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SECTION 1: EXPERTS' PAPERS

Additional Tasks When Criminal Justice Administrations Face Drug Criminality and New Methods to Combat It

*by Walter Odersky**

A

The main theme of this seminar—how criminal justice administration can contribute to the prevention of, and the fight against, new forms of criminality—may be discussed with regard to many and various fields of social reality. In the first of my lectures I should like to describe how the criminality of narcotics and drugs has developed in my country and what new problems this has brought for criminal justice administration. The problems of drug-abuse were new for Germany at the end of the sixties and so they partly have been ever since. It was not until about 1970 that the public became conscious of the existence of the problems of drug-abuse. Certainly, there had been cases of narcotic-misuse before. Occasionally we heard or read of a doctor or a pharmacist, said to be addicted to morphine or who was asked for a prescription by a morphine addict especially in films or novels of the cheaper kind, they were exciting figures. But all this was a matter of individual and isolated cases. Like an explosion, however, cases have spread in our country since the end of the sixties. The USA had already experienced this development five or ten years before. Like many other social evolutions, these forms, too, spread from the New World to us in Europe about one decade later. Some figures from the federal statistics of the German Federal Office of Criminal Investigation may show the development. The Federal Republic of Germany has about 60 million inhabitants. Until 1964 the number of drug-offences known to the police amounted to less than 1,000 per year, in 1968 still less than 2,000. The explosion began in 1969. Within three years the number grew to more than 25,000, that is by fifteen times. Nowadays we have about 60,000 cases per year on average. At first it was cases involving cannabis products which rose so rapidly. Only some three or four years later, heroin followed on an alarming scale and in recent years cocaine has become a very serious problem.

I remember very well those years around 1970. I had just become an official in the Ministry of Justice of Bavaria—which is one of the eleven Laender or federal states of the Federal Republic of Germany—and had to handle criminal justice administration in this field. We all had no experience whatsoever. We had to begin to acquire even the basic knowledge of the different forms of drugs and their abuse. Quite a number of people became a bit unsure as to how the new phenomena were to be assessed, first of all the consumption of hashish (cannabis-products). There were voices questioning whether liberalisation would be the right way. It was pointed out that other drugs, such as alcohol and nicotine, had been used in our country daily for centuries, though they also involved great dangers for public health.

But soon, on thinking it over again, it was clear that a decriminalization had to be out of the question. Apart from the fact that international treaties (agreements) obliged the member states to prosecute drug-offences, a decriminalization would only reduce the numbers in the criminal statistics, but could not clear away the social damage of drug-abuse. And this damage has huge dimensions. It's not only the ruin of the health of the individual. He often has a

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fatal end, either suicide or accidentally caused by an overdose. In Germany at present we have more than one casualty per day, caused by drugs; in 1983 for instance, 472 people died as a result of drug-abuse, mainly of so called "hard drugs" such as heroin and cocaine. But also using hashish has—at least under the conditions of our European civilization—a disintegrating effect and in many cases it is the so called "starting-off drug" the use of which leads to a change to hard-drugs some time later. Using drugs not only puts the user in deep misery, but also destroys human relations in the family, with friends or with a partner. The drug-addict leaves school or professional education, he becomes unable to work and becomes an invalid. The community has to bear the economic damage. Drug-abuse rather frequently results in other forms of criminality of no little extent, especially because the user needs to obtain the financial means for buying new supplies. It is, however, of most significance that drug-abuse is infectious to a very high degree rather like an epidemic. It is a fact of experience, that where there is a drug-user, his family or social surroundings, brothers and sisters, friends, fellows in school, are seriously exposed to the danger of becoming addicts themselves. This fact applies especially to young people. So there is no other way than to undertake all measures imaginable to check the spread of drug-trafficking and drugs-use.

B

Very soon a great mobilisation of efforts began. The conviction grew that the danger could not be combatted in one way only.

There were efforts in many and in various fields of social life, criminal justice administration being only one among them. First, I would like to make some remarks on measures of prevention—such as information and advice and therapy to addicts. Then I'll come to the special issue of the juxtaposition of therapy and criminal justice administration. In the second part, I'll handle some aspects of intensified prosecution. In particular I'll deal with problems with regard to the employment of confidential agents. Finally, I should like to add a few words dealing with international co-operation in combatting drug-problems.

I. 1) Now, first, as to the field of information and education, social care and advice:

Here we are confronted with a phenomenon, which may be formulated in general. Among the various social forces which are countering crime criminal law and criminal justice administration can only make one contribution. Often other forces are much more efficient in preventing social deviation than a penalty under the criminal law and its realization by punishment—such as the influence of the family and other personal relations, of school and the surroundings in the place where one is working, of associations in sport and spare-time occupations, of religious and moral principles, of customs and conventions in social life.

In recent years an immense number of publications in written form, pictures, films, and videos have been produced to provide information about the dangers and the damage of drug-abuse as well as about phenomena indicating that somebody had probably begun to use drugs. It's very important for instance that parents are aware of an inclination of their child in this direction as early as possible. For the purpose of information and general advice innumerable lectures, seminars and conferences have been held. Publications are addressed partly to the public in general, a greater part to special target groups, such as young people, to pupils in schools, teachers, doctors, social-workers and to other persons called multiplicators. There are different opinions about the value of more information, but the demand for such material is great—by all the groups mentioned above, among whom worried parents may be mentioned especially. The mass media—press, radio, television—have also played a great part in the information in this field. A large number of other brochures has been produced with the support of the authorities.

Of greater importance is the need to show young people and to convince them that the way to drugs in most cases is an escape from personal difficulties and that drugs do not solve problems, but, on the

contrary, increase them. For this purpose it is absolutely necessary that the endangered young people may find persons to whom they may talk in confidence about their problems to get advice and help. That was why a large number of agencies for consulation–advisory agencies–were established, the greater part of them by the associations for charitable activities. In Germany we have the so-called principle of subsidiarity: the activities in the field of public welfare in general are left to associations and organizations of society–of the great churches and of other charitable associations; the state and the municipal bodies grant them financial subsidies, but they don't undertake charitable services themselves where these services can be carried out by the independent Welfare Organizations. In the Federal Republic of Germany there were, according to information given by the Federal Government to the Federal Parliament (BT Drs. 10/843), in 1983 about 400 agencies for psycho-social and drug advice. Obviously the agencies for drug-advice acquire great knowledge about offences against the criminal law as regards drug-trafficking and drug-abuse and about the persons involved. So the idea perhaps might suggest itself that the criminal prosecution authorities could try to seize the files of these agencies. On the other hand advice-activities are not possible if discretion is not guaranteed. In the seventies we had one spectacular case with a search of an advisory agency. That was because the text of the law gives the right to refuse to give evidence only to members of the medical professions, not to social workers, too, who were here working in the advisory agency. The Federal Constitutional Court–the highest court of our country–then decided that according to the principle of reasonableness, the work and the materials of those advisory agencies are not in the main subject to search and seizure for purposes of criminal prosecution–except in a case of a severe offence. And I can say that I fully agree with that decision. The principle of reasonableness, a constitutional principle, means that every interference by the state power must stay in a reasonable proportion to the aim pursued.

On the whole we can state that in our population the consciousness of the dangers of hard drugs has certainly increased. The number of persons using heroin for the first time has decreased since 1980. It is difficult to prove, but it is said among young people that taking drugs is no longer "in", as it was five or ten years ago. Whether this change is also the result of a general change in the feeling, in the consciousness of life of the young generation–who may know the answer? In my opinion pessimism, a certain indolence and rejection of work and effort connected with seeking a maximum of distraction and pleasure where more common a decade ago than nowadays. We now have a bit more appreciation for effort and discipline again. This change in the general climate perhaps may have had a share in this development, too.

2) Now some remarks on the field of treating addicts, on the field of therapy. With the exploding number of drug addicts we had of course to try our best to give them help in their efforts to free themselves of the addiction. Left alone the addict cannot succeed. On the other hand no confirmed experiences whatsoever existed as to which kind of treatment and which methods would guarantee success. I am not a specialist in the question of medical or psychosocial treatment and training, yet I may offer a description of the situation as it appeared to us who were in close contact with the representatives of that field. We have to distinguish different steps in the treatment of drug-addicts: First the physical withdrawal; then the period of psychological weaning taking a longer time in which the addict has to stay in a specific institution; and finally the stage of taking care of the person having just completed a therapy stay in the institution.

The physical withdrawal takes some weeks only; this period is also used for curing some of the defects and injuries caused by drug use, such as damaged teeth and infections, also hepatitis which frequently occurs as a result of the use of unsterile injection needles. The greater and much more difficult task is the psychological process of weaning away from drugs. That is, I might

say, the sum of all efforts to enable the person, who was addicted to drugs, to live without them in future, standing on his or her own feet. An addict always has a lot of complications and problems in social relations, concerning his income, his debts, his housing, relations with the authorities including the problems of criminal prosecution, perhaps pending proceedings—a point we will have to talk of in greater detail later on. In all these problems he may get help from social workers. But there is more: in his mental outlook he must get accustomed to leading his way of life under his own responsibility. It is commonly agreed that for this treatment and training, a stay in an institution in most cases is necessary. Normally the stay takes months, if not one to two years. I was told, for instance, that former addicts have to be strenuously accustomed to normal daily routine; addicts are used to sleeping into the hours of the late afternoon and they are awake at night—a custom which does not facilitate their taking part in normal social life, especially in the world of work. Of course addicts have to learn again to fulfill the demands of regular work. A main defect of an addict, however, is his lack of realistic assessment of his own person and situation and of his surroundings. It is said that the way to correct this is very hard and painful. The methods of the various institutions working in therapy are different. Some of them are orientated more to psychological, others more to sociological means. In almost all cases the staying and working in groups has been acknowledged as being very important. (The inclination to live in groups is—to judge by my observation of the younger generation in Germany—a general trend of evolution.) There is, too, a general consensus of opinion that a key factor in regaining health is that the addict himself must want to break away from the addiction and must co-operate in the therapy. Without this prerequisite all efforts at trying to free him of addiction are in vain.

As to the question to what degree the treatment in the therapy of addicts is successful, it is very difficult to get precise statistical material—at least this was true for us who were not insiders. It usually is said that recidivism and the breaking off of therapy are normal in this kind of illness and that quite a number of addicts, after having seen their own weakness, are better equipped for a new try at therapy. Furthermore the follow-up observation of the persons treated is difficult after they have left the therapeutic institution. On the basis of many discussions with leaders and members of therapy institutions, I have gained the following impression, stated in general terms: About half of those who enter a therapeutic institution break off the treatment within the first weeks. Of the remaining half only about 50% reach their aim, that is to say they remain to the end of the institutional therapy. Of course a section of these who are dismissed after a successfull conclusion of institutional therapy become recidivist in the following years. A realistic estimation of the chances of therapy is necessary, but, nevertheless, all possible measures have to be tried.

So it was a very important concern to supply a sufficient number of places for institutional therapy. This was achieved quite quickly. We had almost 2 1/2 thousand places for long-term therapy and this is estimated as being more or less sufficient. It is assumed that places should be offered representing 5% of the assumed number of addicts on hard drugs, that is 50.000 in Germany at present. The institutions for therapy are managed to a large extent by the independent associations of public welfare; there are private organisations, and institutions of the state, the universities or municipal bodies take part, too. The cost for the stay of the in-patients—they are enormous in most cases—are borne by the different institutions, out of social security insurance or public welfare.

II. The time has now come to speak about what criminal law and criminal justice administration can contribute in combatting drug problems in their present rapid increase.

There is certainly a call for the great traffickers and the illegal gangs to be fought with all possible energy and severe punishment. At the same time in public opinion

great sympathy for the treating of addicts arose and resulted in quite some opposition to criminal justice administration. It was not mentioned that addicts were frequently punished because of trafficking, too. On the other hand there was considerable euphoria in respect of the chances of therapy. It was said: punishment doesn't achieve anything with an addict. It is impossible to cure addiction in jail. On the other hand imprisonment precludes the addict from entering an institute of therapy. It pushes him deeper into addiction, and at the end of the prison sentence, his motivation to conquer the addiction will be less then before. Perhaps it was a factor, too. that the departments of prison administration had their problems with those prisoners who were addicted.

These aspects joined together in a general claim which culminated in the slogan: "therapy instead of punishment". This slogan immediately found public sympathy. It was common talk (and it still is in part). There were suggestions which went so far as to request that every prosecution should be stopped the moment a person had entered an institution which called itself an institute for therapy - without any guarantee of the genuine nature of that institute and with the possibility that the person could continue trafficking from the safe base of the therapeutic institution.

There was a deeper, inner reason for this slogan having such a wide and uncritical echo: "therapy instead of punishment", but I think that hardly more than a handful of people were aware of it at that time. It was–in may opinion–the result of the fact that public opinion about the aims of criminal law and criminal justice administration had narrowed in a quite one-sided way. For about 15 years, from about the second half of the sixties, whenever there was reference in the media to the aims and functions of criminal law and criminal justice administration, there was only one word as an answer: "resocialization". The person who has shown behaviour indicating social "deviation" is to be handled and treated up to the point where he is able to continue his life in keeping with the rules of society. To prevent any misunderstanding: in my opinion, too, it is right to use criminal prosecution and punishment for resocializing the offender as much as possible.

But on the other hand–looking at the problems a little less superficially–it ought to be beyond all doubt that criminal law and its application in criminal justice administration have a very important preventive function. Society answers a socially injurious act with punishment for the purpose of counteracting future offences against the norms indispensable for life within the community. The aim of, and the reason for, criminal law is not only the resocialization of the offender, but equally the protection of the community. Facing the ravaging effects of drug-abuse the state is legitimized and called upon to use the instrument of criminal prosecution, too. It is impossible to do without the preventive function of criminal law.

There is still another aspect: the willingness and the decision to submit to therapy are usually born of a certain burden of suffering. In many cases addicts are ready to undergo therapy only in connection with an impending punishment.

That is to say it's not possible to combat drug-problems without criminal law. And on the other hand it is imperative, too, that addict offenders receive a specific therapy. The only way out of the dilemma is to find out how both may be suitably co-ordinated.

This co-ordination has been improved significantly in recent years. I'll explain this in detail:

First I'll mention that here we have to talk about the cases with a prison sentence only. In the lesser cases courts issue sentences to fine or they apply some forms of diversion in the field of drug-offences as well as in that of other offences.

The prison sentence can be suspended on probation. According to the common rules the prerequisites for probation are: the sentence must not exceed one year (in special cases: two years) and there must be good prospects that the convicted person will commit no further offences. The sentence of probation can be combined with a judicial direction on probation–for instance, to undergo a spell of therapeutic treatment in

an institute. In practice, judges use this instrument very extensively—even approaching the utter limits of the application of the law with regard to the fact that recidivism and the disruption of therapy is an almost regular phenomenon in the course of addiction.

Besides imprisonment our criminal law provides as another possibility the committing of an offender to an institution for detoxification and treatment. According to the system of our criminal law, this does not have the character of criminal punishment; it is one of the so-called measures for the reformation of offenders and for the prevention of crime.

Yet it is not a voluntary therapy, but a compulsory measure. In practice this measure has not been very successful for several reasons. One of them certainly is the fact that the will of the addict to submit to therapy is a psychological precondition. Judges use this measure rarely and only in those cases where all other options have failed.

In prison most addicts cannot entirely be cured either. The physical withdrawal process may be carried out, and health restoring measures may be applied in prison, but the second and longer lasting part of therapy—the psychological process of weaning away from drugs—is difficult to foster under the conditions of imprisonment. The prisons are not equipped for this kind of treatment and above all, the process towards self-reconstruction and self-responsibility cannot be performed and brought to an end without being at liberty. With regard to this dilemma our new Law on Narcotics and Drugs which came into force on January 1(st), 1982 has established two further ways for co-ordinating punishment and therapy:

There is, first, the so called "deferment of the execution" of the sentence (section 35 of the Law on Narcotics and Drugs). This possibility is intended for those cases in which probation cannot be given. The precondition is that the convicted person stays under treatment or at least that he has promised to undergo such a treatment and that the beginning of it is guaranteed. In this case the execution of a penalty or of the rest of a penalty up to two years can be deferred for the present. The time of the stay in treatment is counted towards a part, up to two thirds, of the sentence, if the stay was in a state approved institute in which the person in question had to subordinate himself to restricting rules as is usual in those institutes. For the rest of the penalty probation is given after completion of the course of therapy.

You may question: isn't it the same as probation? It is similar, but not same. Unlike probation it is located in the stage of execution after the sentence. The decision is up to the authority responsible for the execution of the sentence; and, in addition, it needs the consent of the court. The general prerequisites for probation being in force for all kinds of offences are not concerned; the deferment can be given to a person with a higher sentence or with no good prospects, too. Execution, however, begins as soon as the convicted person breaks off therapy. On the other hand, motivation for therapy is furthered by the setting off the duration of therapy against a part of the sentence as well as by its impending execution in the case of break off.

There is a second feature brought by the reorganization of the Law on Narcotics and Drugs. Section 37 enables the public prosecutor and the court—if they mutually agree—to suspend proceedings concerning an offence committed in a state of addiction. It is a precondition that the addict has remained under therapy for at least three months, that a sentence not higher than two years is expected, and that the rehabilitation by the therapy "is to expected". This new provision is intended for the situation in which therapy has begun already and winding up the proceedings could seriously disturb these efforts. Without doubt, here we are near to fulfilling "therapy instead of punishment". But if the therapy is stopped or if the charged person commits another offence, the proceedings are to be continued within a period of four years. With the precondition that therapy has to have lasted for at least three months already, there is a certain safeguard against a merely feigned readiness to submit to therapy. It is in this sense that the criminal justice administra-

tion gives priority to the aim of therapy.

It will certainly be of interest to hear how the new regulations described have been put into practice. I refer to the figures contained in the report of the Federal Government given to the German Parliament and concerning the first eighteen months of enforcement of the new law. Suspension of proceedings occured relatively rarely. 112 proceedings were suspended by the public prosecutor, 130 during the proceeding at court. It's not known in how many case the suspension had to be revoked. In any case practice shows that this method of disposal is appropriate only for exeptional cases.

The deforment of the execution of sentence has been much more important. This regulation has been used in 1,504 cases. A little more than one third of the deferments had to be revoked because therapy was broken off. But as I indicated, a new deferment can be given, if the convicted person will seriously re-enter therapy and if this therapy is not without a chance of success.

It is evident that the new form of criminality has brought about new operating conditions for criminal justice administration. The situation is characterized by the juxtaposition of the worlds of therapy and of justice. They may perhaps seem adversaries, but they are called upon to develop contacts and co-operation. I will not deny that at the outset there was largely antagonism, misunderstanding and lack of confidence. The ways of thinking of members of therapeutic professions and of judges and public prosecutors are fundamentally different. Knowledge of the world of the other was too limited and the persons working together were not acquainted with one another.

I believe that within the last ten years this strangeness between the two camps has been overcome to a large extent, by contact and co-operation. But of course there are still difficulties.

For instance, the organizations managing therapy critize the new law; in their opinion the new possibility of deferment of execution has caused a decreasing of cases in which probation is given. There is indeed a certain decrease. This is surely to be explained by the fact that judges in the time before—not having another legal possibility—used the norm of probation very extensively. Now they have the legal instrument of deferment of execution. We can observe that the sum of probations and deferments together is obviously higher than the number of probations alone in the preceeding period.

There are complaints that the proceeding to get a decision on deferment in the phase of execution is a written one, that it is bureaucratic and takes weeks or months. True, the court's decision on probation has to be given during the trial. As a result of this the decision is made personally, and in one day. On the other hand, what is to be done, if the preperations for entering an institute of therapy are not completed on the day of trial? Should the addict be released for the following weeks? Isn't it better to have him in prison and to transfer him immediately to the institute of therapy at the appropriate time? Certainly, the written proceeding should be shortened as much as possible. That depends to a great extent on the persons acting in the case concerned. The ministry has given directives in this concern.

It is a point of particular importance to rouse the motivation of the addict to enter therapy. For this purpose members of the social service professions are employed in the prisons. They give the addict psychological assistance and help him to manage the bureaucratic preparations necessary to obtain therapy. The Federal Government has begun a special programms to employ another 60 free advisers for this work.

Of course there are many and various difficulties in the daily work, too. Motivation is frequently the fruit of personal contact. The general organization of the prisons, however, provides that the convicted person is to be transferred after trial from the prison of pre-trial confinement tc the prison which is destined for the execution of the sentence concerned. In order not to break off the contacts with the advisers and the preparations for therapy, the ministry has given a directive that such transfers should be avoided in relevant cases.

It is necessary to transfer the addict immediately to the institute of therapy and not to give him an opportunity to make even a short visit to the drug scene. So it has to be arranged that the addict is accompanied on the way from the prison to the institute. On the other hand there must be a careful avoidance of any automobile appearing in front of the therapeutic institution, which may be recognized as belonging to the police or justice administration. In a similar fashion, every appearance of members of police or of the judicial system in the institute causes a disruption. The same applies if a person staying in the institute is summoned to an interrogation or to trial, be it as a witness or in his own case. The best way to alleviate all these difficulties is close contact between the persons working on either side.

A special problem arose from the obligation on the institute of therapy to inform the authority of execution of any breaking off of therapy. As you already know, the deferment of execution is given only on the precondition that the convicted person remains under treatment for his rehabilitation. Where such treatment is broken off, deferment is cancelled. The new law imposed an obligation on the institutes to give notice to the authority if therapy is broken off. Initially there was great opposition among the members of the institute to this obligation. They did not want to be the instrument of state power, so they said. Only in long discussions could the view be advanced that, firstly, every discontinuance brings the addict into great danger and it would be better to confine him as early as possible; further, that the obligation to inform the organs of justice could also have a preventive effect on the subjects in the institute. Of course, there remains a need to define what is a "breaking off" of therapy: it is not seldom the case that addicts return to the institute after one or two days; in addition, is this already a "breaking off"? The revocation of deferment and issuing warrant of arrest is not in any case a binding requirement on the authority, but a decision left to its discretion. In order to find the right approach, as in every case, here, too, a close personal contact between those working in the two fields is the best basis.

Personal contacts have increased within the last years to very great extent, both in terms of number and degree. Many conferences and seminars have been held, locally or regionally, where doctors, social workers, judges, public prosecutors, members of the prison administration, probation officers and members of the social services in justice administration discussed their problems and exchanged their views. There have been publications by judges on how to co-ordinate with the sector of therapy in the best way. Above all, personal contact is effected in the daily work on individual cases, too. Of course, it will never be possible to solve the problems completely, but what I wanted to show is that there has never been a field in which the member of the criminal justice administration engaged in such intensive cooperation with the members of the therapeutic field. The new task of combatting drug offences and supporting efforts at therapy at the same time has created now legal instruments and beyond that, a way of daily work which really cannot be compared with any other work in the criminal justice administration.

III. Criminal justice administration taking account of the concerns of therapy with regard to drug-addicts—that is one half of the picture. But of course, I should now talk about the great efforts, too, in combatting drug-trafficking by means of prosecution.

1) The increasing numbers of cases referred to above not only result from the development of this kind of criminality, but at the same time are the fruit of the very thorough work of the police and other authorities, for instance of the customs-authorities which have enlarged their personnel, learnt from their experience and improved their methods of observation and investigation.

2) The penal provisions against drug criminality have significantly improved. Today hardly anyone remembers that the upper limit of the range of punishment under our old Opium Law which was in force up to 1971 was not higher than 3 years imprisonment. Again we see the minor role

drug criminality played in former times. After a first alteration in 1971 a thorough reorganisation was set in force by the new Law on Narcotic and Drugs on January 1 (st), 1982. This Law has reformed the provisions of public law concerning the legal transactions and uses of narcotics and it improved the penal provisions against illegal actions as well. The statutory definitions were more differentiated. Above the different forms of a basic statutory definition, which provides imprisonment up to four years or a fine, the law defines major cases which are threatened by imprisonment up to ten or fifteen years respectively. The major cases are mainly, if the perpetrator trafficks with drugs in a quantity which is "not negligible" or if he holds in possession such a quantity; this element of the "non negligible quantity" aims at the traffickers and intends to leave out the mere users of drugs. The other main case, liable to punishment up to 15 years, is if the perpetrator imports drugs in a "non negligible" quantity or if he is trafficking as a member of a gang. 15 years is the maximum term a sentence of imprisonment can have according to our general system of penalties. Above this there is only the life sentence, provided for murder and a few other capital offences.

3) Let us have a look at how these provisions are applied by the courts. In 1984 18,348 persons were convicted of drug offences by the courts of the Federal Republic of Germany. Not counting sentences applying criminal law in relation to young offenders (their number was about 4 1/2 thousand) there remain about 14,000 adult offenders. About 10,000 of these adult offenders were convicted in relation to a basic statutory definition of drug offence. Only fines were imposed on about 50 percent of them. The provisions on major cases were applied to other 3,844 persons—almost 4,000—and nearly all these persons received prison sentences. 221 times the prison sentences amounted to between five and ten years, 21 times between ten and fifteen years. These figures indicate that the criminal courts have answered the increasing trafficking with sentences of severe punishment. Practising severe punishment does indeed have a preventive effect on these cool, calculating traffickers. We could observe that, if in a certain area courts impose severe penalties, traffickers were driven out of this area to a large extent and moved to other regions and cities. The statutory definitions don't distinguish between the various drugs, but within the legal ranges of punishment, courts fix the individual penalty according to all circumstances. Minor offences, especially those with cannabis-products in a minor quantity, are sanctioned with low sentences, but those with hard drugs and large-scale traffickers are punished severely.

4) There is another special regulation in the new law designed to improve the instruments of criminal justice administration: the court may reduce punishment to a level under the normal range or it may refrain from punishing, if the offender gives evidence and co-operates so that the offence can be cleared up over and above his own involvement in it. Normally this means that he gives evidence against his former accomplices. We have a colloquial phrase for such a witness, which is literally translated as "Crown witness" (Kronzeuge). We don't in general have such a privilege for a witness giving evidence against his accomplices, the principle of mandatory prosecution applying in the Federal Republic of Germany. In addition, the value of a witness won over by such a privilege is to be regarded with reservations. But as an exception to the rule we have this possibility for those fields of criminality where, typically, conspiratorial circles operate and cannot be combatted without infiltrating and breaking them up. The new rule was used in 500 cases within the first 1 1/2 years. Assessments of its value differ. The associations of welfare and therapy reject it. In their opinion it leads above all to charges being preferred against minor or middlecategory offenders and this runs counter to the aims of therapy. (Perhaps we have in this matter, a relic of the antagonism of the two fields we spoke of before?) The criminal police, however, maintain that this is an effective instrument for obtaining first indicators for further investigations. As I see it, the value of this rule about the

"Crown witness" must not be overestimated, but it is one element improving the means of combatting drug-offences.

5) We have just touched upon the conspiratorial and organized form which characterizes drug-trafficking. The forms of combatting it must be adapted to this phenomenon. This focuses our attention on another point of our main theme of new problems of criminal justice administration as a result of new forms of crime. I mean the work with confidential agents and with so-called undercover agents. In this connection I should like to say, right at the start, that the use of non-official agents–confidential agents–is much more important in practice than that of the so called undercover agents, who are police officers.

Confidential agents are not only used in combatting drug-offences. There are other kinds of criminality, too, where we can't do without them. The common attribute of these forms of criminality is that here we have to cope with criminal organizations. This applies to gangs committing car theft in a large scale, for example, selling them abroad illicitly via racketeers working in the background of an organized ring of handlers, who are receivers of stolen goods. Or let us consider the production and disseminating of counterfeit money or the illegal trafficking in arms, and finally of course the field of espionage, too. The main actors in such organizations often remain in the shadows. It is often the case that only the guilt of lesser members of the organisation can be provided. Because of the conspiratorial methods these lesser members have no insight into how the whole organization is built up. Persons who know something are restrained from giving evidence either by paying them money to remain silent or by threatening and intimidating them. These problems exist in the field of drug-crime in a very marked form. It may perhaps be said that there is hardly another field where these problems occur so frequently and intensively every day. For this reason it may be justified to treat them here in this connection.

To combat the forms of organized and conspiratorial criminality it is necessary to acquire knowledge of their internal organisation. For this purpose the police often depend upon information from persons who are ready to give it only if their anonymity is guaranteed, including for the future, of course. In the discussion we have to distinguish between two concepts and technical terms: the first group are private persons giving information in a single case or assisting the authorities for a long period secretly, for instance, taxi-drivers or the proprietors of bars, hotels and guesthouses. They do this if they are promised confidentially. We call such a person a confidential-agent (in German: V-Mann; "V" is the letter pronounced in English "VI" and is the abbreviation for "vertraulich", that is confidential). It's another thing if members of the police, officers, work under a false identity in the scene in order to infiltrate it and to get information. This group is frequently called "undercover agents", following a term used in America. Obviously special additional problems exist for the work of this second group. These result from their being forced to share their life with a criminal scene under a false identity. And on the other hand, as officers they are obliged to keep within the legal bounds of state intervention. In recent public debate in Germany, the use of such undercover agents has been a topic of current relevance. A number of police representatives and politicians demand that, faced with the expected development of criminality, this way of combatting it should be enforced. Other high-ranking police officers suggest that the number of instances of use of undercover agents plays a minimal role and that it would be preferable not to extend this. At any rate the use of confidential agents is of incomparably greater importance, an observation which also applies to our special field of drug criminality.

There are three circles of problems relating to the use of confidential agents and undercover agents: First, under what conditions can they be promised confidentially and who has to decide on this promise? Secondly: what are those persons allowed to do in their contact with the scene? And finally: how can the information given by

them be used in a judicial proceeding?

It is not doubted that confidentiality can be promised in combatting major and organized criminality. But the authority has to take into consideration that principally it is of very great importance that evidence is given by the witness himself. So it is permissible to promise confidentiality only if investigations using another method are without chance of success or substantially inhibited, and if the confidential agent might be seriously endangered if his co-operation were known in the scene. And it is the aim of using the information that openings should be created for further investigations and obtaining other means of proof so that the judicial proceedings do not depend on the evidence of the confidential informant. In Germany two authorities work in the field of criminal investigations: the department of public prosecutions, which is an organ of justice, and the police, who come under the Ministry of the Interior. Responsibility for the investigation proceedings lines with the public prosecutor, who can give directives to the police, but the police in general are nearer to the daily facts of investigation. So you can imagine that there is also a small amount of confusion and complication as to who has the right to give the promise of confidentiality.

Secondly, there is the question of legal limits while working on the scene. Nobody—not a confidential agent, and even less so an officer working as an undercover agent—is allowed to commit an act which is punishable by law. In the general doctrine of criminal law we have the figure of the "agent provocateur"; we say he is not punishable as an instigator because he does not wish the deed of the actor be accomplished, but only attempted. In contacting drug-traffickers, the agents often cannot avoid making test-purchases or simulated purchases or purchases to win confidence. This does not amount to a criminal act because, so we say, the purpose of the law is not infringed by those actions—on the contrary. Questions considerably more difficult arise, if agents get into a situation where they see themselves forced to take part in other actions, for instance to take part in theft, or—as regards police officers acting as undercover agents—to take part in actions interfering with individual rights. So for instance it is problematic to enter private dwelling rooms, perhaps under a pretext or even at the invitation of an individual not knowing about the secret character of the agent. In our penal code we have a general rule concerning 'necessity" (section 34, Rechtfertigender Nostand), which justifies a deed fulfilling in itself a statutory definition contained in the criminal law. According to this rule an action is not illegal, if it is done in order to avert a danger to life, body, property or for another object of legal protection and if the protected interest considerably outweighs the injured one. This means that there must be a weighing of legal merits: consideration must be given to the question of which of the objects of legal protection is to receive priority. There has been some discussion as to whether this rule can justify the work of confidential agents or officers. Situations will have to be differentiated: the general rule of necessity will not make it possible for an authority to start planning confidential operations. It is not excluded, however, that while they are working, persons are confronted with a situation in which they are compelled to perform certain actions in order to avert a danger from an object of great significance. In combatting drug-offences the activities will often not only have the purpose of investigation but at the same time of averting impending dangers, for instance by confiscating a large haul of drugs just being imported. According the predominant doctrine, which is contested however, members of authorities are not excluded from using the general rules of justification in penal law. But besides the question of punishability, there is the other one concerning obligations under public law and particularly under the constitution. So it is seen as necessary to clear and to define the basis for covert investigations in law.

The third field is that of the proceedings before and during trial. Here I must describe a very interesting confrontation of the legal interests in using immediate means of proof and investigating the truth on the one hand,

and of observing rules of formal procedure and fair trail on the other.

To begin with: if the authority, normally the police, has given a promise of confidentiality, this promise must be kept. If in proceedings the personal data of a confidential agent and his personal presence are required, the authority can declare that this information is blocked; but this blocking declaration has to be given by the ministry itself.

Then the question arises whether persons can be examined as witnesses before the trial who can give a report on what the confidential agent, not present himself at trial, has said. In particular it mostly is the police officer who has interrogated the confidential agent. Using hearsay evidence is not generally forbidden in our criminal procedure. Such evidence is a possible means of proof. According to the principle of free consideration of evidence, the judge has to take account of this witness, too, but he is free in his decision as to what degree he will be convinced by him. Many decisions of our high courts emphasize the fact that a judge considering hearsay evidence must be extraordinarily critical, particularly if the informant remains anonymous. As a rule the hearsay evidence alone will not be sufficient to prove the guilt of the accused. Seen in this light, too, it is important not to stop at using the confidential agent himself as a source of evidence in proceedings, but to use him as a means of discovering other proof.

Another procedural principle is that written statements by a person not present in trial or a transcript of his former examination must not be used in the trial; only the transcript of a former examination by a judge can be read and quoted in trial. There is an exception to this principle if the witness has died in the meantime or if the cannot be contacted by the court. So our highest courts had to decide whether it can be acknowledged that a witness is "unobtainable" for the court, too, in where the executive power gives a blocking declaration so that the person remains unknown in the proceeding. This was affirmed in principle, but our Constitutional Court said that the authority of the administration is obliged to weigh the conflicting interests here: there is the interest in combatting crime effectively, for which purpose it may be necessary to have confidential informants. On the other hand the individual's right to freedom has to be considered; this right is to be guaranteed by the rules of procedure which demand in principle that a witness has to give evidence personally in trial. The administrative body has to inform the court on this weighing of interests as far as possible, and courts have to try to establish direct contact with the witness wherever possible.

On this basis a very interesting discussion has arisen in recent years which has been debated by the Great Senate (which has the function of a plenum) of our Federal Court of Justice. There were two camps: according to one opinion the principle of having immediate contact with a witness is of such importance that in order to avoid a total blocking of the witness, the court has to ask the executive authority to consent to an examination under special conditions, sheltering anonymity. Such conditions could be an optical or acoustic screening or to allow the witness to refuse to answer questions on his personal data. The other school of thought rejected this with the argument that the rules of procedure don't allow these restrictions of the rights to examine the witness appearing in a trial completely. The controversy culminated in a case in which the executive body had declared that a confidential agent could be examined immediately by a judge, but only by him and not in the presence of the defence counsel; if the identity of the agent were to become known even to the defence attorneys, his life would be in serious danger. On the other hand, it is a principle of our law of procedure that the defence counsel has the right to be present at every judicial examination. In this conflict the Great Senate of the Federal Court of Justice decided in 1983 that there is no way to examine a witness in a trial under conditions not provided by the law of procedure. As a consequence the conflict is reduced to the two alternatives: either the witness may be

introduced into the trial in the regular form and then he is subject to all the different rules provided or—where the interest in guaranteeing his anonymity is foremost—he cannot be used as an immediate witness in trial at all and the authority may block him in this case. In my opinion the decision of the Federal High Court deserves approval. Surely it may result in using indirect evidence in some more cases in a trial (that is if the immediate witness gets blocked), and it may be the case that the chances of proving guilt are reduced in some way if the immediate witness cannot be used. On the other hand, the decision draws a clear line for our judicial proceeding and avoids the danger of developing in directions which may perhaps create some obscurity. It seems that experience since this decision has not shown as yet that the concern of combatting crime, especially in the field of drug-criminality, has been unduly handicapped.

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Finally, we come to international and supranational co-operation in drug-problems. As interchange with foreign countries has increased, it has been suggested, criminality, too, has taken on more and more forms crossing the frontiers and interweaving in several countries. That is especially true of drug-criminality. So, naturally, international co-operation is of extraordinary importance for combatting this criminality.

There is co-operation at the level of the United Nations based on a number of international agreements, in particular on the Convention on Narcotic and Drugs of 1961 and on the Convention on Psychotropic Substances of 1971. By 1983 115 states had acceded to the first mentioned convention and 76 to the second one. The body directing drug-policy at the UN is the International Narcotics Control Board which has its seat in Vienna. The board is directed by 13 members. It issues an annual report on the operation of the international drug control system. This reports contains an attentive analysis of the world situation too, dealing with the individual regions and states and finally the board makes conclusions and suggestions. The report for 1985 has been published just some weeks ago.

In co-operation with the countries where the opium poppy is cultivated, the main aim is to promote programmes of economic development, replacing opium poppy cultivation by the production of other crops and goods. For this purpose it is necessary to give peasants a market for alternative products. The Federal Republic of Germany subsidizes such programmes of development and substitution in several countries. The United Nations Fund of Drug Abuse Control (UNFDAC) plays an important part in this work.

In addition, the bilaterial and multilateral co-operation between the European states, the United States of America and the countries of origin and of transit has been considerably improved within the last decade. There is an intensive exchange of information at the level of the police and of custom authorities. The German Federal Bureau of Criminal Police—that is the central police authority for international contacts—has had favourable experiences in sending liaison-officials to the diplomatic missions in some countries of origin and transit; they were able to improve immediate personal contacts with the authorities concerned in those lands. The Federal Bureau of Criminal Police supports the police of several countries, too, by assistance in training and equipment. Contacts and the exchange of information with the authorities of our neighbouring countries are particularly intensive, of course.

In addition to the co-operation of the police, there is a regular exchange of experience in the framework of the European Council by the "Co-operation Group to Combat Drug Abuse and Illicit Trafficking in Drugs," the so called Pompidou-Group. In this group the member states of the European Community and, in addition, Norway, Sweden and Turkey are represented. In the group experts from the several disciplines exchange their experiences and give suggestions influencing the efforts in the individual countries as well as in international co-operation. Co-ordinating national policies in the European framework is of

special importance. In conclusion, quote the words of a member of this group in the session held last year at Paris: "We have come here together in order to try to make a joint step forward in our common fight against drug trafficking and drug consumption. In order to achieve this ambitious, but essential aim we should always be aware of the fact that –because drugs are international phenomenon–all national drug policies necessarily also have international effects and repercussions. If the conviction among the member states prevails that international collaboration is necessary in our common fight against drugs, then it seems indispensable to us that national measures in one country must not conflict with those of another country".

Undercover Operations — The Design and Management of an Effective Law Enforcement Investigative Capability

*by Jay B. Stephens**

Introduction

During the past decade, undercover operations have played an increasingly important role in federal law enforcement in the United States. The undercover technique has been utilized successfully in investigating and prosecuting a broad range of criminal activity including narcotics trafficking, espionage, racketeering, public corruption, terrorism, and money laundering. It has proven to be a critically effective means of investigating organized, clandestine, sophisticated criminal activity which is readily susceptible to detection by traditional investigative techniques. The continued utility and legitimacy of this law enforcement tool as a means of bringing guilty offenders to justice require a recognition of and sensitivity to a number of legal, policy, and investigative/prosecutive management issues, careful attention in planning undercover operations to avoid government overreaching and to minimize the potential harmful risks to law-abiding citizens will enhance the credibility of this very effective law enforcement technique and will ensure the viability of undercover operations as a means of reaching organized, covert criminal activity.

General Remarks on Undercover Operations

The "undercover operation" concept includes a wide scope of investigative activity ranging from the more simple "controlled buy" narcotics transaction with a law enforcement agent posing as a prospective purchaser of drugs to a complex business-financial law enforcement front organization interfacing with an ongoing criminal enterprise to provide a service to that enterprise. The relationship of the investigative agency through its undercover agents to the criminal activity and targets under investigation varies substantially depending upon the complexity of the criminal scheme, the nature of the criminal organization engaged in the activity, and the undercover scenario devised to gather evidence of the criminal activity. The contact between the law enforcement agent and the target can range from a single, brief encounter to a sustained, long-term relationship with the criminal organization.

The common feature of all undercover operations is the use of a co-operating individual, an undercover employee, or an undercover agent who operates at the direction of the law enforcement agency to assist in an investigation and whose true identity and relationship to the investigative agency is concealed through the maintenance of an alias or "cover." Development of information leading to the initiation of an undercover investigation may come from an informant and the ongoing operation of the investigation may involve the assistance of a "co-operating individual," who is a private person not otherwise linked to law enforcement. In addition, an undercover operation may depend upon a "middleman" to introduce potential targets to the criminal opportunity of the undercover investigative front organization or to introduce an agent into a criminal organization; generally, the "middleman" has an ongoing relationship with or an entre to potential targets and does not know that the front organization or undercover agent is law enforcement controlled. As will be discussed below, the

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control and management of these various participants in the undercover scenario entail significant issues which impact on the ultimate success of the undercover investigation and resulting prosecutions and which pose risks to innocent persons and potential for government overreaching.

The establishment of an agent's "cover" requires building his "credibility" with the targets of the investigation. This process, which is at the heart of structuring an undercover investigation, can entail simply the assumption of an alias and a pretext for contact with the target or can involve an elaborate design of a business enterprise with all the indices of a legitimate operation run by an individual experienced in a particular industry. The development of credible "backstopping" for legitimacy, including the leasing of space, the establishment of bank accounts, the development of credit and professional references, the training of the agent in the expertise of the assumed business, and the design of the accoutrements of the assumed role requires extensive planning and frequently involves the assistance of non-law enforcement personnel, sometimes unknowingly and other times surreptitiously.

The characteristics of the targets and their organization dictate in large measure the design of the "cover" and the indices of "credibility" which need be established for effective penetration of a criminal enterprise. Since the thrust of the undercover technique is to interface law enforcement personnel with ongoing criminal activity or the planning of a criminal scheme in order to investigate the illegal scheme and either to prevent its execution in some cases or to develop sufficient evidence for a successful prosecution, the structure of the relationship between the law enforcement operation and the criminal enterprise is critical. Frequently, development of the necessary credibility to penetrate effectively a tightly organized criminal enterprise may require months or even years to achieve and may depend upon building a relationship with a 'middleman" or use of an informant to 'vouch" for the law enforcement agent and to introduce him into the criminal enterprise; then the agent can develop his credibility by performing some service or function for the organization or otherwise participate in the activities of the enterprise.

In other situations where the undercover front provides a "service" to a number of different individuals or organizations engaged in criminal activity, the design of the business situation, the representations made by agent, the word " on the street" put out by middlemen and confederates, and the continued performance of the service itself generates credibility. Designing a store-front business operation to detect the fencing of stolen heavy equipment obviously requires a different approach from seeking to penetrate an organized crime drug smuggling operation by posing as a distributor; likewise, posing as an illicit arms dealer to penetrate an assassination plot requires a much different scenario from providing an apparent outlet for forged securities or stolen art to snare those who are trafficking in such commodities.

Great imagination and sensitivity are required in designing this interface role. Imagination is necessary to develop a creative scenario which will prove to be both attractive and credible to those predisposed to engage in criminal activity while at the same time not injecting the law enforcement agent into initiation of criminal acts or unintended participation in illegal conduct. Sensitivity is demanded to avoid harmful impact on innocent third parties, to limit overreaching by government agents, to minimize the intrusive characteristics of the investigation, to ensure strict adherence to recognized legal norms, and to ensure in the final analysis that the role played by the government agents comports with accepted standards of fair play recognized by society.

In the American criminal justice system the undercover investigative technique has proved to be an effective law enforcement tool, especially where criminal activity is clandestine or involves apparently "victimless" crimes. The technique is not a substitute for traditional criminal investigation, but in some circumstances provides an important addition to the investigative arsenal.

The investigation of many crimes still is suspectible to traditional investigative techniques. Where, for example, it is apparent that a crime has been committed, the investigating agent can identify and interview witnesses, review documents, and gather and analyze evidence from a crime scene. This approach is effective when someone knows a crime has been committed, the crime has been reported, the crime occurred in the presence of witnesses, or physical or documentary evidence of the crime can be produced. But with respect to more sophisticated and organized criminal activity, particularly where the illegal conduct is concealed, the traditional investigative approach increasingly has its limitations. In some cases the leadership and bosses of criminal organizations effectively have insulated themselves from the criminal operations under their direction. In order to reach those who are ultimately responsible for masterminding and directing the organization, law enforcement needs to penetrate the organization itself to detect the agreements, the orders and directions, and the disposition of proceeds which underlie the organization's criminal activities.

Similarly, so-called victimless crimes are not readily susceptible to detection and prosecution through traditional methods. Because these offenses frequently are consensual in nature, there are no apparent witnesses and no readily identifiable individual victims. For example, narcotics trafficking does not usually result in an identifiable individual crime victim who can provide evidence about the culpability of the leadership of the importation and distribution structure of the trafficking organization. Also, bribery and public corruption generally occur between consenting individuals without producing identifiable witnesses or individual victims who can identify the perpetrators of the crime and without producing any obvious public manifestations that a crime was committed. Finally, the undercover technique provides a means of penetrating a criminal organization such as a terrorist organization so that the execution of criminal operations can be preempted or prevented before individuals are victimized. In short, effectively investigating and prosecuting concealed crime and corruption requires enforcement agencies to inject their agents into the midst of corrupt transactions and to feign the role of a corrupt participant.

It should be noted that the use of undercover operations to investigate criminal activity which otherwise may have gone undetected has been significantly enhanced by the use of electronic surveillance. While undercover operations and electronic surveillance entail two totally separate investigative techniques, they have become almost intertwined in the more complex undercover investigations, and for a number of reasons electronic surveillance continues to be a critical ingredient in the growth and development of the undercover technique. Under American law there are essentially two types of electronic surveillance utilized by law enforcement. The first is "consensual" which sanctions the recording of conversations or events where one party agrees or consents to the recording. Thus, when an agent or co-operating individual meets with a target, the agent is authorized to record that conversation as long as he is present or is a party to the transaction. The second type of surveillance is "court-authorized" which requires law enforcement agents to obtain a judicially sanctioned warrant upon a showing of probable cause. Court-authorized surveillance is utilized to record events where a law enforcement agent or co-operating individual is neither present during a conversation nor a party to an exchange and where the target would otherwise have a legitimate expectation of privacy.

Undercover investigations depend heavily upon consensual electronic recordings to document conversations between targets and law enforcement personnel and to record transactions between targets and agents. Since generally there are no disinterested witnesses to a bribery transaction or clandestine criminal activity, a recording of the transaction provides persuasive evidence, not only of the fact of the transaction, but of the intent, motive, and state of mind of the criminal participant. In addition, documentation of various agent-target

contacts through aural or video recording enhances the credibility of the entire undercover operation as well as providing specific evidence of criminal activity. Since at trial testimonial evidence might consist of the agent's word against that of an otherwise respected public official, recordings are critical to underscore the agent's credibility. As a tactical matter, evidentiary recordings against the target force him as a defendant at trial to defend by attacking the entire investigation rather than to dispute the facts supporting his guilt. Finally, unfortunately American juries have almost come to expect that the evidence supporting guilt will be either voice or video recorded, and where such evidence is not presented juries are far more skeptical of the investigation and less likely to convict. This phenomenon has even had some spillover in traditional criminal cases not involving undercover investigations because of the media attention and high visibility given some of the more dramatic undercover cases and the video and voice recordings which were part of those cases.

As an investigative tool in undercover investigations, law enforcement agencies have recognized that electronic recordings must be handled with great care and consistency. Recordings can provide critical evidence of criminal predisposition of a target and are particularly important during the initiation stage of contact between agent and target. Because of the central role which recordings play in undercover operations, the Federal Bureau of Investigation has provided management guidance to its agents which advises them to follow a consistent policy of recording as many contacts with targets as possible since the failure to record raises concerns about the integrity of the undercover operation and the agent, and because recordings eliminate disputes about evidence at trial, capture the the tone and demeanor of the target, reduce reliance on informants and middle-men, and demonstrate general control of the operation. FBI policy also mandates careful custody and control of recordings. Finally, in planning and executing long-term undercover scenarios, prompt review of recorded transactions can provide a great deal of information to assist in developing and modifying an investigative approach to deal with changing circumstances or newly surfacing targets and in determining where additional supporting evidence is necessary for a successful prosecution.

The growth of the undercover technique in federal law enforcement and its positive results are dramatically demonstrated by budget statistics and enforcement data for the Federal Bureau of Investigation of the Department of Justice, one of the principal enforcement agencies which pioneered the undercover technique. The first year Congress appropriated funds specifically for undercover operations, fiscal year 1977, it appropriated one million dollars for FBI undercover operations. By fiscal year 1981, $4.5 million was appropriated for undercover activities, and by fiscal year 1985, the FBI budgeted nearly ten million dollars for undercover work. During fiscal year 1985 the FBI operated approximately four hundred short-term undercover operations of six months or less duration and approximately 75 more sophisticated, complex, long-term undercover investigations, including initiating about forty new long-term investigations. As a result of its undercover program, the FBI estimates that in fiscal year 1985 nearly 1,300 defendants were convicted, $7.5 million of fines were imposed, and approximately $126 million in criminal assets were seized. During FY 1985, the FBI initiated major undercover investigations in narcotics and organized crime (14), economic corruption crimes (12), property crimes (10), and terrorism (5). Of course, since other enforcement agencies within the Department of Justice, including especially the Drug Enforcement Administration, and throughout the federal government utilize the undercover technique, these statistics represent only a part of total undercover activity within the federal enforcement community.

The utility of the undercover technique as a law enforcement tool is demonstrated not only by the number of convictions and amount of recoveries attributable to the technique, but even more so by qualitative

factors such as the type of criminal activity targeted, the ability to reach otherwise undetected illegal activity,and the complexity of the investigations undertaken. A few examples of past operations dramatically illustrate the profound impact this technique has had on the detection and prosecution of serious criminal activity.

On the anti-terrorism front, "Operation Rite Cross" was an undercover investigation directed at preventing the assassination of Indian officials in the United States and abroad and neutralizing planned terrorist activities of a group of Indian Sikhs. An FBI agent acting in an undercover capacity was solicited by a Sikh leader in New York to provide training to Sikhs in the United States and India; this training was to consist of teaching techniques of urban warfare, demolition, and automatic weapons use. In May 1985, two days prior to the commencement of training, five Sikhs involved in this operation were arrested for plotting the assassination of the Chief Minister of the Indian State of Haryana who was in New Orleans for medical treatment. In this investigation, the FBI was able to utilize access to the Sikh organization gained through the undercover terrorist training ruse to detect and interdict a terrorist act before it resulted in death and property destruction. During the course of the investigation the FBI took appropriate steps to ensure that the terrorists did not succeed in their planned activities.

Also in the anti-terrorism area, "Operation Bushmill" was a complex investigation that focused on identifying a compartmentalized network of terrorists who were procuring and shipping weapons and munitions to the Provisional Irish Republican Army in Northern Ireland. Through a joint effort with the U.S. Customs Service, FBI undercover agents developed a plan to gain access to this organization, and then delivered dozens of sophisticated automatic weapons to two individuals in exchange for a sizable payment of money. Following delivery of the weapons, the targets were arrested and additional weapons and ammunition were seized from a confederate's residence. This operation eliminated some major arms procurers and brokers for the Irish Republican Army.

In the money laundering area, in "Operation Bancoshares" the FBI established a fictitious corporation with FBI agents posing as employees willing to launder large sums of money accumulated by narcotics traffickers. The front corporation offered several services to drug traffickers, including converting small denomination bills to large bills and currency to cashier checks, and depositing "client" drug proceeds in Miami area banks to protect the client's identity. In the course of this operation, financial transactions of over one million dollars per day were videotaped, resulting in numerous convictions. In addition, millions of dollars worth of airplanes, drugs, real estate, and cash were seized.

In the area of violent crime and narcotics, in 1985 the FBI set up an investigation known as "Roughrider" which was directed at obtaining evidence of the illegal activities by the Hells Angels Motorcycle Gang. In particular, the operation was directed at the illegal sale and manufacture of narcotics by the Hells Angels. During the course of the operation an FBI undercover agent developed credibility with the Hells Angels by posing as an associate of the organization, and he was thereby able to purchase narcotics from members and leaders of the various Hells Angels chapters throughout the United States. As a result of the operation, dozens of members of the organization were arrested and charged with narcotics offences, and in addition, search warrants executed as part of the investigation resulted in the seizure of over 150 firearms, including automatic weapons, explosives, bombs, and other criminal paraphernalia.

With regard to public corruption, "Operation Greylord" was designed to develop evidence regarding corruption among state court judges in the Chicago area. Greylord involved an elaborate system of developing and processing fictitious criminal cases through selected courts in the Chicago area in order to gather evidence of payoffs being made to various court personnel and judges to fix cases. Greylord's scenario involved arrests primarily for weapons, narcotics of-

fences, and traffic offences which were staged by the FBI; these arrests were then processed through the criminal justice system with the assistance of co-operating prosecutors and co-operating individuals serving as defense attorneys. This investigation was targeted at particular court personnel and particular judges where there was informant or other investigative information indicating the willingness of such judges and court personnel to accept bribes and to engage in corrupt practices to fix cases. By processing these fictitious criminal cases through the criminal justice system of selected courts of Chicago, the FBI was able to develop evidence regarding the payment of bribes to fix cases by lawyers and court personnel and the solicitation of those bribes and receipt of corrupt payments by various judges. Although the prosecutive stage of Greylord are continuing, to date numerous judges, court personnel, attorneys, and law enforcement personnel have been convicted in this three-year undercover operation.

Finally, the "Abscam Operation" was one of the first extensive undercover investigation which dramatically brought the undercover technique to the attention of the public and which demonstrated the utility of the investigative technique. Although Abscam resulted in the conviction of 20 individuals, including a Senator, several Congressmen, attorneys, and other public officials for political corruption, in its inception in 1978 it was designed to apprehend sophisticated swindlers dealing in stolen securities and art objects. The operation was started by establishing "Abdul Enterprises" which held itself out as an Arab-backed investment company looking for opportunities to invest Arab oil money. The undercover agents in Abscam worked through various "middlemen" who used their connections with the underworld to "put out the word" that Arab investment money was available and that the investors were not too particular about the legitimacy of their investments.

It was through a number of these middlemen that Abscam came into contact with various politicians who agreed to take money in exchange for official acts. The "middlemen" were not FBI agents, and most did not know that Abdul Enterprises was an FBI operation. The FBI relied on the middlemen to know what politicians and businessmen were interested in making a deal and were likely to corrupt themselves for an Abscam business proposal. In the end, the middlemen were prosecuted along with the politicians which had been brought to Abscam. In a number of the Abscam cases, public officials agreed to do special legislative favors for the Abdul Enterprises in exchange for payments of cash. In some cases, Congressmen agreed to assist in special immigration legislation for the posing Arab Sheik in exchange for payment of large sums of cash up to $100,000. The Abscam investigation resulted in the conviction of 20 individuals in a series of 10 separate jury trials; all these convictions were affirmed on appeal.

In the area of public corruption, while undercover investigations such as Abscam and Greylord have proved to be an effective way of confronting concealed criminal activity, the experience developed from conducting such sophisticated operations underscored the fact that there are a number of special considerations which need by taken into account when investigating corruption cases. Because acts of potential corruption and bribery almost never occur in the presence of disinterested witnesses and corroborating evidence is difficult, if not impossible, to obtain, undercover investigations are particularly suited to address this type of criminal activity. As the trial judge in one of the Abscam prosecutions opined:

> The Government to have available the weapons of undercover operations, infiltration of bribery schemes, and 'sting' operations such as Abscam in order to expose those officials who are corrupt, and perhaps more importantly to praise by negative example those who are honest and square dealing. Without the availability of such tactics, only rarely would the Government be able to expose and prosecute bribery and other forms of political corruption. *U. S.* v. *Myers*, 527 F.Supp. 1206, 1229

(E.D.N.Y. 1981).

Most significant public corruption investigations are subject to intense media interest in large part because the targets may be visible, highly positioned officials who themselves have access to the media. Consequently, each investigative and prosecutive step is scrutinized carefully in public. This factor not only can have an impact on how a criminal corruption case is tried, but impacts on the public's perception of whether an investigation was conducted fairly and whether the undercover technique is an appropriate tool for dealing with alleged corruption. In addition, the defendant generally starts with a reservoir of public trust because he is in a position of responsibility as a result of either election or appointment and can cloak himself with the dignity of the institution he serves. Moreover, by their nature public corruption investigations frequently involve claims by the target that the investigation was improperly motivated by political considerations and that it is therefore tainted. In addition, some types of corruption investigations may be seen as a challenge to an entire institution of government. Finally, frequently corruption investigations involve parallel inquires by other agencies of government such as congressional ethics committees or supervisory judicial panels which necessitate special prosecutive management and ethical considerations. All of these factors demand that undercover operations directed at public corruption must be particularly well-conceived and especially well-managed.

While the use of undercover operations have proved to be an extremely effective law enforcement tool for investigating and prosecuting criminal activity which otherwise might have gone undetected, the use of this technique can pose significant risks to innocent persons and has the potential for intruding on private relationships. The nature and extent of these risks and the perceived appropriateness of the undercover technique depends, of course, on the political and legal regime and the cultural milieu of the society in which such investigations are undertaken. Recognized relationship, patterns of privacy, and legal norms in part define the parameters of accepted investigative activity. Acceptable standards of investigative conduct in the United States may not necessarily be appropriate for other cultures and countries.

There are a number of potential risks attendant to undercover operations which must be assessed and balanced against the law enforcement benefits. If an investigation is properly structured many of those risks can be minimized or eliminated. In some circumstances there is a risk of physical harm to innocent persons as well as to undercover agents. For example, undercover agents operating a bar or restaurant designed to attract motorcycle members may face danger of retaliation if exposed, or may be involved in fights and other violence occurring in the bar. Or, in a sting aimed at detecting fraudulent laboratory billing practices by doctors, unless properly structured the reliance of legitimate patients on an undercover laboratory operation could result in damage to their health.

There is also the risk of financial loss to innocent individuals. In some situations non-culpable persons have been defrauded by an undercover operative, usually an informant or middleman, utilizing the cover of an official undercover operation for his own personal scam for his own benefit. On occasion the legitimacy and credibility with which the law enforcement agency has cloaked an undercover operative has resulted in the perpetration of the operative's private fraud on persons not the target of the investigation and without the knowledge of the investigative agency. The defrauded persons may then seek to sue the government to recover or to be indemnified for losses which they would not have incurred except for the undercover activity by the government.

In other cases the pursuit of the legitimate objective of the undercover operation can result in economic loss to innocent victims. For example, a number of civil law suits were filed as a result of the FBI's Operation Recoupe which was designed to penetrate stolen car rings. In that operation an FBI front-company sold wrecked cars to middlemen who transferred the serial num-

bers of the wrecked cars to stolen cars in order to hide the fact of the theft. When these retagged stolen cars were sold to innocent purchasers and were subsequently recovered by their original, rightful owners, the FBI was sued because of its complicity in facilitating the transfer of stolen property to the new "innocent" purchaser. Additionally, the government may incur tort liability because of the negligent actions of an agent executing the ordinary and necessary part of an investigation such as operating a vehicle or managing a business. Moreover, an undercover operation may cause innocent citizens to make detrimental economic choices or deprive them of legitimate business opportunities to contract for goods and services.

Perhaps less tangible, but more important, are potential risks to the reputation of innocent persons and to privileged relationships. Telling falsehoods about real persons to build credibility or to gain entre to a situation can, when such statements are later revealed during trial or otherwise, damage the reputation of an uninvolved person. For example, claims by a middleman that he can bribe a named judge to get a verdict may be "puffing" to enhance the middleman's status with potential targets or with agents, and even though they are not true, may reflect negatively on the official when the statements are made public as part of an undercover operation. Or, posing as a lawyer or nurse can unnecessarily harm privileged relationships or invade someone's personal privacy.

In addition, undercover operations, unless properly designed, may result in undercover employees engaging in professionally unsuitable behavior such as use of drugs, sexual encounters with targets or innocent third parties, violence, or facilitation of child pornography or drug trafficking. In addition to the personal costs, the overall financial cost to the government in running the undercover operation might outweigh any likely law enforcement benefit to be achieved. For example, getting the government involved in extensive real estate transactions and incurring large start-up costs for a front-business in order to develop evidence about a small-time zoning fraud may entail unacceptable risks of financial loss to the public treasury.

Finally, as discussed more fully below, there is the risk that innocent individuals may be "entrapped" in criminal activity and that the government may "create" a crime that would or could otherwise not have been committed. In this regard, it is essential that the illegal nature of the criminal opportunity be clear, convincing, and unambiguous, and that the target be given ample opportunity to demonstrate his predisposition to engage in criminal activity given the chance or incentive.

Legal Questions Regarding Undercover Operations

While the authority to conduct undercover operations flows directly from the Attorney General's authority to direct and supervise investigations of federal criminal offenses, and while no general statutory authority is required to utilize the undercover technique, nonetheless, undercover operations, like other law enforcement tools, are subject to the restraints imposed by applicable case law and the Constitution. The Supreme Court has long recognized that stratagem and deception are necessary methods for law enforcement to investigate sophisticated crimes of a consensual nature. *Lewis* v. *United States*, 385 U.S. 206 (1966); *Sherman* v. *United States*, 356 U.S. 369, 372 (1958); and *Sorrells* v. *United States*, 287 U.S. 435, 441 (1932). Prior judicial authorization of investigative techniques is limited to those situations which confront areas of Constitutional dimensions, such as search warrants and electronic surveillance which implicate Fourth Amendment rights. The Court has found that there is no Constitutional problem acting upon misplaced confidence which is the hallmark of the undercover technique. *Hoffa* v. *United States*, 385 U.S. 293, 302 (1966).

For those defendants charged with crimes investigated through an undercover operation, the most common defense is that of entrapment which frequently is trans-

muted into a claim of government overreaching or unfairness. Under current United States law, the entrapment defense involves a subjective test which looks to the propensity or predisposition of the defendant to engage in the criminal conduct with which he is charged. The Supreme Court has rejected an objective test of whether a reasonable man under the circumstances presented would not have committed the offense but for the government's conduct in inducing him. Initially, formulation of the entrapment defense focused both upon the conduct of the government in inducing the action and the predisposition of the defendant to engage in criminal acts given the opportunity. *Sorrells* v. *United States, supra.* Subsequent developments refined the defense by limiting it to the defendant's predisposition to commit the crime, and the degree of the government's involvement in the structuring of the criminal opportunity was held not to be relevant legally to the entrapment defense. In *United States* v. *Russell*, 411 U.S. 423 (1972), the Supreme Court interpreted earlier court language on entrapment as defining the principal element of the defense as the defendant's predisposition to commit the crime. In *Hampton* v. *United States*, 425 U.S. 484, 488–89 (1975), the Supreme Court opined even more definitively that the decision in *Russell* had "ruled out the possibility that the defense of entrapment could ever be based upon government misconduct in a case... where the predisposition of the defendant to commit the crime was established."

As the Second Circuit Court of Appeals emphasized in *U.S.* v. *Meyers, supra*, an appeal from one of the Abscam convictions, the Constitution does not provide any special rule that requires prior suspicion of criminal activity by a target before he may be confronted with an opportunity created by the government to commit a crime. The entrapment defense provides exoneration for the defendant where evidence established that the government agent implanted in the mind of an otherwise innocent person the disposition to commit the offense and then induced its commission by presenting the defendant with an otherwise unavailable opportunity to commit the crime. The defense fails if the evidence establishes only that the government afforded the defendant the criminal opportunity or facilities for commission of the offense.

As is apparent, the evidentiary key in the entrapment defense is the mental predisposition of the defendant, and the government's burden is to prove beyond a reasonable doubt that the defendant was predisposed to commit the offense. If the accused presents evidence demonstrating that the undercover agent induced him to commit the charged offense and that the defendant was not otherwise disposed to commit the act, the government must then prove beyond a reasonable doubt that the defendant was predisposed toward the criminal conduct. To meet this burden the government may introduce evidence of the defendant's reputation, character, prior bad acts, and prior convictions. Ultimately, the entrapment defense is a question of fact to be resolved by the jury.

While as a matter of law the government's conduct is not an issue in assessing the entrapment defense, as a matter of trial tactics the defendant frequently puts the government's conduct "on trial" in an undercover case. By attempting to present evidence of government misconduct, overreaching, or "unfair" tactics against the defendant, the defense tries to persuade a jury to acquit. Of course, when a defendant if filmed accepting a bribe, this way be the only plausible defense available. In the evidentiary battle to determine whether the defense was predisposed to commit the criminal acts charged, counsel can utilize a wide range of factual considerations involving the initiation, operation, and structure of the undercover operation.

Critical factors which bear on the factual proof a claim of entrapment include the factual predication for targeting a defendant in an undercover operation; the manner in which a target is brought to a criminal opportunity; the degree of inducement applied to the target; the eagerness with which a target seeks to participate in the criminal enterprise and to reap the rewards of the criminal activity; and the overall sense of

fairness and adherence to established procedures exhibited by the government agents. Of course, recorded acts of the target such as the statement of Congressman Jenrette in Abscam, "I have larceny in my heart,"; the statement of Congressman Lederer in Abscam, "I am not a boy scout,"; and the image of Congressman Kelly stuffing money in his pockets, vividly dramatize the target's predisposition to commit the offense given the opportunity. At bottom, the entrapment defense is designed to serve the purpose articulated by Chief Justice Warren. To protect the unwary citizen, not the wary criminal.

In addition to the entrapment defense, some courts have recognized a constitutionally based due process, equitable defense where a defendant can establish egregiously outrageous conduct by government agents. Although the Supreme Court has not clearly accepted a due process defense to outrageous government investigative conduct nor defined its objective standards, the Court has suggested that conceivably it could be presented with a situation in which "the conduct of law enforcement agents is so outrageous that due process principles would absolutely bar the government from invoking judicial process to obtain a conviction." *Russell* v. *United States*, *supra*, 411 U.S. at 431–32. Such prohibited conduct which would vitiate a conviction even where a defendant was not entrapped would need to be of the magnitude that would shock the universal sense of justice.

A few lower courts have relied on *Russell* in making a due process violation claim available to defendants. In *United States* v. *Twigg*, 588 F.2d 373 (3d Cir. 1978), the court barred the prosecution of defendants who played a minor role as financial backers of a drug production laboratory where the government set up the drug laboratory and supplied the necessary chemicals for production of the drugs. However, the plurality and dissenting opinions in *Hampton* v. *United States*, *supra*, decided in 1976 cast doubt on the availability of a "due process" legal defense. In any event, under current law any due process limitation on the conduct of undercover operations would be extremely narrow, and it would be extremely rare to find cases where police overinvolvement in crime reached such a demonstrable level of outrageousness that it would bar conviction. *See Hampton* v. *United States*, *supra* (J. Powell, concurring).

In several of the Abscam prosecutions the trial courts entertained due process hearings to determine whether the government's conduct was so outrageous as to shock the universal sense of justice. And while these hearings held outside the presence of the jury usually after completion of the trial provided a forum for the defense to explore at great length the entire structure, operation, and management of the Abscam undercover investigation, none of them resulted in barring the prosecution. Indeed, four separate appellate courts rejected the due process claims of Abscam defendants and found there was no government overreaching which would rise to the level of a constitutional violation of due process. Given the constitutional standards of due process articulated by the courts in reviewing previous undercover operations, due process defense claims should not pose a significant obstacle to carefully planned and executed undercover operations.

Procedural Safeguards – Review and Supervision of Undercover Operations

Because undercover operations are a potentially intrusive investigative technique and can pose risks to an individual's reputation and economic well-being, it is essential that they be properly initiated, carefully managed, and meticulously controlled. The undercover technique inherently involves an element of deception, and not uncommonly utilizes the co-operation of an informant, middleman, or co-operating individual whose motivation and credibility are suspect. In addition, not infrequently illegal activities are carried on with the knowledge and complicity of law enforcement agents during the course of an investigation which may last several months or even years. These factors suggest that undercover operations should be drawn as narrowly as possible to avoid untoward impact on innocen third

parties, and should be carefully supervised to minimize the financial and reputation risks that can arise.

In an effort to impose high-level supervision on this emerging investigative technique, effective December 31, 1980, the Department of Justice adopted Undercover Guidelines applicable to undercover investigations conducted by the FBI or jointly with the Drug Enforcement Administration (see Appendix A). Since that time the Immigration and Naturalization Service has adopted similar guidelines; the Drug Enforcement Administration has also adopted its own guidelines as have other law enforcement agencies in the federal government. The FBI Guidelines establish procedures for initiating sensitive undercover operations and standards for evaluating proposed investigations. The Guidelines are designed to require careful headquarters' review of sensitive field investigations, to minimize the risk of harm and intrusiveness to affected persons, and to improve the ultimate effectiveness of the undercover investigation at developing admissible evidence of serious criminal activity.

The Guidelines are utilized by the Criminal Undercover Operations Review Committee to evaluate proposed investigations and provide standards to agents in the field in planning investigative strategies to deal with perceived crime problems. The Review Committee is comprised of senior FBI agents with investigative, technical, legal, and financial backgrounds and of senior Department of Justice attorneys with experience in prosecuting public corruption, organized crime, narcotics, and fraud cases. The Committee reviews written investigative proposals submitted by field offices, suggests modifications to proposed investigations to minimize risks and increase effectiveness, and recommends either approval or disapproval of the proposed operation. All "sensitive" FBI undercover operations ultimately must be approved by the Director of the FBI.

While not all undercover operations conducted by the FBI required review by the Undercover Operations Review Committee, and headquarters' approval,nearly all would involve consultation with senior headquarters' supervisory personnel. Some investigations may be authorized by the senior agent in a field office after appropriate planning and evaluation. but those operations which involve "sensitive circumstances" require Committee review and headquarters' approval. First, there are a variety of fiscal circumstances which trigger review. Where there is potential for significant civil claims against the government; where an operation requires the long-term leasing of property or the purchase or operation of a commercial enterprise; where the investigation entails the conduct of business activities such as operating bank accounts, reinvestment of income generated from the investigative activity, and indemnification agreements with co-operating individuals; or when an investigation will extend beyond six months or involve the expenditure of large sums of money, then consideration by the Review Committee and approval by the FBI Director is required.

Likewise, Review Committee evaluation and approval is required when a proposed operation raises the likelihood of involving one of a variety of sensitive circumstances, such as where the subject of the proposed investigation is a public official, the activities of a foreign government or foreign entity, or the activities of a religious, news, or political organization. In addition, the following types of investigative activities involving sensitive circumstances require headquarters' evaluation and approval:

- the investigation will involve false representations by an agent of the government concerning the activities of an innocent person;
- an agent of the government will engage in illegal activity as part of the investigation;
- an agent of the government will provide an item or service to the target of the investigation which would reasonably be otherwise unavailable to criminal actors:
- an undercover agent will run a significant risk of being arrested by non-participating law enforcement agencies or will be required to give sworn testimony in his undercover capacity;

- an undercover agent will engage in activity that intrudes on recognized confidential relationships such as lawyer-client or doctor-patient or will lead an individual into a professional or confidential relationship as a result of an agent's pose or cover;

- there may be a significant risk of violence or injury to individuals; or

- there may be a significant risk of financial loss to innocent persons.

In evaluating a proposed undercover investigation the Review Committee considers the seriousness of the criminal activity being addressed by the investigation, whether alternative investigative techniques could accomplish the objective, the likelihood of obtaining a viable criminal prosecution of substantial magnitude, the efficient use of investigative resources, and the feasibility of the investigative strategy and design of the undercover scenario in developing evidence against the target. Also, weighed in this equation is an assessment of various risks such as risk of harm or injury to innocent persons and participating agents, risk of financial loss to innocent persons, risk of civil liability to the government, risk of harm to the reputation of innocent third parties, and risks to confidential relationships. In addition, the Committee must carefully assess whether the undercover plan is designed to avoid entrapment of the target as well as unauthorized government conduct. Moreover, the Review Committed evaluates the suitability of informants and other undercover employees for the planned operation, the type and degree of control which will be exercised over such co-operating individuals by government agents, and the role which such persons and government agents will be expected to perform. Finally, the Review Committee makes an overall assessment of the operational planning done to minimize the incidence of sensitive circumstances and the risk of harm and intrusion created by such circumstances.

In conducting its assessment, the Review Committee seeks to ensure that a number of fundamental issues are satisfactorily addressed by the proposed undercover plan. First, to minimize risk of harm to individuals and to ensure necessary control and direction of the investigation by the federal law enforcement agency, informants and middlemen must be controlled to the greatest extent possible; as soon as possible, when possible, the roles of such co-operating individuals should be filled by federal law enforcement agents acting in an undercover capacity. Second, to minimize risk of entrapment, the inducement or criminal opportunity offered a target must be *realistic*; otherwise, persuasive proof of a target's predisposition is very difficult to establish, and the government is perceived as ensnaring innocent persons or unfairly testing the morality of its citizenry. Third, to eliminate any suggestion of government overreaching and also to avoid claims of entrapment, the illegal nature of the criminal opportunity presented to a target must be clear and unambiguous; the target should be given an opportunity to make critical decisions about the criminal enterprise, and the investigative scenario should avoid mixing together both legitimate objectives and criminal opportunities.

As an additional safeguard, all sensitive undercover operations must be favorably recommended by the chief federal prosecutor in the district where the undercover operation is planned. In designing an undercover scenario the investigative agents are required to consult with the chief district prosecutor to get his assessment on the significance of the criminal activity targeted, whether prosecutive resources would be committed to the case if evidence were developed, whether the risk of entrapment is minimized, and whether other risks are minimized. In recommending approval of a proposed undercover investigation, the Review Committee assesses the written proposal prepared by the chief investigative agent and also looks to the recommendation of the chief field prosecutor responsible for prosecuting any cases which develop from the investigation.

Under the Guidelines, participation by a government agent in any illegal activity is carefully circumscribed, and certain practices are proscribed. First, an undercover agent is prohibited from engaging in acts of violence except to take reasonable measures

of self-defense in an emergency to protect his own life or the life of others. Second, an undercover agent cannot instigate or initiate any plan to commit criminal acts. Participation by an agent in illegal activity (except false representation or the purchase of contraband goods) must be approved in advance, and will be approved only where such activity is necessary to obtain evidence or information for paramount prosecutive purposes, to establish and maintain credibility with persons associated with the criminal activity under investigation, and to prevent or avoid serious bodily harm. Finally, in undercover operations as in other types of investigations, agents are prohibited from using unlawful investigative techniques to obtain evidence, and must comply with all the statutory procedures and constitutional safeguards applicable to the criminal investigative process. Thus, for example, agents cannot engage in illegal wiretapping, illegal mail openings, or illegal searches under the guise that it is part of the undercover investigation. Such activities are equally illegal and unauthorized in undercover investigations as they are in any other investigative context, and could taint any prosecution arising from an undercover investigation where such an illegal technique were employed. In undercover operations, as in other investigative circumstances, the use of techniques such as electronic surveillance and search warrants remain subject to the established standards of judicial scrutiny.

Finally, once the undercover scenario is approved by headquarters, there is continuing supervision in the implementation of the operation including on-site review and periodic reporting requirements. Of course, undercover investigations, like other criminal investigations, are subject to the same agency policy guidelines for developing and handling evidence and witnesses. It is especially important in long, on-going investigations which often involve permutations and modifications to meet changing investigative circumstances and newly emerging targets that there be close consultations between prosecutors and investigators. Since frequently it is the government's conduct of the undercover investigation which is challenged at trial by the defense, it is imperative that each investigative step be taken with great care, that all standard operating procedures be followed, and that the investigation be monitored and evaluated on an ongoing basis by someone who is removed from the investigative activity itself and who can assess how a jury would react to the investigative process.

Of particular concern in the review and management of undercover operations is the issue of entrapment. Not only must those who review and manage an undercover investigation insure that the legal standards on entrapment are satisfied, but they must maximize the jury appeal of the case by minimizing any perception of government overreaching. The core issue of entrapment raises the underlying considerations of targeting, predisposition, inducement, and government conduct. The Undercover Guidelines acknowledge the need to look beyond the legal prohibition against encouraging an individual to engage in illegal activity in which he would otherwise not be disposed to engage and to evaluate the practical impact of the proposed investigative activity. Since the government frequently either is creating the criminal opportunity for the target or acts in complicity with illegal activity, at the outset it is important to determine what predicate exists for targeting a particular person or organization.

Under the Guidelines, the Review Committee must give careful attention to evaluating the "predication" for initiating an investigation against an individual or organization. First, the Review Committee examines existing information regarding the potential target to determine if there is a reasonable indication of criminal activity on the part of the subject. Information from informants, related criminal investigations, or information developed by traditional investigative activity could provide the basis to determine that the subject is engaging in, or is likely to engage in, illegal activity of a similar type to that which is the focus of the undercover scenario. This predicate finding is particularly critical to investigations structured to target an identified individual's

corruption or specific acts of corruption or fraud.

Alternatively, where there may not be sufficient predicate criminal predisposition information available, or where, instead of focusing on identified individuals, the investigation is targeted at general types of criminal activity in an industry or activities by organizations such as money laundering, fencing stolen property, or transactions in fraudulent securities, the operation should be designed so that individuals drawn to the opportunity necessarily manifest their predisposition to engage in the unlawful activity. In this regard, the operation should be structured so that the corrupt nature of the activity is unambiguously clear to potential subjects, and that by participating in the opportunity the subjects must necessarily engage in illegal activity.

On key factor in rebutting an entrapment defense is the "origination" of the contact between the target and the criminal opportunity presented by law enforcement. The ultimate evidentiary question is "whose idea was it to do the criminal act?" How a target is made aware of a criminal opportunity and what action he takes upon that information is critical. If an informant is involved in the initial contact, it is doubly important to document who initiated the discussion of criminal activity and to record the initial contact if possible. At the earliest possible time the target should be put on record acknowledging that exploration of the criminal opportunity was his idea or expressing his interest in pursuing the criminal activity. Evidence of an informant seeking to persuade a target to participate in an undercover scheme or counseling him on how to deal with the undercover agents can be very damaging to the government's proof of predisposition, and to the extent possible co-operating individuals should be discouraged from engaging in such activity.

The issue of "inducement" also bears directly on the viability of an entrapment claim. Any inducement offered a potential target should be of a magnitude that is consistent with the nature of the illegal activity in which he is invited to engage. While the size of the inducement is not legally dispositive, practical considerations dictate that the inducement should not be disproportionate to the crime committed and to the expectations and experience of the target. The standard for inducements must remain a subjective one dependent upon the risks of the activity, the potential rewards to the target, and the standards for comparable payoffs in the criminal milieu in which the target operated. Thus, offering a million dollar bribe payment to secure a five thousand dollar supply contract, while not prima facie illegal, raises the specter of government overreaching and undercuts evidence of predisposition by the target. What is central is that inducement not be measured by an objective reasonable man standard, but, even assuming the validity of a proportionality standard, that such an assessment remain subjective, dependent upon the circumstances and experiences of the target, the role of the imposture, and the risks and potential rewards of the criminal activity. Realism is the bottom line when evaluating inducements which might be offered.

Finally, in structuring the undercover operation, the government may provide the opportunity, but in executing the operation, the target must be given the choice of whether to engage in the criminal activity or to withdraw from the transaction. Giving the target ample opportunity to withdraw from the scheme is important in evaluating his interest in exploiting the criminal opportunity. Similarly, it is helpful in rebutting entrapment claims to let the target make some of the important decisions in the transaction, and not simply give his assent to suggestions of government agents. A target who offers various illegal options to accomplish an objective and who expresses his own thoughts and ideas about achieving the objective obviously demonstrates greater predisposition than one who consents to an arrangement. Additionally, if possible the target should demonstrate his interest in pursuing the criminal objective by putting up something of value. If he has to put some money up front to get a piece of a narcotics transaction, that is more persuasive evidence of his predisposition to commit the crime than if the government agent is willing to

stake the target's interest in the enterprise or is willing to accept worthless collateral from the target for his participation. Structuring the undercover operation in a way which gives the target an active, manipulating role generates evidence of predisposition and forecloses claims of entrapment.

Conclusion

In sum, undercover operations play an increasingly important role in federal law enforcement in the United States, especially in investigating organized, clandestine, apparently "victimless" criminal activity which otherwise may go undetected and unprosecuted. While there is a solid legal basis supporting this investigative technique, undercover investigations can entail a number of risks to innocent parties and may raise the spectre of government overreaching. Careful design of the undercover scenario, closely supervised implementation of the investigative plan, and continuous attention to the sensitive circumstances implicated in the investigative activity can minimize the intrusive qualities of this technique and maximize the effectiveness of this law enforcement tool as a means of bringing guilty offenders to justice.

Canadian Approaches to Crime Prevention

*by Alex Himelfarb**

Introduction

Criminologists have increasingly questioned the efficacy of traditional efforts to contain or reduce crime and its impact. By "traditional efforts", I refer to the reactive mechanisms of criminal justice – arrest, charge, conviction to incarceration. We have learned a good deal about the limits of such approaches even as we recognize their necessity.

As developing countries confront new, disruptive crime problems associated with social development, the need is particularly great to consider new, positive approaches to controlling and preventing crime and to alleviating the suffering that crime produces. This is not to suggest that there exists some panacea, some conbination of measures that will eliminate crime and the suffering it produces. Rather it is to say that some approaches, new approaches, positive approaches, are necessary at least to complement and support traditional criminal justice. And, it is to say that crime prevention demands an investment in research and development to foster such innovation.

Canadian Approaches

Canada's is a federated system in which criminal justice is a shared responsibility. In Canada, a fundamental goal uniting the various components and levels of the Criminal Justice System has always been the prevention of crime. The meaning of crime prevention, however, seems always to be changing. In the past, crime prevention has largely meant an emphasis on deterrence and individual treatment – the sureness of detection, the swiftness of apprehension, the justness and strength of sanctions, and the disuasive and rehabilitative effects of official responses. More recently, a body of empirical evidence and practical experience has led to the development of innovative approaches to crime prevention focussed primarily on opportunity reduction and on community. More broadly, Canada's extensive network of social, educational, and welfare programs, while not developed for the express purpose of preventing crime, no doubt has a profound influence on reducing crime and its impact. In this context, Canadian governments and non-governmental organizations are examining the effectiveness of specific targetted social, cultural and economic programs for preventing crime among those at greatest risk. And this approach will demand a return to fundamental questions about the social, cultural and economic causes of crime and about how these can be addressed.

Crime in Canada

Virtually all accounts of Canadian crime trends begin with the now mandatory caution about the dangers of relying on questionable and, too often, non-existent official crime statistics. In Canada, the problem is aggravated by the lack, since 1973, of national courts data. This has meant the almost complete reliance on official police statistics – i.e. crimes reported to and recorded by the police.

A national, continuing committee of federal and provincial Ministers responsible for criminal justice has taken steps to improve national justice statistics through the

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New Crimes Emerging in the Process of China's Development and the Strategic Policies and Measures to Be Taken

*by Yao Zhaohui**

Introduction

Crime is a common social phenomenon and has become a severe social problem in many countries. In some countries, there have appeared new types of crimes in various forms while conventional crimes are also on the rise. While the social systems and circumstances vary from one country to another, the severity of the problem also differs. In some countries, criminal offences tend to be stable or on the decline. But in other countries, because of economic recession and a degeneration of morality, the crime rate is steadily increasing. New crimes, such as organized crimes, computer crimes, cross-border trafficking and smuggling of narcotic drugs, arms and even persons, the spread of videotapes, TV programs and movies filled with pornography and violence that induce many young people to commit crimes have all increased. A side effect has been to increase people's fears and insecurity in their daily life. In a word, crime has, to some degree, seriously undermined the economic development of every country in the world, has hampered social advancement, and has threatened the present and future happiness of mankind. Governments throughout the world have been taking active measures to prevent and control various forms of crimes in order to create a peaceful environment in which to conduct an economic construction and to better people's cultural life. Crime has often crossed national borders with an unprecedented advancement of science, technology, communications and transportation. No country in the world can be completely free from outside influences and crime has become an international problem. Therefore, international co-operation in the prevention and control of crimes has become an absolute necessity. The United Nations has undertaken a great amount of work and has achieved remarkable successes in co-ordination among countries and in the promotion of crime prevention and control and criminal justice. It is with this consideration that China resumed its participation in the United Nations in the field of criminal justice to discuss the issues of common concerns with other countries, to exchange experiences and information so as to promote international contacts and co-operation in this field and to bring benefit to mankind.

The economic development of a country may bring benefits to the life and other aspects of its citizens. However, if relevant aspects, such as the economic and social management systems, culture, education, social welfare, employment opportunities and laws are not in keeping with the economic development, they may result in the rise of various crimes, in particular, the emergence of new types of crimes. The rise of these conventional crimes and the emergence of new types of crimes will, in return, destroy the achievements of the development. But the degree of damage varies because of the differences in social systems and specific circumstances and the countermeasures taken. The reality in line with the objective law has been proven by practices in many countries. Therefore, while one country is developing its economy, it should also take the above-mentioned problems into consideration when making its general development plans. At the same

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time, the country should also make predictions on the budding and the emerging of the new types of crimes, take relevant measures for prevention and control so as to guarantee the smooth implementation of the economic development and make sure the benefit resulting from such development is brought to its people.

China is currently engaged in an unprecedented socialist modernization construction, trying to realize an ambitions goal to quadruple the industrial and agricultural output value by the end of the century and to build China into a modern socialist country with a highly developed culture and democracy so that she can make a greater contribution to world peace and to mankind's well-being. To realize the ambition, China is now unswervingly pursuing the policy of invigorating the domestic economy and opening to the outside world. China is also undertaking large-scale, thorough reforms of the economic structure, with the urban areas as the focus. While rural reforms have produced fruitful results, urban reforms have also achieved preliminary accomplishments. Both rural and urban economies have greatly developed on a continuous, steady and well coordinated basis and the people's living standard has displayed a remarkable improvement. The open policy of our country has also achieved great accomplishments. From 1979 to 1985, about $20 billions of foreign capital were invested in China; 2,300 Sino-foreign equity joint ventures were established, 3,700 Sino-foreign contractual joint ventures were formed; 120 wholly owned foreign ventures were set up in China and 35 contracts for off-shore oil exploration were signed. The economic achievements gained during our reforms will bring tremendous changes not only to the people's economic life but also to their way of living and their state of mind. Our work in criminal justice is now also facing the same problems of how to keep up with the new situation of rapid development of economic structural reforms, of how to better employ economic, administrative and legal means to regulate the relations between economic development and other social aspects, and of how to bring the tasks of crime prevention and control into the general plan of national economic and social development to guarantee the smooth implementation of economic development. Generally speaking, the present social order in our country is stable, and the crime rate is on the decline year by year. However, because of the influence of various factors coming from in and outside of the country, the number of crimes in some fields has showed signs of increase and their degree of seriousness is also somewhat on the rise, the most prominent being serious economic crimes and the emergence of some new types of crimes. Deeply concerned with such crimes, the Chinese Government has taken a series of measures to prevent and control such crimes, to punish and remodel the criminal elements so as to guarantee the smooth implementation of economic structural reforms, to maintain the normal economic and social orders and to protect the lawful rights and interests of the State, the collectives and the citizens.

New Types of Crimes Emerging in China's Development

A. The General Situation of Criminal Offences since the Establishment of the People's Republic of China

Talking about the new types of crimes in China, it is necessary to make a brief introduction of the criminal offences since the founding of the People's Republic.

During the 36 years since the founding of the PRC, public security and social order, generally speaking, have been good and satisfactory. However, owing to different historical reasons, there were two peak years of crime. On occurred in the period right after the country's liberation. The Guomindang government left us with an awful mess, riddled with gaping wounds and afflicted with all kinds of ills. Lots of counter-revolutionaries, hooligans and hardened thieves left over from the old society continued with various criminal offences in a reckless way, inflicting great harm on the social order and people's life

at that time. In 1950, the incidence of criminal cases numbered 500,000 in the whole country, with a crime rate of 9.3 per 10,000 in terms of population. Through the movement of suppressing the counter-revolutionaries and various other social reforms, public order was much improved and the incidence of criminal cases fell substantially. From 1952 to 1965, the year just before the start of the Cultural Revolution, the crime rate in the country declined in a big way and dropped to 3 per 10,000 in terms of population. Another peak occurred during the Cultural Revolution. Because of the destruction by the Lin Biao clique and the Gang of Four and the rampant practice of anarchism, grave damage was inflicted not only on the country's socialist construction but also on the general mood of social codes and ethics. During the decade of chaos, the incidence of criminal cases was somewhat on the increase. Between 1977 and 1979, the average annual incidence of various crimes in China stood at about 570,000, with 630,000 cases being the peak, and the average crime rate stood at 6.5 for each 10,000 people. Of all the cases, petty thefts of articles of public and private property and other minor offences accounted for more than 90 per cent of the total; serious cases such as homicide, robbery, rape and arson held 7 per cent of the total. After the smashing of the Gang of Four, the social order undertook great changes for the better and the crime rate also registered a substantial drop, thanks to the efforts of the Public Security Bureau and other judicial organs to restore public order and tackle the problem in a comprehensive way. The situation has further improved since September of 1983 when a war was waged on criminal elements who seriously endangered social security, following a decision of the Standing Committee of the National People's Congress to severely punish criminals seriously threatening public order. In the 22 months between September, 1983 and June, 1985, there occurred about 750,000 criminal offences in China, a drop of 36.4 per cent from the previous 22 months. The occurrence rate of criminal offences dropped from 7 per 10,000 in 1982 to 5 per 10,000 in 1984 in terms of population. In other words, the average annual occurrence of criminal cases dropped from more than 700,000 to no more than 500,000.

The reasons why the crime rate is kept so low in China, which has one of the lowest crime rates in the world, are that we have brought into full play the superiority of our socialist system and we have attached great importance to forming good social codes and ethics, as well as in raising organizational consciousness among the people. The Chinese Government has taken a series of strategic measures and implemented strategic policies for the prevention and control of crimes while developing the country's economy and education and improving the legal system.

B. New Types of Crimes Emerging in China Nowadays

Some new types of crimes have added a new dimension of criminality as China's economic reforms and the policy of invigorating the domestic economy and opening to the outside world continue. According to the characteristics, these new types of crimes fall into three catagories: 1. economic crimes, 2. offences appearing in China for the first time which are committed under foreign influence and inducement and 3. re-occurrence of crimes made illegal and eradicated in the early years of the new China.

1) Economic Crimes

The economic crimes occurring in the socialist new historical situation is not surprising. Among economic crimes, major cases of swindling, speculation, smuggling, thefts of articles of public property, bribery and corruption are listed as serious economic offences and they stand out glaringly among all crimes. According to statistics, people's courts at all levels throughout the country handled 42,365 serious economic offences mentioned above and sentenced 54,836 persons from January to November of 1985. These offences are unprecedented since the founding of the People's Republic

of China in all respects, namely, scale, number, sums of money, means and damage. New trends also appeared in conventional economic crimes, such as the producing and selling of bogus medicine, alcoholic beverages, food, tung oil, and fake commodities; infringing upon other's trademark rights; and destruction of forest resources and ecological balance by illegally felling and denuding forests for profit. Such crimes, having occurred in some places, inflicted heavy damage upon the State and the people.

Under the new historic circumstances, economic crimes have the following characteristics: 1) Joint crimes committed with widespread collaboration between those in and outside companies, government officials and business persons; 2) speculations and swindlings by criminal elements under the pretext of companies, trading centers, business firms, and by making illegal use of contracts or forged contracts; 3) economic crimes committed by some State-owned or collectively-owned enterprises, institutions and State organs, which have the status of a legal person, in collaboration with unlawful personnel in mainland society and Hong Kong and Macao businessmen who make use of one another; 4) criminal activities committed by those changing tactics swiftly to take advantage of loopholes in policies, systems and managements; 5) evil deeds done by those with bad records who are now regarded as "the talented," and "the Gods of Wealth" and are given important positions, thus making it possible for them to commit illegal acts.

2) Offences Appearing in China for the First Time which Are Committed under Foreign Influence and Inducement

Opening to the outside world is the basic policy of China. The implementation of the policy needs the introduction of advanced foreign technology, key equipment, funds and scientific management. Although such introduction is beneficial to the advancement of the socialist construction, at the same time, it will unavoidably bring with it some negative elements, such as decadent ideology and habits, an unhealthy spiritual life-style, pornographic culture and terrorist acts. These negative elements may exert a bad influence upon some weak-willed persons, particularly young people, and trigger illegal offences, such as the reproduction, sale and dissemination of video products depicting pornography, and terrorist and violent acts brought into China from Hong Kong, Macao and other places by smugglers or travellers; the hijacking of taxis and even the killing of taxi drivers; the swindling of large sums of money with the use of illegally obtained credit cards; and even the crime of hijacking. Until recently, such new types of crimes had not occurred in China since the founding of the PRC. Though they are small in number and have already been controlled, the potential hazards of such crimes still exist.

3) Offences once banned and eradicated in the period right after liberation have showed a sign of resurgence in recent years. They include gambling, drug trafficking and prostitution.

Although causes for the occurrence of such crimes mentioned above are many, they mainly fall into five catagories:

a) Since China's socialist system was built upon the ruins of the old society, the vestiges, such as the opportunistic habit, profit-before-everything mentality, hedonism, money-mindedness and extreme individualism, may still exist for a long time. Such vestiges, still prevailing and having a corroding influence on weak-willed persons, are the ideological cause for various crimes.

b) The cultural revolution caused great chaos and heavily damaged the socialist legal system, social code and ethics, and confused people about what is good and bad, thus making it possible for the above-mentioned vestiges to become rampant.

c) Although production capacity has been greatly developed since the founding of the People's Republic, it still lags far behind the industrialized countries. Therefore, it is not possible for the economy to create the production rate and social material wealth up to the standards of the industrialized countries. So it is very difficult to avoid and eliminate some negative elements

coming in during the implementation of the open policy. Some weak-willed persons who could not resist the materialistic temptation degenerated morally and even embarked on the undertaking of crimes.

d) During the economic reforms in China, various regulations and management systems are not perfect and complete. The existence of loopholes creates opportunities for criminal offences.

e) There exist bureaucracy and unhealthy tendencies among some government officials who may be bribed and used by illegal personnel. They may be so corrupt that they will go along with and become the accomplices of such people.

The above-mentioned types of crimes may not be new in some countries, but they can be regarded as new types of crimes in China. The expansion of such crimes will certainly inflict damage upon the socialist construction with respect to the economy, disrupt the social and public security order with respect to politics and pollute the general mood of society with respect to ideology. The Chinese Government has shown great concern for such problems, has taken measures for the prevention and control of crimes and has also meted out severe punishment against economic crimes.

It should be made clear that the crackdown on economic crimes does not contradict the country's open policy and the economic reforms. Because the crimes seriously hampered the smooth implementation of the open policy and economic reforms, they had to be cracked down on, otherwise, the nation's open policy and economic reforms will not be able to continue smoothly. Our open policy and economic reforms will not change and such policies and the crackdown on economic crimes share the same goal.

Strategic Policies and Measures China Is Taking to Deal with New Types of Crimes

The superior socialist system has provided us with a favourable condition in preventing and controlling crimes. The Chinese Government, while thinking highly of building a material civilization. attaches great importance to spiritual civilization; and while thinking highly of developing socialist productivity, attaches great importance to raising people's ideological consciousness and improving their mental world through an education of communism and discipline. These favourable conditions provide material and ideological foundations to prevent and hinder criminal conduct. What is more, the Chinese Government has traditionally paid much attention to maintaining social order and safeguarding people's lives and properties, and has placed the task of preventing and controlling crimes into the comprehensive planning of the national economic and social development, taking various positive measures in criminal justice to prevent and control crimes. The new crimes emerging in the course of current economic reforms have received much attention from the Chinese Government and, at the same time, the following strategic policies and measures to prevent and punish crimes and to rehabilitate criminals have been adopted by the Chinese Government.

A. Strengthen and Perfect Legislation, Using Legal Weapons in the Struggle against Various Crimes

Since China shifted work emphasis to the building of modernization, the construction of socialist democracy and the legal system have undergone new developments. In recent several years, a total of about 1,300 laws, decrees, regulations, decisions and local laws have been enacted and passed by the National People's Congress and its Standing Committee, the State Council; ministries and committees under the State Council; provincial or municipal people's congresses and people's congresses of the minority autonomous regions. These include the criminal law, the criminal procedure law, organizational decrees of people's courts and people's procuratorates, regulations on arrest and criminal detention, supplementary regulations on rehabilitation through labour, provisional regulation for lawyers, provisional regulations for

notaries public, and other decrees relating to criminal justice. In the economic field, there is now an economic contract law, patent law, trademark law, food hygiene law, pharmaceutical management law, regulations on gold and silver management, provisional regulations on product quality supervision, regulations on credit contracts, regulations on consolidated industrial and commercial taxes, law of economic contracts with foreign nationals, law on joint ventures with Chinese and foreign investment, provisional regulations on foreign currency management, provisional regulations on an import license system, and other economic laws. These laws are playing important roles in enhancing China's socialist legal system, in protecting the legitimate rights and interests of the State, of the collectives and of the citizens, as well as of foreign businessmen and investors and in punishing various crimes and promoting the construction of modernization.

The Criminal Law is the main criterion on which crimes are punished in China. The following are some of the stipulations concerning new crimes.

Whoever commits crimes like smuggling, speculative arbitrage, speculation, theft of articles of public property, selling narcotics, swindling, and bribery is to be sentensed to not more than 15 years of fixed-term imprisonment, detention, and control based on Chapters Three, Five, Six and Eight of the Criminal Law of China and in accordance with the criminal circumstances and the seriousness of the damage. The offender may in addition be subject to a confiscation or a fine.

Whoever, for the purpose of reaping profits, manufactures or sells bogus medicines harming the people's health is to be sentenced to not more than two years of fixed-term imprisonment, detention or control and may in addition or exclusively be given a fine according to Article 164 of the Criminal Law of China. When serious consequences have resulted, the sentence is to be not less than two years and not more than seven years of fixed-term imprisonment, and the offender may in addition be given a fine.

Where, in violation of the laws and regulations on trademark control, an industrial or commercial enterprise falsely passes off trademarks already registered by another enterprise, the persons directly responsible are to be sentenced to not more than three years of fixed-term imprisonment, criminal detention or given a fine, according to Article 127 of the Criminal law of China.

Whoever violates the laws and regulations on forestry protection, illegally chopping down trees or denuding forests or other woods, when the circumstances are serious, is to be sentenced to not more than three years of fixed-term imprisonment or criminal detention and may in addition or exclusively be given a fine, according to Article 128 of the Criminal Law of China.

Whoever, for the purposes of counter-revolution, carries on crimes like hijacking ships, airplanes, trains, streetcars, or motor vehicles may be sentenced to death when the harm to the State and the people is especially serious and the circumstances especially odious, according to Article 100 and Article 103 of the Criminal Law of China.

Whoever, for the purpose of reaping profit, produces or sells pornographic books or pictures is to be sentenced to not more than three years of fixed-term imprisonment, criminal detention or control, and may in addition be given a fine according to Article 170 of the Criminal Law of China.

Whoever, for the purpose of reaping profits, assembles a crowd to engage in gambling or makes an occupation of gambling is to be sentenced to not more than three years of fixed-term imprisonment, criminal detention or control and may in addition be given a fine, according to Article 168 of the Criminal Law of China.

Noticing the present rampancy of serious economic crimes like smuggling, speculative arbitrage, speculation, theft of articles of public property, and bribes which have jeopardized the economic reforms to some extent, the Standing Committee of the National People's Congress passed on March 8, 1982 a decision regarding the severe punishment of criminal elements who seriously

undermine the national economy (hereafter referred to as the Decision). The Decision makes some appropriate supplementations and revisions to relevant provisions of the Criminal Law of China.

The Criminal Law of China stipulates no death sentence for crimes such as smuggling, speculative arbitrage, seeking exorbitant profits through speculation, theft of articles of public property, sales of narcotics and theft and sales of precious cultural relics, but allows a minimum of three years of fixed-term imprisonment and a maximum of life imprisonment for these crimes. The Decision makes the following supplementation or revision: when the circumstances are particularly serious, the sentence is to be not less than ten years of fixed-term imprisonment, life imprisonment, or death, and the offender may in addition be subject to a confiscation of property.

With respect to bribes, the Criminal Law of China stipulates a maximum of 15 years of fixed-term imprisonment. The Decision makes this revision: when the circumstances are particularly serious, the sentence is to be life imprisonment or death. When we impose principal sentences (i.e. control, criminal detention, fixed-term imprisonment, life imprisonment, and the death sentence), we also impose supplementary punishment (i.e. fine, confiscation, deprivation of political right) which means a sentence of fine or confiscation can be imposed at the same time to make offenders realize that they cannot profit economically from violating the law when they serve the sentence of imprisonment or death. Only in this way can economic crimes be cracked down on more thoroughly.

In order to tackle present crimes that seriously endanger social security, the Standing Committee of the National People's Congress passed on September 2, 1983 a decision regarding the severe punishment of criminal elements who seriously endanger public security. The Decision also makes some supplementations and revisions to the Criminal Law of China. For instance, those who intentionally injure others, causing a person's serious injury or death used to be punished with sentences ranging from detention to life imprisonment in Article 134 of the Criminal Law of China. Now the Decision makes the revision to allow punishment to go beyond the maximum punishment stipulated in the Criminal Law, up to and including death sentences.

In Article 169 of the Criminal Law of China, whoever, for the purpose of reaping profits, lures women into prostitution or shelters them in prostitution, is to be sentenced to not more than five years of fixed-term imprisonment, criminal detention or control; when the circumstances are serious, the sentence is to be not more than five years of fix-term imprisonment and the offender may in addition be given a fine or subject to a confiscation. The new Decision makes this revision: those who lure women into prostitution, shelter them in prostitution, or force them into prostitution, when circumstances are especially serious, can be punished with death sentence.

To be brief China's Criminal Law has comprehensive, detailed provisions for the punishment of various crimes. Besides, the Standing Committee of the National People's Congress, being aware of the change in the crime situation, has passed the two above mentioned Decisions to make supplementations and revisions to some relevant provisions in the Criminal Law so as to attack, more timely and severely, serious economic crimes and crimes seriously endangering social security. The society is progressing. Crime, as a phenomenon of social life, is developing and changing, too. So, our laws should be supplemented and revised in accordance with the legal procedure to reflect changes in the situation. New laws should be made, too, to provide legal criteria for struggles against conventional and new crimes in a timely, steady, severe and to-the-point manner.

B. Perfect and Strengthen Judicial Organisations, Further Enlarge Judicial Personnel

Public security organs, people's courts, procuratorates and judicial administration organs are the four special institutions rendering their services in preventing and punishing crimes, and rehabilitating criminals.

They should be strengthened further to meet the needs of the situation. According to statistics date August of 1983, our people's court network had a staff of 144,000 people; the people's procuratorate network, 113,000 people; and the judicial administration organs, 74,000 people, including 8,500 professional lawyers and 3,500 part-time lawyers working at 3,350 legal consultant offices and lawyer's offices. (By the end of 1985, the total number of lawyers reached 20,000, of whom 30 per cent were part-time lawyers and the notary public officers numbered 2,600 with a total of nearly 10,000.)

Apart from perfecting the judicial organizational system, we have also greatly developed legal education and legal research in a planned way. Since 1979, the the political science and law education system have been expanded from the original two law departments to the present system that includes one political science and law university, four political science and law colleges, and more than 30 law departments in various universities. The total enrolment of registered students has developed from 300 to more than 10,000. In addition, we have run correspondence universities and TV universities, all of which provide a great variety of law courses to encourage legal workers in great number. We have also recently established a public security university and some public security colleges to raise the professional level of our public security workers and to strengthen our public security departments. In order to raise the political and professional level of our judicial workers, we have set up a three-level (central, provincial and prefectural) judicial training system. The number of central-level political science and law cadre schools has increased from one to two: while 19 provincial, municipal and autonomous regional judicial cadre schools and 27 prefectural judicial training schools have been re-opened or newly established. The above-mentioned institutions can train about 5,000 persons at a time. In addition, we have set up five secondary law schools which now enrol more than 1,000 students. Our law schools, law research institutions, and judicial administrative departments are all strenthening research work on various legal subjects, including criminology, criminological psychology, juvenile delinquency and so on. We regard the task of perfecting and strengthening the criminal justice administration, the training of legal professional workers, the raising of the quality of on-the-job judicial and legal personnel, and legal research, as both concrete measures and long term targets in preventing and controlling crimes. This has practical significance in reducing and controlling new crimes.

C. Strengthen the Roles Played by Public Security Organs, People's Procuratorates, People's Courts and Judicial Administration Departments in Criminal Justice

China's judicial organs consist of people's courts, people's procuratorates, public security organs, and judicial administration departments. In conducting criminal proceedings, the public security organs, the procuratorates, the people's courts and the judicial administration departments have a division of labour with separate responsibilities. They co-ordinate with each other and restrain each other in order to guarantee the accurate and effective enforcement of the law.

1) The public security organs are responsible for investigation, detention and arrest upon approval of the people's procuratorates and preparatory examination in criminal cases. Apart from cases investigated by the people's procuratorates themselves, the public security organs are responsible for conducting the investigation of all other cases, timely and accurately, in accordance with legal procedures. They shall strictly draw lines between guilt and innocence, crime and minor violation of law. When criminal guilt is found, the public security organs should draft an opinion recommending prosecution and transfer it together with materials in the case and evidence to the people's procuratorate at the same level for review and decision. For those minor violators of law, they will draft

an opinion recommending exemption from prosecution and impose punishment of criticism, education detention, or labour rehabilitation.

Confronting new crimes that have emerged in China recently, our public security organs have adopted some countermeasures. just to mention a few:

a) Study and master advanced techniques and equipment so as to raise the quality of public security personnel.

b) Co-operate closely with customs authorities in an antismuggling program. We have tightened checkings at water and land border passages and have installed scanners and metal detectors at airports throughout the country to carry out strict checking of passengers. At the same time, we have carefully checked and blocked possible smuggling channels to prevent pornographic articles and narcotics from being smuggled into China and precious cultural relics, antiques, rare medical herbs, gold, silver and jewelery from being smuggled out.

c) Safeguard public security and strengthen the administrative work in public places such as railway stations, ports, hotels, trading placer, theatres, stadiums, etc. where it is easier for criminals to hide and commit criminal offences.

d) Expose and attack, with the deterrence of law and the help of people, those handful of criminals who produce, sell, and spread pornographic materials and those who make an occupation of gambling. Now, the illegal activities of spreading pornography, and gambling have been restrained to great extent.

2) The people's procuratorates are State organs supervising the enforcement of the law and exercising procuratorial power independently over the activities of the other judicial organs. They examine and decide whether to approve or not to approve a request for arrest made by the public security organs. They also examine charges brought up by the public security organs which have completed investigation and decide whether it is necessary to bring the case before a court. Besides accepting criminal cases investigated and brought up by public security organs and discipline inspection commissions,* the people's procuratorates can, in accordance with the law, accept cases such as corruption, infringement of the democratic rights of citizens, dereliction of duty, and other cases that the procuratorates consider they should accept. At present, the main tasks are to file and investigate criminal cases in the economic field and make decisions of prosecution, exemption from prosecution and no prosecution in accordance with the facts and the law.

In dealing with economic crimes at the present time, our procuratorates are working in two aspects. On the one hand, they study the cause, methods, and features of economic crimes in order to devise countermeasures and to offer suggestions to authorities concerned to close loopholes so as to help prevent future crimes. On the other hand, they bring prosecutions against verified economic criminal cases to people's courts for legal punishment.

3) People's courts are State organs conducting trials. One of the main tasks of our people's courts is to adjudicate criminal cases and to punish all criminals. The basic principles of our criminal adjudication are as follows: a) The principle of "taking facts as the basis and the law as criterion." b) The principle of "all citizens are equal before the law." c) The principle of "people's courts exercise their authority independently and are subject to law."

After a people's court has conducted a review of a case in which public prosecution has been initiated, where the facts of the

*The Discipline Inspection Commission is an organ of the Communist Party of China. Its duty is to supervise and check if members of the Party or State personnel violate the disciplines of the Party, of the government, or the law. When guilt is found in violating the disciplines, the Committee will bring the case to authorities for punishment within the Party and the Government. When criminal offences go beyond the punishment of the discipline, the Committee will bring the case of the people's procuratorates for decision.

crime are clear and the evidence is complete, it shall decide to open the court session and adjudicate the case; where the principal facts are not clear and the evidence is insufficient, it may remand the case to the people's procuratorate for supplementary investigation; where there is no need for a criminal sentence, it may demand that the people's procuratorate withdraw its prosecution. During adjudication proceedings, the people's courts should abide by the principle of taking facts as the basis and the law as criterion to make fair decisions regarding the defendants, to punish criminal elements and to safeguard innocent people from criminal prosecution, so as to fully perform the function of adjudication.

As for economic criminal cases and other new criminal cases prosecuted by the people's procuratorates where facts are clear and guilt is verified, the people's courts can, in accordance with the law and the two above-mentioned Decisions of the Standing Committee of the National People's Congress, impose severe sentences on serious economic criminal elements and other criminal elements who seriously jeopardize social security.

4) Judicial administration organs are government departments responsible for judicial administration at various government levels. Apart from duties such as the training of judicial personnel, education of political science and law, publicity of the legal system, administration of lawyers, work of notaries public and mediation, judicial administration departments also assume important duties of management of prisons and labour reformatories. In our country, criminals are treated with a policy of combining punishment with remoulding and combining ideological reform with productive labour. This policy has achieved great results in the past 30-odd years. A detailed description of it will be given in the next chapter devoted to what is called comprehensive treatment.

It is worthwhile to introduce the function of lawyers and notaries public in criminal justice. The functions of lawyers are: a) to spread the knowledge of the legal system; b) as a legal consultant to one side in a contract, a lawyer can, in the course of drafting and examining the contract and other documents, find problems and loopholes in connection with legal and economic matters; and c) as a defender to a defendant. A lawyer can, in accordance with the law, protect the lawful rights of the defendant. The function of notaries public is to find problems and close loopholes through notarizing contracts and other documents.

The public security organs, people's procuratorates, people's courts and judicial administration organs, while having a division of labour, co-ordinate with each other and restrain each other in handling economic and other crimes including new crimes. From the stage of investigation through prosecution to adjudication and to rehabilitation through labour, the four judicial organs shall strictly abide by our country's Criminal Law, Criminal Procedure Law and the two Decisions passed by the Standing Committee of the National People's Congress in order to firmly, accurately and severely punish criminal elements who seriously endanger the economy and social security, so as to safeguard the smooth progress of our country's economic reforms.

D. Maintain Public Security with a Comprehensive Treatment

Crime is a social problem, and to prevent and control crime is a common task facing the whole society including judicial institutions, police departments, government organs, people's organizations, industrial enterprises, schools, families and all citizens. It cannot be done well single-handedly by any one department or with any one measure without support from the whole society. In the practice of preventing and controlling crimes, China has gradually formed a practical and comprehensive measure called "comprehensive treatment" which means that under the unified leadership of governments at all levels, judicial organs work hand-in-hand with departments of propaganda education and culture, trade unions, women's associations, the Communist

Youth League, the army, schools, families and broad masses of people. All of them shoulder responsibility in their own fields and co-operate with each other to take administrative, cultural, educational, economic, legal and moral measures to efficiently prevent and control crimes. Comprehensive treatment is not only applicable to regular crimes and juvenile delinquency but also is applicable to economic crimes and other new crimes because all crimes have many common elements. But specific measures should be applied to economic and new crimes according to their characteristics. In conclusion, the main points are summed up, below:

1) Widely Engage in the Construction of Socialist Spiritual Civilization

When making great efforts in building socialism, China not only pays attention to the development of the society's education, science, and culture to raise our people's intellectual standards, but also lays emphasis on building a spiritual civilization by carrying out extensive education on lofty ideals and a sense of discipline to government personnel, workers, farmers, students, servicemen, and the masses to guide them towards learning from revolutionary heroes and model workers. We encourage people to learn civility and courtesy and encourage everyone to become citizens with lofty ideals, moral integrity, education, and a sense of discipline, and who should study hard and work selflessly for the country's modernization program. This work is particular important among young people because they represent the hope and future of our country. They are the main force who will carry out socialist construction in our country. To raise them into a new generation with lofty ideals, moral integrity, education and a sense of discipline is a major strategic policy to make sure that China's socialist cause will be handed down from one generation to the next.

China is now facing a new situation brought about by economic reform and the policy of opening to the outside world. We should enhance teaching of morality and discipline to officials, especially to leading personnel to help them carry on the spirit of hard work and honesty; to correct unhealthy tendencies both in ideology and in work style; to strengthen their immunity against corruption and influence from outside decadent and unhealthy tendencies; to consciously guard against individualism, selfishness, money-mindedness and hedonism; and to establish a selfless spirit to help others and to be devoted to the cause of serving the people. As soon as we build up a wall of spiritual civilization, we can resist various evil winds and help to stop those who have already started down a criminal road, so as to reduce all kinds of crimes including new crimes. Where proper work has been done to build up spiritual civilization, criminal cases are reduced. In some places, crimes occur in small numbers, and some other places have had no cases of crime. Taking Mancheng County of Hebei Province for example, because of the abovementioned activities, the county's major crime cases dropped by 53.7 per cent in 1984 compared with the previous year. So, we can see that to carry out a socialist spiritual civilization program has become an important measure and experience in establishing good social morale, and preventing and reducing various crimes in China.

2) Wide Spread Information and Education about Our Legal System, so that Everybody Knows the Law and Becomes more Legal-minded.

In the last few years, we have promulgated education and publication of legal knowledge so as to put the law into the hands of one billion people and thus enable everyone to know the laws and abide by the laws. We have raised legal consciousness among the people and have helped people to form a habit of respecting and upholding the laws, and standing up against those who break them. This way we have created a favourable social environment in which various criminal acts are resisted and guarded against. Our aim is to nip any evil in the bud and prevent crimes. Legal system publicity can be combined with the construction of socialist spiritual civilization by utilizing the media such as newspapers,

magazines, literature, art, movies, TV programs, broadcasting and public lectures to carry out the message.

Recently China has decided to popularize legal knowledge among the entire nation in the next five years. This will be done in a planned, systematic way and it will include general knowledge of our Constitution, the Criminal Law, the Criminal Procedure Law, the Law of Civil Procedure (draft copy), Marriage Law, Inheritance Law, Business Contract Law, Draft Law, Tax Law, Patent Law administration of public order and its regulations on imposing fines, and other legal knowledge closely linked with the everyday life of the people, such as Traffic Regulations, Fire Control Regulations, the Environment Protection Law, etc. All this is aimed at making the people more legal-minded, so that they can carry out their duties as citizens and safeguard their own rights and interests. In popularizing legal knowledge, our government places emphasis on two groups of people: the first is the cadres, especially the leading personnel at various levels of government organs because they have to lead the people in studying laws, using laws, and abiding by the laws. People should be taught what is legal and what they should do and what is illegal and what they should not do. They should also be taught to report criminal suspects who might seriously endanger the economy and to struggle against all criminals who have broken the law. With these methods, we can prevent crimes by deterring some officials from trying to test the law and profit from the economic reform. The second is the young people. Our government has ruled that legal knowledge should be taught in all educational institutions, including primary, middle and high schools, and colleges and universities. To strengthen legal education among young people will not only prevent and reduce crime, but what is more important, it will also nurture the healthy growth of a new generation.

Legal knowledge, once grasped by the people, will become a massive material power. Where the legal education is done well, the social security will be sound. In Benxi City in Liaoning Province, for instance, which has done a good job in popularizing legal knowledge, the annual crime rate dropped by 54 per cent in 1984 compared with 1983. In the city of Chaozhou in Guangdong Province, constant and systematic legal education is carried out in 101 middle schools and 484 primary schools and the results have been very satisfactory. In 1983 and 1984, only three theft cases occurred among the city's 180,000 students. In two of the three cases, the offending students voluntarily gave back the stolen articles after attending legal lessons, so they were spared any punishment. In the whole city, not a single student was arrested for crime. The practice has proved that legal information and education is an effective means to prevent and reduce crime.

3) Bring into Full Play the Role of People and Mass Organizations

Our crime prevention work depends largely on the masses. Throughout the country we have established urban neighbourhood committees and rural villagers' committees. Under these two committees are public security committees and people's mediation committees, both mass organizations. In the cities, security and mediation committees are set up in neighbourhoods and work units while their rural counterparts are organized with production brigades. The main function of public security committees is to mobilize people to help government maintain social order and help educate minor offenders, juvenile delinquents and those released after expiration of their terms to prevent them from committing crimes. The main function of mediation committees is to popularize knowledge of the socialist legal system, settle general civil disputes among people to prevent minor troubles from being intensified in order to reduce the crime rate. The members of the grass roots committees are selected by the people. They should think kindly and fairly and be disciplined to set examples for other people. They should be watchful for strange things in the area and dare to report suspicious things to the police to reduce crimes in the area. These organ-

izations serve as bridges and links between judical organizations and the people. They play a role that cannot be replaced by State organs in preventing crimes.

4) Strictly Enforce State Laws to Protect People and to Punish and Rehabilitate Criminals

When we try all we can to prevent crimes, we at the same time investigate crimes and punish a handful of criminals in accordance with the law and bring into full play the roles of legal deterrence. To punish a handful of law violators will not only prevent them from continuing to endanger the society, but will offer lessons to those who might otherwise commit crimes later by teaching them the power of law, so as to stop them from testing the law. In this way we can eventually protect the normal order of people's lives, work and production.

The ultimate purpose of imposing punishment on criminals is to rehabilitate the majority of them to make them law-abiding citizens who are able to support themselves. This will help to reduce crimes from the root. Our policy towards criminals is to combine punishment and control with ideological reform, and combine labour reform with education. Education always carries more weight. As our economic construction enters a new stage, we have to keep pace with the changes in the criminal situation, developing and improving our policies toward offenders. When we severely punish serious crimes,we have also adopted a policy putting emphasis on education, persuasion, and redemption of offenders, especially juvenile delinquents. Those in charge of labour reform institutes must be responsible, patient and meticulous. They should act like parents towards their children, doctors towards their patients, and teachers towards their pupils, so as to help the offenders remould themselves into new persons.

Our prisons are like schools, factories, and farms. We are turning our prisons into special schools where we reform people and remould people. In such schools, when punishment is imposed on criminals, a systematic, formal education of politics, culture, professional and technical skills are taught to them in the hope of turning them into useful, law-abiding persons who can take part in socialist construction. Their educational qualifications and their technical gradings are recognized by the educational and labour departments. Many are employed by business enterprises and professional institutions, taking up posts for the construction of our country. For example, altogether, six hundred and thirty offenders from Weifang Reformatory in Shandong Province took part in provincial, primary level technical tests for mechanics on various occasions and over 90 per cent of them successfully passed the tests. This is the highest passing average in the whole city. And not long ago over 300 offenders in Guangdong Province took part in a higher education examination for self-taught students and this evoked quite a positive reaction from the society.

In turning labour reformatories into special schools we not only remould the offenders ideologically and help them get rid of their evil habits, but also teach them knowledge and skills, paving the way for them to find work in society after the expiration of their terms. Our government has always upheld the policy of "providing a way out" to former convicts, telling people not to discriminate against, nor cold-shoulder them. The government also helps them solve problems in living, provides them with opportunities to study and work in the hope of leading them onto a correct path. Juveniles of school age may resume schooling or be promoted after passing an examination. Thanks to these correct policies, the rate of recurrence of crime among those released from reformatories has been reduced to about 6-7 per cent. For instance, in Weihai City of Shandong Province where 55 former convicts settled in the last few years, no one has committed a crime again. Instead, one third of them have become advanced workers. Another example is a neighbourhood-run boiler factory in the Haidian District of Beijing where one-fifth of the workers are former convicts or those released from reformatories. There is not a

single case of recidivism in nine years, and most of them have become model workers. Facts have showed that when a correct policy is carried out, those once criminal elements will no longer endanger society and may be transformed into positive elements for the construction of society.

Summing up, the work of preventing, reducing, and tackling crimes and remoulding offenders is the main content of "comprehensive treatment" in maintaining social security. Carrying out all these measures will lead us towards our goal of the effective steady prevention, reduction and control of crime, including new crimes.

In conclusion, in the course of economic reform, some crimes which are new to us have emerged in China. The Chinese Government has adopted a series of strategic policies and measures to tackle them and has realized some achievements. We have also noticed that the fight against economic crimes and other crimes, including new crimes, is arduous and will last long. There is a lot of work to be done. The burden is heavy and the road is long. We should constantly sum up our experiences, improve our work and learn from the useful experiences of other countries and ultimately promote innovation in criminal justice administration for the prevention of new criminality throughout the world.

Characteristics and Roles of Japanese Public Prosecutors

*by Shigeki Ito**

The Important Roles of the Prosecutor in Criminal Policy

The administration of criminal justice covers a series of criminal proceedings which are usually initiated by the detection of a crime and followed by investigation (locating the criminal and collecting evidence), prosecution, trial, conviction, sentencing and execution. A Japanese public prosecutor is the sole person in the criminal justice system who can participate in every stage of such proceedings. It is a unique characteristic of Japanese criminal procedure that only public prosecutors are granted the power to decide whether or not to institute prosecution and to direct the execution of sentences. Prosecutors are therefore in a position to observe the fate of a criminal for a far longer period than other agencies in the criminal process. This inevitably requires the prosecutor give serious and careful criminological consideration to the crime and the criminal. These considerations should be emphasized as the two important aspects of "general deterrent effect" and "special preventive effect."

General Deterrence

One very important mission entrusted to the public prosecutor is to seek a general deterrent effect in criminal justice administration. He may deter the people from criminal behaviour and thus contribute to the suppression of crime by demonstrating that all criminals who have committed serious offences are apprehended and receive legally fixed punishments with certainty and by imposing a necessary and adequate punishment against a particular criminal. For securing certain apprehension and punishment, a public prosecutor always gives necessary training in investigation practices to police officers, maritime safety officers, narcotics agents, railway police officers and other special police officers. In certain important or difficult cases, he initiates the investigation whenever he deems it necessary to do so. These efforts undoubtedly successfully prevent many evasions of justice by criminals. In addition, there have been many approaches to formulating a fair and sound sentencing policy to achieve uniformity in sentencing with necessary modifications in local situations. Nation-wide or prefecture-wide standards for choosing prosecution or non-prosecution were formulated for certain crimes. While a prosecutor states his opinion as to the appropriate penalty to be imposed on the accused at the conclusion of trial, this opinion has been standardized as a useful source for assessing penalties.

Japan is unique among countries in that crime has showed a general downward trend (See Table 1). This may be attributed to swift and certain apprehension and punishment together with painstaking efforts made by special preventive measures which will be described later.

Incidentally, a slightly increasing trend in crimes from the beginning of the 1980s is due solely to an increase in theft, particularly shoplifting and larceny involving bicycles and motorcycles committed by juvenile offenders in their early teens (14 to 15 years old). Statistics indicate, however, that hardly any increase can be found in crimes committed by juvenile offenders in their mid-teens (16 to 17 years old) and juvenile offenders in their late teens (18 to 19 years old). Therefore, it should be noted that this tendency towards increased crime among juvenile offenders in their

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Table 1: Trends in Non-Traffic Penal Code Offences Known to the Police

Year	Offences known to the police	Population (thousands)	Offences per 100,000 population
1946	1,384,222	73,114	1,893
1947	1,382,210	78,101	1,770
1948	1,599,968	80,003	2,000
1949	1,597,891	81,773	1,954
1950	1,461,044	83,200	1,756
1951	1,387,289	84,573	1,640
1952	1,377,273	85,852	1,604
1953	1,317,141	87,033	1,513
1954	1,324,333	88,293	1,500
1955	1,435,652	89,276	1,608
1956	1,354,102	90,259	1,500
1957	1,354,429	91,088	1,487
1958	1,353,930	92,010	1,472
1959	1,382,792	92,973	1,487
1960	1,378,817	93,419	1,476
1961	1,400,915	94,285	1,486
1962	1,384,784	95,178	1,455
1963	1,377,476	96,156	1,433
1964	1,385,358	97,186	1,425
1965	1,343,625	98,275	1,367
1966	1,293,877	99,054	1,306
1967	1,219,840	100,243	1,217
1968	1,234,198	101,408	1,217
1969	1,253,950	102,648	1,222
1970	1,279,787	103,720	1,234
1971	1,244,168	105,014	1,185
1972	1,223,530	107,332	1,140
1973	1,190,534	108,710	1,095
1974	1,210,987	110,049	1,100
1975	1,234,279	111,940	1,103
1976	1,247,613	113,086	1,103
1977	1,268,391	114,154	1,111
1978	1,336,880	115,174	1,161
1979	1,289,360	116,133	1,110
1980	1,357,418	117,060	1,160
1981	1,463,188	117,884	1,241
1982	1,528,752	118,693	1,288
1983	1,540,689	119,483	1,289
1984	1,588,667	120,235	1,321
1985	1,607,663	121,026	1,328

Reference: The White Paper on Crime 1986, Report of Research and Training Institute, Ministry of Justice

Source: National Police Agency and Statistics Bureau, Management and Coordination Agency

early teens is simply a passing phenomenon, and that boys and girls in this age bracket are less likely to commit crimes as they grow older. Thus it would be fair to say that the general deterrent effect is working properly in this nation.

The same may be seen in the recent downward trend in traffic-accident cases. While the number of automobiles was estimated at around 9 million in 1966, it increased to 52.4 million in 1985 (in addition, there are around 14.6 million motorcycles). However, the number of traffic accidents and deaths and injuries caused by them has decreased since 1970 (See Table 2). This may be partly because of improvement in road conditions and facilities. However, it should be emphasized that prosecutors made sincere efforts to demand that the courts impose fair and sound punishment on those causing traffic accidents (professional negligence causing death or bodily injury) in accordance with the uniform standards of disposition and punishment, which also took local situations into full consideration and appealed to the high

Table 2: Trends in Traffic Accident Cases

Year	Cases known to the police	Persons killed per 100,000 population	Persons killed per 10,000 motor vehicles
1966	425,944	14.0	14.9
1967	521,481	13.6	12.1
1968	635,056	14.1	10.5
1969	720,880	15.8	10.1
1970	718,080	16.2	9.0
1971	700,290	15.5	7.8
1972	659,283	14.8	6.8
1973	586,713	13.4	5.6
1974	490,452	10.4	4.1
1975	472,938	9.6	3.7
1976	471,041	8.6	3.2
1977	460,649	7.8	2.7
1978	464,037	7.6	2.5
1979	471,573	7.3	1.7 (2.3)
1980	476,677	7.5	1.7 (2.2)
1981	485,578	7.4	1.6 (2.1)
1982	502,261	7.6	1.6 (2.1)
1983	526,362	8.0	1.5
1984	518,642	7.7	1.4
1985	552,788	7.7	1.4

Reference: The White Paper on Crime 1985, Report of Research and Training Institute, Ministry of Justice

Source: Traffic Bureau, National Police Agency

Note: Since 1979, motor vehicles include motorcycles. Figures in parentheses show the number of accidents causing death per 10,000 vehicles excluding motorcycles.

courts to reverse unreasonable sentences imposed by the district courts. It should also be stressed that prosecutors' similar efforts in the apprehension and punishment of violators of the Road Traffic Law have contributed much to prevent the occurrence of traffic accidents.

In this connection, it should be mentioned that the occurrence of some special law offences relates to various defects in administrative policies, and that non-punitive administrative measures are sometimes more effective in achieving the goal of criminal justice than criminal sanctions. In these cases, prosecutors are required to give necessary advice or recommendations to other suitable administrative agencies.

Special Prevention

Public prosecutors dealing with criminal cases are required to give careful consideration, especially when they decide whether or not to institute prosecution against a criminal. The decision will be rendered after the prosecutor has carefully examined all the evidence and is convinced of the guilt of the suspect. This strict attitude toward a firm belief in an offender's guilt has caused a surprisingly low not-guilty rate. For instance, in 1985 the not-guilty rate for dispositions by district courts and summary courts was 0.11 percent and 0.28 percent, respectively. However, prosecutors take painstaking efforts in deciding whether a criminal should be prosecuted or whether to suspend the prosecution of a case even where there is sufficient evidence to support conviction. It is a unique characteristic of Japanese criminal procedure that the prosecutor is granted wide discretionary power to decline any prosecution, even after he has obtained sufficient evidence to establish the guilt of a suspect. This system is called *kiso-yuyo* (suspension of prosecution).

Article 248 of the Code of Criminal Procedure provides: "If, after considering the character, age and situation of the offender, the gravity of the offence, the circumstances under which the offence was committed, and the conditions subsequent to the commission of the offence, prosecution is deemed unnecessary, prosecution need not be instituted." While the decision should reflect the gravity of the criminal's misconduct, the prosecutor should always consider whether the criminal can use his suspended prosecution as an opportunity to rehabilitate himself by his own will as a responsible member of society without being labelled as a criminal by prosecution and conviction.

The percentage of suspension of prosecution (the percentage of the number of suspended criminals to the total number of suspended and prosecuted criminals) was approximately 35 percent with regard to Penal Code crimes excluding traffic-accident cases in 1985. In short, nearly more than one-third of criminals were allowed to return to society, despite the existence of sufficient evidence to support their convictions. The percentage of the suspension of prosecution amounted to around five percent even as regards serious offences such as homicide and robbery. With regard to thefts the rate was as high as around fifty percent.

This kind of criminological consideration in the suspension of prosecution undoubtedly contributes much to the rehabilitation of criminals and is highly valued by society as one of the most important and effective measures in criminal policy. However, it should be noted that such discretionary power by a prosecutor may be exercised only when he is considered as an impartial and integrated representative of society and has obtained the absolute confidence of the public.

A senior prosecutor often gives advice to a new prosecutor as follows, "You should be deceived rather than indulge in too strict an attitude". This means that the prosecutor should not be afraid of being deceived by the criminal or his family and thus of rendering a decision of suspended prosecution and that he should not prosecute without adequate consideration and impress the label of criminal upon a person who shows a reasonable possibility of rehabilitation. Further, it should also be mentioned that all criminal records are accessible to public prosecutors' offices

which have a nation-wide computer on-line system with Tokyo as the input source.

Independent Investigation

One very important characteristic of a Japanese public prosecutor is his power to investigate all kinds of criminal cases on his own initiative and without any assistance from the police and other law enforcement agencies.

Crimes may be divided into two categories: those with high visibility due to the existence of a specific victim or complainant and those with low visibility due to the lack of such a person. For example, homicide cases can be traced from the existence of a corpse. Thefts cases are enforceable by the statement of a victim as a complainant. These are crimes with victims and with high visibility. Japanese police, with highly qualified, disciplined and trained personnel and an efficient and well-equipped organization, have shown a remarkable record in solving these visible crimes. This may be illustrated by a 96.5 percent clearance rate for homicide cases, 82.5 percent on robbery cases and 59.9 percent for theft cases in 1985. People undoubtedly are fully confident in police ability to solve these visible kinds of cases.

However, there are a number of crimes with low visibility or without a specific victim or complainant. For example, bribery committed by high government officials and many corporate crimes and economic crimes typically belong to this category of crime. While victims of such crimes are the nation or society or a company or its stockholders, particular citizens or stockholders have no strong feelings as victims and dare not submit a complaint about such crime. However, this unenforceability based on the lack of a complainant will cause serious damage to society if it is left unsolved. Corruption may involve the society as a whole and thus produce serious danger which may eventually lead to its destruction. It is without doubt one of the most important responsibilities of any law enforcement officer to root out such crimes and thus fortify the very foundations of society.

It cannot be denied that the police have been primarily involved in solving high-visibility crimes and that this circumstance consequently limits the amount of time and attention which can be allotted to the detection and investigation of low-visibility crimes. While the detection and investigation of low-visibility crimes often require sophisticated knowledge of complicated corporate accounting systems or of banking transactions, police officers do not always have such expert knowledge. Therefore, it often becomes the business of a public prosecutor to investigate these crimes on his own initiative and without any kind of assistance from the police. Prosecutors thus make every effort to detect and investigate low-visibility crimes in full recognition of their role in criminal justice.

While most of the prosecutors' offices have no special organization aimed at the investigation and prosecution of particular kinds of crimes, Tokyo and Osaka, the centers for political and economic activity in eastern and western Japan, respectively, have established Special Investigation Departments in their prosecutors' offices, where a considerable number of well-trained and qualified prosecutors and their assistants actively carry out their work.

The Special Investigation Department of the Tokyo District Public Prosecutors Office, especially, has played a very important role since its establishment in 1949. The Department uncovered and brought to court a number of cases of bribery of high government officials and corporate crimes such as breach of trust by executives, illegal manipulation of financial settlements, tax evasion and secret price cartels in violation of the anti-monopoly law. Their efforts undoubtedly produced strong public confidence in law and order and promoted a public feeling of equal protection under the law. Moreover, it has played an important role in rooting out evil among those who hold political power or who control wealth and promoting sound social and economic development in society. Activities of the Department cannot be

distracted, and actually have not been distracted, by any kind of unreasonable political pressure. Further, the Department never discloses to the public the process or results of its investigation except on the occasion of an arrest, prosecution or other action that inevitably causes a considerable amount of publicity. Even a veteran journalist cannot have access to any news or information as to what is going on in the Department. This very strict attitude may be considered one important reason for being able to obtain testimony or information from those who are afraid of any kind of publicity.

Among a number of important cases investigated by the Department, the Lockheed Case may be the best known to the public. This corruption case was first disclosed to the public when the vice-chairman of Lockheed Aircraft Corporation testified before the U.S. Senate Subcommittee on Multinational Corporations in February 1976. He testified that, "Lockheed Aircraft Corporation paid millions of dollars to Japanese high government officials through its Japanese agent Marubeni Corporation to smooth the way for the sales of Lockheed's TriStar airbuses to All Nippon Airways. Lockheed also paid Yoshio Kodama, an influential and powerful figure and a secret consultant, millions of dollars for his role in engineering Lockheed sales in Japan." Based on this testimony and other evidence, the Department interrogated Kodama on the charge of tax evasion and arrested executives of All Nippon Airways and Marubeni Corporation for violation of the Foreign Exchange and Foreign Trade Control Law. Prosecutors also carefully examined voluminous documents and account books seized from those corporations and other places together with various related records of their banks. The investigation revealed the names of high government officials who received bribes from Lockheed Corporation. Former Prime Minister Kakuei Tanaka, former Minister of Transportation Tomisaburo Hashimoto and former Parliamentary Vice-Minister Takayuki Sato were arrested and prosecuted on the charge of receiving bribes. Along with the investigation, the Department requested the U.S. District Court to obtain testimony from the former Vice-Chairman of Lockheed Corporation, A.C. Kotchian, and two other persons. They testified before the court after they had been given immunity from criminal prosecution by Japanese authorities. The content of their testimony completely coincided with the results of the investigation made by the Department.

Defendant Kodama died in the process of trial, but as for the other defendants including Tanaka, Hashimoto and Sato, a guilty judgment was rendered to each at the first instance. Currently the case is pending in the Tokyo High Court after the defendants appealed.

Special mention has to be made of the fact that as soon as the Special Investigation Division of the Tokyo District Prosecutors Office commenced its investigation a Judicial Agreement was entered into between the Ministry of Justice of Japan and the U.S. Department of Justice specifying that prosecution authorities of both countries would co-operate in the resolution of the Lockheed Scandal. Thus, from the investigation stage to the public trial stage, much evidential material collected in the U.S. was provided to Japan's prosecution authorities without going through diplomatic channels, which proved to be very useful in obtaining guilty judgments against the defendants. Assistance of this kind has continued at the appeals stage.

Advocates for Victims

As in other countries, the Code of Criminal Procedure may be considered as "the Magna Carta for the criminal." As its historical background shows, the main emphasis has been put upon the safeguarding of the human rights of the suspect and accused at every stage of criminal procedure. However, the criminal justice system came into existence as a means to impose criminal sanctions upon a criminal by prohibiting the victim's personal revenge. It is, therefore, of primary importance to reflect the feeling of victims fully and accurately

in court procedure. In this connection, it should be noted that while the accused enjoys an advantageous position in presenting favourable evidence to the court with the assistance of a tactical defence counsel, the victim has not been blessed with an adequate opportunity to express his own feelings except by taking the witness stand. Since victims are almost always mute, especially in a murder case, the accused often justifies his actions by saying, for example, "The victim is the kind of person who would die in a ditch, even if he had not been killed by me," or "The victim himself should be blamed," or other such statements to transform bad into good and good into bad. No one but a public prosecutor can speak for the victim and express fairly and accurately the feelings of the victim. They make every effort to induce in judges a thorough and accurate grasp of the victim's feelings.

I want to share with you one experience I had when I was Deputy Chief Prosecutor of the Tokyo District Public Prosecutors Office. The case occurred more than ten years ago, but it left such an indelible impression on my mind that I can even now recall it vividly as if it had occurred just yesterday. The accused, a young bachelor, was driving a car, ignored the red light at an intersection and hit and killed a high school boy who was crossing the road on a bicycle with the green light. He was prosecuted on the charge of professional negligence causing death. The day after the examination of evidence in trial court, the father of the victim asked the accused to his home to worship before the spirit of the dead son and there he stabbed the accused to death with a knife. The father, who failed to commit suicide by hanging himself, surrendered voluntarily to the police. During the interrogation, the father made the following statement:

> "My murdered son was my only one. I could not go to college because my family was so poor. I worked very hard and finally became a manager of a small company. It was my only wish that my son would not have the same hardships and pains I had, and I spent my whole life for my son only hoping that he would grow up in good health, graduate from a top-level university and have a successful career in society. But he was killed. The man who killed my son never visited my home to pay any respect before his spirit. Furthermore, I was deeply shocked yesterday in court. He was justifying himself by insisting that my son had ignored the signal. His mother also testified as to how gentle and nice her son was, and asked the judge to render a most lenient sentence because he was going to get married soon. She also added in her testimony that she had failed to reach a monetary settlement because of the unreasonable demand for money by the victim's father amounting to one hundred million yen for compensation. I have never demanded this amount of money. I only said to the mother just after the occurrence of the accident that the sorrow of the parents who lost their only son could not be lessened even if they received one hundred million yen. She nevertheless gave such false testimony, and when she did, the defence counsel and her daughter sitting in the audience chuckled with contempt. Then, I decided to take my revenge upon him, because I could not put my trust in the court any more. I took the law into my own hands."

Faced with such a shocking case, I asked all the public prosecutors in the Public Trial Department how they could have prevented the occurrence of the second case of homicide. The answers consisted of three alternatives: 1) the prosecutor should have cross-examined the mother and asked her the following question, "How would you feel if the dead victim were your own son?" 2) after the mother's testimony, the prosecutor should have emphasized fully and adequately the resentment and other feelings of the victim's family in his closing argument; or 3) the prosecutor should have immediately requested the father to take the witness stand after the mother's testimony and to testify as to his feelings to his full satisfac-

tion. It was unanimously agreed by all the prosecutors, and I, too, that if any of these measures had been taken, the second case could have been prevented. I keenly feel that the public prosecutor should always play the role of an advocate for the victim and reflect his feelings at every stage of the criminal process.

As this instance indicates, there is a possibility that the victim's resentment and other feelings may not be adequately expressed in criminal proceedings. Prosecutors do their best in paying due attention to the victim's feelings even before instituting a public action. With regard to such offences that harm an individual person or his interests, for example, property offences such as theft and fraud, the public prosecutor often suspends prosecution, which I have dealt with before, especially when the suspect is a first-time offender or where there are other mitigating factors, and if the suspect remedies the damage and the prosecutor finds that the victim's feelings have been considered. The prosecutor sometimes recommends a settlement by negotiation (*jidan*), i.e., compensation for the damage by the suspect who has confessed to his offence. If the suspect is unable to compensate for the damage before he is prosecuted but compensates for it after being prosecuted, he may receive a mitigated sentence, usually the suspension of execution of sentence, through a comparatively simplified trial with prosecutor's favourable practice in the court.

In addition, the Law for Paying Benefits to Victims of Crime came into force in 1981 in this nation. This law stipulates that the bereaved family of a person who is killed in a criminal act or a person who has been severely handicapped by such an act may receive compensation for victims of crime from the national government. When they discover during the course of investigation and public trial that this law is applicable, prosecutors actively recommend persons concerned to make application for this compensation. For instance, in 1985 the number of victims compensated under the provision of the Law was 183 and the amount received by them totaled approximately 540 million yen.

Protection of Independence

The above-mentioned activities of prosecutors are supported by the sense of justice and responsibility of each prosecutor. Each prosecutor, who legally constitutes an independent administrative organ, carries out his work using his own judgment and is responsible for his own actions. He may ask for a directive from the Deputy Chief Prosecutor or the Chief Prosecutor before rendering his decision. This is processed in the form of active discussion between them. If the case is a very important one, the Chief Prosecutor follows the same procedure, taking the case to the Superintending Prosecutor or in some cases to the Prosecutor-General, who makes a final judgment on the matter and asks for no directive from another person.

The Cabinet or the Minister of Justice has no power to control each public prosecutor in regard to the investigation and disposition of individual cases. They may control only the Prosecutor-General. Even where a directive is issued to the Prosecutor-General, that directive may not be executed at the refusal of the Prosecutor-General. The one Minister who issued such a directive to the Prosecutor-General was attacked and criticized by the public and resigned the day after its issuance. Since then, there has been no Minister of Justice who has dared to control the Prosecutor-General by issuing a directive. This attitude clearly corresponds with the feeling in society, and the independence of prosecutors is thus protected from unreasonable political or other pressures or influences.

Expeditious Court Procedure

It goes without saying that slow and time-consuming court procedure cannot fulfil its original purpose. Currently, 92 percent of all first instance criminal cases at district courts are dealt with within six months after prosecution is instituted. And more than 97 percent are finished within a year. Now we have to direct our efforts to-

ward expediting the remaining three percent. A good example of lengthy court procedure is the first instance of the aforementioned Lockheed case, which took seven years to conclude.

A variety of reasons hinder speedy court procedure. And an equally large number of countermeasures are being contemplated. I am afraid it would require another paper to elaborate on them, since they are not pertinent to the main theme of this paper.

However, public prosecutors are trying to expedite trials from the following two points:

1) Public prosecutors, whose function is to duly carry out the authority of prosecution, have to co-operate with courts to prevent trials from becoming mere formalities.

2) As plaintiffs involved in a trial, public prosecutors are keenly aware that lengthy court procedure is ineffective because of the waning memory of witnesses and reduced availability of evidence resulting in increased difficulty in proving a case.

Moreover, it gets harder to convince a court of the strength of the victims' feelings and opinions.

We are aware that a defendant, who could have been judged guilty at the beginning of the trial, might be leniently released as the result of a prolonged trial.

Unfortunately, even now there is much room for further efforts toward expediting court procedure in Japan.

SECTION 2: PARTICIPANTS' PAPERS

Crime Prevention and Treatment of Offenders — New Criminality and Innovative Action/Administration of Justice in Pakistan

*by Mohammad Nawaz Malik**

Before Independence in August 1947 areas constituting Pakistan today mostly comprised rural areas where old traditional types of rural crimes like cattle theft, murder due to personal enmity, abduction/elopement of women, etc. were committed, whereas in the small towns/cities the main crime was house burglary, gambling and an occasional robbery. The motives of these crimes mostly used to be personal feuds and revenge and the typical village or small-town criminals were basically the local spoiled rough-necks who would commit crime usually under the patronage of a local feudal landlord. Travelling and means of travel were limited – most people moved about either on foot or on horseback or by horse/animal driven carts for social and business contacts.

Soon after Independence the successive Governments launched plans for industrializing the country for rapid economic development and plans to provide gainful jobs for the large population. Primary industries like cotton ginning and textile and later sugar, cement, vegetable ghee, fertilizer factories and a big steel mill were established in major provincial cities. To build an essential infra-structure for development, the laying of roads was started all over the country. A big electrification programme was launched to provide electricity for various industries. Commercial centres/markets developed in the Fifties and Sixties. As a result of this quite vast economic activity the migration of population – especially that of the non-landowning class started from villages to cities on a big scale. A city like Karachi, having a well-managed population of about 400,000 at the time of Independence, developed into one of the major cities of the world with more than 8 million heterogeneous people gathered in a period of 37 years only. Similarly, a large number of other provincial and district towns grew into big population centres. Essential facilities like housing, water, electric supply, jobs, travel facilities, health and education could not be developed to properly cater to the needs of the burgeoning population resulting in the growth of unplanned/irregular shanty towns lacking in basic facilities which in turn generated social tensions and frustrations among the populace. Though a large majority of people both in our towns and villages still lack formal education, they are nonetheless exposed to all sorts of information and ideas through radio, T.V., the press, films and VCRs – both local and imported. The building of roads and expansion of travel facilities including air travel enhanced the capability of all types of people to easily move from one place to the other.

Side by side with the above developments occurred the disruption of the old social, moral and traditional order/controls – more so in the new urban centres where anonymity encouraged the newcomers to discard all old inhibitions. For a variety of reasons there has been at times political instability in the country resulting in frequent, sometimes violent, changes of Government. The successive Governments have been faced with problems of rising expectations and a flood of demands from all over. People both in villages and cities want better economic opportunities and paying jobs for themselves and their children and facilities like housing, a running water supply, electricity, gas, health,

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education, and easy travel facilities – cheap and in abundance. Quite often the Government has lacked not only resources but also proper knowledge and expertise, to cope with the complex and gigantic problems created by this national situation. The partial attitudes and personal motives of the policy makers often resulted in uneven and lopsided distribution of benefits of development. The industrial and commercial classes became ostensibly very rich without sharing their benefits with the labouring class in a proportionate manner. Landlords have benefited from the development in agriculture in a big way but there has been hardly any visible change in the fortune of their tenants. On top of all this, there has been a big rise in population – from 33 million in 1947 to more than 90 million today. Jobs could not be created at that pace resulting in big unemployment. The country is facing quite an acute problem of educated unemployed or under-employed.

The cumulative effect of the above-mentioned socio-economic phenomenon, political uncertainty and sometimes unsound priorities in public policy has been the growth of what is called the 'get rich quick tendency' all over. Most people, whatever their means, wish to possess big houses and all sorts of modern gadgets like colour TVs, VCRs, impressive cars, etc. There has developed the phenomenon of what is known as 'ostentatious living' and 'wasteful consumption' amongst both privileged and not so privileged classes.

The fast rise in population and accompanying unemployment, slow or non-expansion of resources, often unfair distribution of the scant resources amongst various classes, and exhibitionist styles/customs of living gave birth to all sorts of malpractices and corruption amongst Government servants/agencies as well as the people who increasingly are losing respect for law, and violation of all laws/norms is common among various sections of people – both high and low.

It is with this background that white-collar crime or the new criminality developed progressively and seems to be flourishing in Pakistan as in many other countries of the world. The nature and dimensions of the new criminality, the legislation/laws and the enforcement agencies dealing with it, the administration of justice regarding these crimes and existing inadequacies, etc., are briefly discussed in the following paragraphs.

Smuggling of Foreign Goods

Despite bans and restrictions, many banned foreign goods are available in all major cities and markets of the country. The origin of smuggling in Pakistan quite often lies in the tribal areas of the North-west Frontier Province adjoining Afghanistan. All foreign trade with Afghanistan, by an old Treaty, takes place through Karachi Port in Pakistan. From Peshawar these goods go to Kabul by truck, etc. Most of the Pakistani tribesmen have their relationships/associations with Kabul also. They started bringing cloth, electrical gadgets, china crockery and other articles of daily use to a market called Landi Kotal in the early 60s and shifted to a place called Bara in the tribal area near Peshawar. From this and other similar bases in the tribal territory goods have been smuggled to other parts of the country over the years. Other categories that contributed in occasional smuggling are some members of airlines crews, shipping crews and Pakistani travellers abroad. With the spread of economic prosperity the comparatively poor quality of some local products created a demand for better-quality foreign goods. As demand increased smugglers started smuggling in all sorts of big and small goods/machinery, etc., by land, sea and air routes. The Government, on its part, strengthened its preventive and checking measures and machinery.

Table 1 shows the total value (in Pakistan Rupees) of seized contraband goods during the last five years.

The seized goods include vehicles, foreign cloth, currency, arms and ammunition, gold, silver, tyres and tubes, spare parts, precious stones, watches, liquor, etc. In all, the number of customs/smuggl-

Table 1

Year	Value of seized goods
1980–81	Rs. 25,37,35,465
1981–82	Rs. 22,89,23,020
1982–83	Rs. 26,72,76,721
1983–84	Rs. 22,66,92,895
1984–85	Rs. 48,38,92,298

ing offences shown in Table 2 have been registered and dealt with during the last five years by various agencies.

To deal with the increasing number of smuggling cases having an adverse impact on the country's economy and finances, the Pakistan Government enacted the Customs Act 1969 which came into force on 1 January 1970. Enhanced punishments of imprisonment, heavy fines and seizure of smuggled goods were prescribed in the Customs Act. The agencies that take cognizance of offences of smuggling and have powers of seizure, search, arrest and investigation are the Customs Department, Police, Coast Guard, Frontier Constabulary, Officers of the Federal Investigating Agency (F.I.A), etc. It may be mentioned that all these agencies also function as preventive agencies at the country's borders, seaports and airports and are also empowered to act in all towns and cities to capture smuggled goods.

To try customs offences, separate Special Courts were established and appeals against the orders of such Courts also lie with Special Appellate Courts exercising all powers of the High Court. This arrangement was made to expedite the decision of customs offences. Dealing effectively with smuggling has been most difficult. It is mostly the carriers of big-money smugglers who are occasionally caught and punished whereas the real big fish stay behind in remote, safe places and seldom get caught for a variety of reasons including legal difficulties. Connecting smuggled goods with such expert smugglers is not easy.

Narcotics/Heroin

Poppy and cannabis plants have grown in the Northwestern tribal areas of the country since long ago. The illicit use of both opium and cannabis was limited only to a small number of people both in villages and towns. The addicts lived their normal lives without causing many social problems. Smuggling of opium and cannabis from the producing areas in the Northwest to various cities and adjoining countries existed, but it assumed a new shape with the influx of Western hippies in the country in the Sixties. Young men and women from America and Western countries flocked to Kabul and our tribal areas in search of these drugs in the Sixties. Kabul and Nepal were described as havens for hippies in the Western press.

The development of heroin from opium and the transfer of this technology to Afghanistan and the tribal areas of Pakistan led to the establishment of heroin laboratories and the conversion of opium to costly powder in those areas. It in due course attracted the notice of international heroin smugglers who established their contacts with the local smugglers of the commodity. The main markets of consumption for the commodity were the U.S.A and other Western countries where

Table 2

Year	Reported cases	Challenged/ sent up	Convicted	Acquitted
1981	5,961	5,851	2,017	1,298
1982	5,987	5,895	2,103	1,309
1983	5,876	5,787	2,012	1,137
1984	6,001	5,910	2,103	1,297
1985	6,030	5,954	1,997	1,236

young men and women in increasing numbers were falling prey to this deadly poison. This situation created great alarm in the Western societies which reacted to fight the menace at Government and private citizen levels. The Pakistan Government, with the assistance of the U.S. Government, established a full-fledged agency by the name of the Pakistan Narcotics Control Board in 1973 to organize multi-pronged efforts to reduce production and distribution and to discourage/penalize the spread of the deadly drug. Various official agencies like the Customs Department and border forces like the Frontier Constabulary, Rangers, Coast Guard, Excise Department and Police in the country co-ordinated their efforts for action at all levels. Table 3 indicates seizures in kgs. of heroin, opium and cannabis that were made by various agencies during the last five years.

Unfortunately, the use of heroin and other narcotics has caught on in Pakistan in the age group of 15 to 35 years during the last five years. It is estimated that today 1.3 million people in Pakistan are using various drugs out of which about three *lacs* are heroin addicts. There were hardly any known heroin addicts before 1980. The Government of Pakistan, realizing the gravity of the situation, reacted and enacted new legislation under the Islamic Laws known as the Prohibition (Enforcement of Hadd) Ordinance 1979. In 1983 this enactment was further amended raising the punishment to 14 years rigorous imprisonment for possession, sale or use of heroin and opium in case of possessing more than ten grams of heroin and one kilogram of opium, etc.

The agencies that deal with these offences are mainly the Customs Department, Narcotics Control Board and its Joint Task Forces, the Police and the Federal Investigating Agency. Table 4 indicates the number of narcotics cases registered in the country during the last five years.

These offences are tried by the normal Civil Courts and appeals lie with the Federal Shariat Courts.

The fight against the menace of heroin and other narcotics is going on in all seriousness in the country at Government and private citizen levels. People have become aware of its disastrous effects. Cultivation of poppies has been banned in vast areas and production of opium has been reduced from 850 metric tonnes to 40 metric tonnes over the years. More than 80 heroin laboratories have been destroyed in the tribal areas by Government action. Despite all this effort it is an unfortunate

Table 3

	1981	1982	1983	1984	1985 (up to Oct. '85)
Heroin	431.689	2392.801	3376.740	2332.150	4561.698
Cannabis	531073.482	49764.305	31566.499	50816.231	125401.508
Opium	11941.304	10209.282	19550.261	8501.571	2363.881

Table 4

Year	Reported cases	Challenged/ sent up	Convicted	Acquitted
1981	12,014	11,922	678	401
1982	12,713	12,646	1,238	763
1983	12,854	12,762	1,601	1,017
1984	13,097	13,001	736	519
1985	13,301	13,243	715	459

fact that heroin is being produced in the border areas of Afghanistan and remote adjoining tribal areas of Pakistan. Some of the old tribal smugglers who have developed international links are engaged in this nefarious activity. Even rich people like Sadarud Din Ghanchi, owner/manager of a hotel worth 100 crore rupees, and Nushtaq Malik, known as the Black Prince, have been caught and sentenced for these offences. A high-born, Cambridge-educated, sophisticated person like Manzar Bashir was caught at Heathrow Airport and sentenced by a British Court. The names of a number of high-placed and well-connected citizens are mentioned in connection with this highly lucrative trade. The big profits that the sale of the commodity in the Western markets fetch irresistibly attract unpatriotic individuals to this heinous crime.

Like smuggling, in this trade also it is the carriers and the small victims of the drug who are caught and punished, but the real big criminals indulging in this inhuman business escape arrest and punishment.

Bank Fraud and Currency Offences like Counterfeiting/Smuggling, etc.

Counterfeiting of Government currency has always been treated as a very serious offence in the substantive law of Pakistan known as the Pakistan Penal Code. Various Sections exist in the Penal Code prescribing punishments of seven to ten years rigorous imprisonment for the offender. Police and other agencies have always been alive to detecting and firmly deal with this crime.

The use of counterfeit currency has never been known as a big problem or menace in Pakistan – thanks to the vigilance of the people and the Government agencies. However, almost every year a big racket or two of currency counterfeiters are detected in cities like Lahore, Karachi or in the tribal areas. There do exist people who learn the art and unlawfully counterfeit currency notes both Pakistani and foreign.

For Pakistan, bank fraud is a new and big phenomenon. It is mostly unscrupulous citizens who, either with the connivance or due to the negligence of bank officers, defraud banks of big sums each year. It is estimated that banks have lost more than Rs. 500 crores due to fraud of different types over the past few years. Taking cognizance of this increasing menace, the Government of Pakistan promulgated an Ordinance in 1984 known as Offences in Respect of Banks (Special Courts) Ordinance 1984. Special Courts with powers to try bank fraud offences were created by this Ordinance for speedy trials of serious bank offences. These fraud cases are first dealt with by the Banking Council of Pakistan and, if they so decide, only then are referred to the F.I.A. (Federal Investigating Agency) or the area Police. Table 5 shows the number of economic offences the F.I.A. dealt with during the last five years.

In these offences the criminals involved mostly are bank officials themselves or their friends/relations in business and ex-Mint officials who have served in the Pakistan Mint and have been removed from service or their friends and confidants.

Table 5

Year	Reported cases	Convicted	Acquitted	Recoveries and court fines in Rupees
1980	363	205	18	Rs. 53,59,279
1981	502	123	22	Rs. 20,64,77,714
1982	281	214	32	Rs. 1,48,35,215
1983	175	141	26	Rs. 6,90,32,388
1984	380	158	38	Rs. 2,28,17,713

Emigration and Immigration, Fake Passports and Visa Offences

Pakistanis in quite large numbers have been going abroad for higher studies, genuine business and service, etc. since long ago. Pakistani labour, both skilled and unskilled doctors and engineers made their mark in countries like the U.K., U.S.A., West Germany etc. Their number being limited and there being fewer restrictions for their entry into the U.K., U.S.A., etc. till the end of the '50s, hardly any problems or offences in this respect were known. Lack of employment at home and the Oil Boom, resulting in big development activity in the Middle East, attracted Pakistanis in large numbers to Middle East countries particularly Saudi Arabia, U.A.E. and other Gulf States to earn high wages. This large-scale demand for jobs and foreign passports/visas generated many malpractices. A number of unscrupulous fortune seekers started deceiving and fleecing poor people by offering them fake passports, visas and job permits in foreign countries in early the '70s. Such malpractices by the criminal elements created a lot of misery for Pakistanis landing in foreign lands, who in turn raised a hue and cry. Realizing the gravity of the situation the Pakistan Government promulgated a comprehensive ordinance known as the Emigration Ordinance 1979 to deal with all aspects of emigration. Punishments ranging from 5 to 14 years imprisonment with heavy fines were prescribed for various offences pertaining to passports, visas, job permits, etc. On the one hand, special Government departments like the Director General of Emigration, Protector of Emigrants and Pakistan Overseas Foundation, etc., were created to regulate emigration and protect the legitimate interests of outgoing Pakistanis, and on the other, special cells were created in the F.I.A. to check, detect and prosecute all irregularities pertaining to this activity. Institution of recruiting agents was created under the overall control and direction of the Director General of Emigration. The F.I.A. has during the last five years registered and prosecuted the cases pertaining to various offences under the Emigration Ordinance.

All the offences under the Emigration Ordinance 1979 are tried by Special Courts presided over by a Sessions Judge. The offenders involved in these cases are usually very well-placed, well-connected mostly educated people.

Similarly, illegal immigration into Pakistan is also taking place from all sides. Beharis from Bangladesh, Indian Muslims, Iranian dissidents and, above all, Afghan Freedom Fighters daily cross the borders of Pakistan without any passport or permit and the fortune seekers help them make big fortunes.

Car Theft and Bank Robberies

Car theft started in Pakistan as an organized offence in the mid '60s. Table 6 gives an idea of cars/automobiles stolen and recovered during the last five years.

The criminals are usually educated young men from well-to-do families. They steal cars for joy rides, to commit offences like bank robberies or to sell them to get easy money. Quite often sons of Government officials and feudal landlords are also involved in this crime. Some parts of

Table 5

Year	Reported cases	Convicted	Acquitted	Recoveries and court fines in Rupees
1980	1,580	1,304	17	Rs. 39,94,849
1981	2,521	1,996	65	Rs. 59,62,250
1982	2,460	1,783	52	Rs. 73,38,550
1983	3,231	2,411	30	Rs. 75,99,076
1984	3,154	2,103	9	Rs. 3,44,64,369

Table 6

Year	Stolen	Recovered
1981	1,987	1,289
1982	1,953	1,130
1983	2,011	1,188
1984	2,172	1,147
1985	1,517	853

the tribal areas serve as markets for disposal of the stolen cars/vehicles. Apart from investigation and arrest of culprits, police checkposts at the major outlets of the main cities have proved a deterrent against car thefts. The Owners' own vigilance has yet not developed.

Another new crime in our country that has developed during the last 15 years is bank robberies in the main cities and district towns. Table 7 would indicate the incidence of bank robberies and the money looted during the last five years.

Table 7

Year	Reported cases
1981	1
1982	5
1983	8
1984	13
1985	14

Criminals involved in this crime also are usually young, educated desperadoes in need of big money. Safety measures by the banks like the posting of armed gunmen, alarms, etc., are helpful against this crime.

Fake Degrees/Certificates/Driving Licences

Crimes like preparing fake college/university degrees and driving licences have also come to be noticed. Luckily, gangs of such criminals, consisting mostly of three to four persons, are always detected.

The crime of counterfeiting/preparation of soft drinks, artificial tea, spare parts of vehicles, motor oil, medicines, books, clothes, etc., is being committed in increasing numbers particularly in cities and towns. All these offences are detected, registered, investigated and prosecuted by the Police or other concerned agencies under the substantive law of the country known as the Pakistan Penal Code. These offences are also tried by normal Civil Courts and the punishments vary for different offences including imprisonment and fines. These are very serious offences that cause a lot of damage and attract public criticism.

Terrorism

The crime of terrorism is not unknown to Pakistan. Political dissidents have been engaging in unlawful, subversive and terrorist activities to harass and terrorise people by use of violent means. The main terrorist activity that gained international publicity was the hijacking of a P.I.A. plane to Kabul in 1981 and the murder of two very well-known and well-established political figures in Lahore and Karachi. Offences are dealt with under the Suppression of Terrorist Activities (Special Courts) Ordinance 1974 and tried by the Courts constituted under the Suppression of Terrorist Activities (Special Courts) Act 1975, as amended in 1981 and 1982. The Police and F.I.A. are the agencies that deal with this very serious crime and Special Courts are constituted to try the offenders. Terrorists mostly have political motives and are instigated/financed by foreign forces hostile to the regime in the country.

Corruption

Corruption, unfortunately, has become quite wide-spread in levels high and low both in official and private citizen circles. Barring a fair number of honourable exceptions, all and sundry have fallen prey to this cancer. Even the Government agencies supposed to detect and prosecute corrupt elements and the Trial Courts are not free from it. It looks like one has to live with it. All laws and actions taken thereunder appear to be just eyewash. The Small fry get caught and convicted whereas one hardly knows of a big fish ever being netted.

Big money lies in big national and international deals and contracts and is not easy to detect.

The perusal of the above paragraphs surely gives one the impression that lot of essentially modern white-collar crime involving educated, well-placed and well-to-do people with big money at stake is taking place in Pakistan too. As already discussed this is the result of a large number of complex national and international factors and has generated a lot of frustration and uncertainty in the minds of law-abiding and patriotic citizens. Very often citizens lose confidence in the Government's ability and will to effectively check these serious crimes against humanity, the nation and the prestige of the country.

The Pakistan Government is very much alive to the situation and is taking all possible measures to eradicate these crimes and malpractices. Various programmes of social reform involving public representatives and citizens themselves; the Islamisation of Laws to ensure speedy justice and strict dispensation for the criminals; and education and awareness of the masses through T.V, radio programmes and press are being launched to create a general awakening in the people. Only recently a high-powered Jail Reforms Committee set up by the Government has submitted a report suggesting various reforms in the administration and working of jails to reform the convicts and make them useful citizens. A large number of convicts are being given elementary education including religious education and are taught various trades like carpet making, carpentry and furniture making, pottery and utensil-making, agriculture and gardening, cooking and other jobs so that they can take up independent professions after leaving the jails. These efforts are surely yielding encouraging results.

It is very much relevant to mention that the phenomena of new criminality and white-collar crime are common to all countries both developed and developing. Actually the sources of most of these crimes like heroin/narcotics smuggling and their use, smuggling of high-quality manufactured goods, offences involving big money, etc., lie in the advanced Western capitalist countries. Only their form is a little different. Crime has been a perpetual problem in all countries all through history assuming different shapes and techniques. The majority of the citizens all over the world are law-abiding and want to live respectable lives. It is only a minority of people who, due to various congenital, hereditary or socio-economic and environmental factors, resort to committing various crimes.

New criminality often crosses all international borders. Criminals indulging in narcotics/heroin smuggling and counterfeiting of currency, emigration and immigration offences, smuggling of all sorts of foreign goods/machinery and arms and ammunition, counterfeiting of known and famous brands of various goods, etc., have international connections/cartels involving people of different nationalities, languages and culture. The common interest in making big money by unlawful methods joins them in firm friendship and brotherhood. To fight such organized and widespread gangs of criminals it is most essential that the international community and particularly the law enforcing agencies of all countries also tighten up their co-operation for collection of information about the criminals, exchange of intelligence relating to their activities and information for their arrest and prosecution. For this purpose extradition treaties to repatriate criminals to their parent country are essential. The Pakistan Government has entered into extradition treaties with 24 countries and negotiations are going on with a few more. There is an urgent need for bilateral, regional and international co-operation on an active basis to handle the menace of such crime. As earlier suggested, the law enforcing agencies and agencies concerned with the administration of justice have to adapt themselves to meet the new challenges by earnest and intelligent co-operation. Criminals can be tracked down anywhere on this globe. Interpol, UNO and various organizations for regional co-operation have to lead and take positive, concrete

measures for inter-country co-operation to track down criminals the world over. Unless that happens the criminals shall always have an advantage to hide themselves under different garbs.

The present Seminar inviting officers from various countries is surely a step in the right direction and great measure to encourage international co-operation for the prevention and detection of organized modern crime having regional or international ramifications.

The Sri Lankan Efforts to Meet New Criminality

*by Lalani S. Perera**

While criminality around the world has increased there has been a significant difference between the crime rates of the developed nations and the developing nations. Although the overall crime rate in the developed world has been significantly greater, the growing incidence of criminality in the developing nations has become a cause for much concern, especially in view of the gradual introduction of new forms of criminality. Non-conventional crimes, which have begun to appear in the wake of socio-economic development, rapid industrialization and the resulting urbanization, have all contributed to new crime profiles with criminals using new techniques and sophisticated weaponry. This has added to the tendency to consume the benefits of development, diverting national attention, energy and time from urgent national needs such as reduction of poverty – something which a developing country like Sri Lanka can ill afford.

Sri Lanka's law relating to crime is contained in the Penal Code introduced by the British and other post-independence enactments as well as subsequent legislation enacted to meet new crimes such as terrorism, narcotic offences, ecological crimes and hijacking.

In my paper I propose to deal mainly with three instances of the laws relating to criminal activities which are of current and urgent interest, viz: Terrorism, Dangerous Drugs and Environmental Crimes.

Terrorism

Continued danger to the public order in Sri Lanka by elements or groups advocating the use of force or the commission of crime as a means of accomplishing governmental change in Sri Lanka accompanied by murder and threats of murder as well as other acts of terrorism as stated in the Preamble to the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979 (P.T.A.) led to the enactment of this special piece of legislation. Terrorism first reared its head in an organized manner in 1971 in an attempt to overthrow the government of the time. From about 1977 terrorist activities commenced gathering momentum. Police officers were murdered; ex-parliamentarians were murdered; bank robberies were committed. Up to 1979 about 50 major crimes were committed by separatist organizations in the Northern and Eastern part of the island, but the offenders could not be brought to book since the normal law of the land was not geared to meet the situation. Various organizations publicly claimed responsibility for the offences but the inadequacy in the existing laws was one of the major setbacks for successful prosecution. Such was the background to the enactment of the special legislation. Since acts of terrorism have primarily arisen for political reasons, the necessity for a political solution has arisen. The Government of Sri Lanka is actively engaged in the search for such a solution within a democratic framework.

Persons committing offences under this Act are triable without a preliminary inquiry on an indictment before a judge of the High Court (the highest court of criminal jurisdiction in the island) sitting without a jury. The Act provides that priority be given to all trials and appeals for offences committed under the Act.

A significant feature of this Act which has attracted continuous criticism is the admissibility of confessions in evidence,

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a departure from the normal rules of evidence as contained in our Evidence Ordinance. Such a departure was necessary in view of the circumstances in which the crimes were committed, as it was difficult to get the evidence of eye-witnesses. Confessions are admissible provided they have been made to a police officer not below the rank of an Assistant Superintendent of Police. However, it must be noted that a built-in-safeguard is also provided, as such statements are not considered final and conclusive, if the accused can *only* give the appearance that the statement was made under duress, etc., which is sufficient to vitiate the confession. The burden of proof cast on the accused is therefore a very light one. It may also be stated here that irrespective of the rank of the officer to whom a confession is made, confessions have always been admissible under the English and U.S. legal systems. In fact, in a case presently pending before the High Court of Colombo, the Assistant Superintendent of Police who recorded a statement was subject to no less than 60 days of cross-examination on the question of whether the statement was voluntary.

Another criticism that is levelled against the P.T.A. is that a confession by one accused can be used against another accused. This, however, is not entirely novel to our law, for under the Evidence Ordinance things said or done by a conspirator in reference to common intention is a relevant fact against each of the conspiring persons. Besides, the Prevention of Terrorism Act requires corroboration of such confession in material particulars.

Under the P.T.A., the offence of failure to give information has been criticized on the basis that no person can reasonably be expected to do so unless the state is able to provide protection for such informants. It may be mentioned here that up to now no persons have been charged merely on the basis of failure to give information.

Detention orders issued by the Minister under the Act can be challenged by way of *habeas corpus* applications on the basis that the Minister had no reason to believe or suspect that any person was connected with or concerned in any "unlawful activity." This safeguard is being availed of in many cases presently pending before our courts. In a decided case, the question arose whether *"unlawful activity"* as defined in the Act includes the *actual commission* of the act and not merely an act committed *in connection* with the commission of any offence. The Court of Appeal took the view that a detention order was perfectly legal if issued on the basis that there was ground for believing that the accused was concerned in unlawful activity. The defence argued that persons who have actually committed offences would not come within the purview of the meaning of "unlawful activity." On appeal against the order of the Court of Appeal, the Supreme Court held *inter alia* that "unlawful activity" would not include the actual commission of offences under the Act. This compelled the Government to amend the meaning of "unlawful activity."

Under the Act persons subject to detention or restriction orders have the right to make representations to an Advisory Board appointed by the President. Available statistics show that from August 1984 to December 1985 the Advisory Board inquired into over 700 applications. In all cases the detainees are informed of the grounds for their detention and right of representation and in almost all the cases they are represented by counsel of their choice. The Advisory Board makes recommendations to the Minister.

While dealing with the subject of terrorism it may be relevant to refer briefly to anti-aircraft violence legislation in Sri Lanka. Although Sri Lanka has been a signatory to several conventions since 1963 on offences against aircraft violence, it was only an actual situation that provoked the enactment of the necessary legislation. In 1982, when a Sri Lankan hijacked an Italian airliner, demanding in addition to a ransom, the return of his son from his Italian-born wife, Sri Lanka was compelled to enact with retrospective operation the Offences Against Aircraft

Act, No. 24 of 1982 with the severe penalty of life imprisonment for offences committed on board or against an aircraft. Such offences are non-bailable but extraditable.

Dangerous Drugs

Drugs abuse which threatens the social and economic welfare of nations and indeed their very security is a relatively new but serious problem in Sri Lanka.

A major problem encountered by Sri Lanka in its programmes against narcotics offences is the fight against drug trafficking. Sri Lanka, surrounded as it is by the sea on all sides, has no territorial land frontiers with any adjacent country; nevertheless, the development of communication by sea and air has brought it within the world-wide system of trafficking in drugs. Drug trafficking was evident in Sri Lanka as far back as the 17th century when in 1675, the Dutch rulers prohibited traffic in opium with a proclamation, attaching severe penalties. The first piece of legislation in Sri Lanka dealing with the use of opium or *ganja* for native medicinal purposes was the Opium and Bhang Ordinance of 1878. In 1929 a consolidated ordinance, the Poisons Opium and Dangerous Drugs Ordinance, introducing a control system in accordance with international conventions, was enacted. According to the *World Opium Survey, 1972,* a document of the U.S. Cabinet Committee on International Narcotics Control, it was roughly estimated that 0.6 tons of opium is brought into Sri Lanka annually from India by illicit operators. That was more than a decade ago. Sri Lanka does not grow opium, but the equally dangerous plant cannabis has been detected illicitly growing in large quantities especially in the semi-arid Southeastern parts of the island. By 1980, Sri Lanka's status as a transit country for the movement of cocaine, hashish and heroin became confirmed.

The escalating drug problem in the Asian region in the 1970s began to have serious repercussions in Sri Lanka. The gradual decline in traditional social values and a dearth of resources and manpower in the law enforcement agencies have contributed to the alarming spread of the problem. The expansion of tourism, too, has had its undesirable effects in the popularization of undesirable drugs among the youth. The problem has in fact gone further than mere trafficking. In a leading tourist resort in Sri Lanka, Hikkaduwa, a clandestine laboratory for the production of heroin was detected in 1981. There was a noteworthy increase in the cultivation of cannabis; seizures escalated from 153 kilograms in 1974 to 4,209 in 1981 and cannabis plants destroyed increased from 15.6 metric tons in 1975 to 429 in 1981. The Colombo Plan Annual Report for 1984 makes the following points in respect of Sri Lanka: medical practitioners and sociologists have warned that at least ten new addicts are added daily to the heroin-using population in the country. Law enforcement figures mention a heroin-using group of about 2,000-3,000 persons which has emerged during the last 3-4 years, the majority of them being young persons of school age, including young females. Heroin has spread beyond the urban centres into villages. Statistics reveal that 40% of the persons imprisoned for narcotics offences are below 22 years. Colombo Plan studies have revealed that the victims are generally between 15-20 years and from families not necessarily poor, but middle class. Recent newspaper reports have shown that the French police arrested 12 Sri Lankans after smashing a drug ring in Paris. Sri Lankan authorities have reported the arrest of 211 Sri Lankans around the world in 1983 for narcotic offences, almost double the number arrested in 1982. The enormity of the problem is such that our prison statistics show for the period 1980-1984 a steady rate of admissions, the figures rising from 584 in 1980 to 1977 in 1984 for narcotic drug offences, whereas the statistics from 1974-1977 do not even contain a separate classification for such offences, and they would probably have been at that time included in the broad category of "other

offences"

A recent amendment to the Poisons Opium and Dangerous Drugs Ordinance passed by the Sri Lanka Parliament in 1984 has been characterized as perhaps one of the most stringent in the world. The amendment provides for the death penalty or life imprisonment for the manufacture, trafficking, importing or exporting of more than 500 grams of opium and 2 grams of morphine, cocaine or herion. Major drug offences have also been made non-bailable. Sri Lanka has also recently established a central body on anti-narcotics – the National Dangerous Drugs Control Board – as a co-ordinating body under the purview of the Ministry of Defence.

Under the Sri Lanka Extradition Law, No. 8 of 1977, offences against narcotic laws are extraditable, the problem not being one that can be tackled unilaterally by any one country.

Sri Lanka is a signatory to the U.N.-sponsored Single Convention on Narcotic Drugs 1961 as amended by the 1972 Protocol. Under Article 35 of this Convention it is required to strengthen national drug law enforcement arrangements and related co-ordination capacity. However, Sri Lanka is not a signatory to the Convention of Psychotropic Substances 1971. Sri Lanka subscribes to the view that in the control of drugs it is difficult to distinguish between "hard" drugs like heroin and "soft" drugs like vallium.

If narcotics were not available there would be no drug abuse. It is the "source" of the narcotics that has to be wiped out and not so much the person who has a little for his immediate personal use. Narcotic addiction itself is associated with organized criminality and in narcotic traffic lies the single greatest threat to the safety and welfare of the community. Drug abusers often commit other crimes; criminal acts are on the one hand motivated by the need to obtain drugs and on the other hand result in the influence of the drug with consumption leading to aggressiveness, violence and other criminal actions such as thefts to procure money or thefts from pharmacies to procure pharmacalogical drugs.

There is also growing evidence of close links between drug trafficking, the illegal traffic in fire-arms and international terrorism. Drug traffic has frequently generated, supported or been accompanied by illegal traffic in fire-arms.

Sri Lanka wishes to emphasize its firm commitment to co-operate with other countries in all measures conducive to ending the menace of drug abuse.

In Sri Lanka there are also instances where big-time drug traffickers involve young persons in the drug trade. These youths ultimately end up in prison. At present a committee appointed by the Minister of Justice to review the laws and practices relating to sentencing of young offenders is considering, among other things, the matter of bringing the "mastermind" to task thereby preventing the penalty being met by the "proxy".

In view of the increasing number of drug addicts who end up in jail and the lack of separate programmes within the prisons for such offenders, with prison conditions not being conductive to their rehabilitation, the government is presently contemplating the establishment of a separate treatment centre.

Various governmental agencies have started programmes of preventive education and re-habilitation. Several non-governmental organizations, including religious bodies, are also actively involved in similar projects. The media has publicity programmes highlighting the evils of the drug menace and drug-related problems. The government is taking action to have illicit plantations like cannabis destroyed. Legislation to decriminalize drug abuse, described as a so-called moral offence or victimless crime, is a matter for consideration as criminalization is tantamount to a punishment for an "illness".

Crimes of vice such as the sale of narcotics have no "victim" and therefore there are no citizen complaints to the police to initiate action. In this situation more stringent police methods are called for. The gravity of the situation caused by the use of narcotics would appear to

demand measures which are not normally admitted in a democratic set up, such as hotel managers giving keys to the vice squad while the occupant is away, the tapping of telephones in cases of reasonable suspicion, and search without warrant.

Environmental Crimes

Serious pre-occupation with environmental problems is a recent phenomenon. The need for environmental protection has never been felt so keenly as now. Accelerated development, technological and social changes, uncontrolled urbanization and rapid population increase have all contributed to environmental destruction and pollution. In developing countries it is sometimes even felt that environmental disasters are "public risks", the necessary evil that must accompany accelerated development. But should it be so? The Sri Lanka Constitution of 1978 in its Directive Principles of State Policy also lays down that the state shall protect, preserve and improve the environment for the benefit of the community and that it is a fundamental duty of every person in Sri Lanka to protect nature and conserve its riches.

In Sri Lanka there are nearly 50 separate enactments such as the Fauna and Flora Protection Ordinance, Factories Ordinance, Nuisances Ordinance, etc., most of which date back nearly 100 years. These enactments were administered by different departments having no overall co-ordination or policy direction. In some cases the punitive measures were inadequate and law enforcement authorities clamoured for more powers to enable the prevention of crime against the environment instead of taking an offender to court after a crime was committed. Hence with the escalation of crimes against the environment such as rapid destruction of forest cover, coral mining leading to erosion of the sea, the threat of extincition of certain species of fauna and flora, stinking highways from emissions from motor vehicles, and pollution of rivers and lakes from industrial effluents and sewage, the need was urgently felt for the enactment of a basic law for environment pollution control and nature conservation, providing for the establishment of the necessary legal, institutional and administrative framework. The available piece-meal legislation was also often not particularly relevant to the type of disaster likely to occur in modern contexts. Hence, a concerted attempt to combat environmental monstrocities led to the enactment of the National Environment Act, No. 47 of 1980. This Act establishes a Central Environmental Authority (CEA) for the protection and management of the environment and fulfils the need for a state agency which would act in the public interest. Since it is now felt that this Act is inadequate to deal with certain environmental hazards, it being primarily a co-ordinating and policy-making body, the need to give more teeth to the (CEA) by giving it powers of regulation and prosecution is causing the Act to be amended. With the amendment the CEA will have enhanced powers for the control of the quality of the environment and prevention, abatement and control of pollution. Specific provision is therefore being made, *inter alia,* for the prohibition of unauthorized discharge of litter; display of posters and erection of advertising boards; prevention of discharge of untreated sewage, substandard industrial effluents and toxic chemicals; the defacement of public property and scenic places; the control of pollution of the atmosphere and noise pollution; and the storage, transport and disposal of material hazardous to the health and environment.

At present most prosecutions are through local government authorities under section 271 of the Penal Code, in terms of which any person who voluntarily vitiates the atmosphere so as to make it noxious to the health of persons is guilty of a punishable offence and, under the Nuisance Ordinance, acts such as having foul and offensive drains are statutory offences.

Since the early part of this decade, Sri Lanka has also enacted other pieces of special legislation to meet certain other

aspects of environmental problems which have gradually been emerging. To take a few examples, there is the Marine Pollution Prevention Act, No. 59 of 1981 enacted in view of the constant threats of marine pollution to the southern coast of the island resulting from the heavy tanker traffic from the Middle and Far East carrying, in addition to oil, extremely dangerous chemicals and cargo with poisonous, corrosive and radio-active properties which when disposed could cause harm to the marine environment. There is the Coast Conservation Act, No. 57 of 1981 providing for the survey of the coastal zone and regulation of the development activities within the zone. There is the Pesticides Control Act No. 33 of 1980 regulating the control, use and sale of pesticides. There is the Malathian Control Act, No. 22 of 1985 regulating the possession, sale, transport and use of malathian.

Introduction of a preliminary Environmental Impact Assessment (EIA) procedure for evaluation of development projects is also presently receiving the attention of the Sri Lanka Government. Preliminary because several constraints such as institutional inadequacies and lack of trained manpower are preventing the establishment of a comprehensive EIA procedure, although EIA studies have been used in some major development projects.

Industrial disasters such as the Bhopal tragedy have revealed the inadequacy of the regulating framework governing chemical multinationals. Although major industrial disasters have not occurred in Sri Lanka, a malathian fire occurring in the State Anti-Malaria Campaign Stores in the vicinity of Colombo and a chlorine leak in the State Fertilizer Corporation in the suburbs of Colombo have shown us that there is a possibility of such disasters occurring at home in the future. Victims continue to suffer in silence for protracted litigation is beyond their means. Despite the remedy of an action in damages available under the general law of delict and despite the recognition of criminal liability under our laws, our law reports are a sad reflection that this form of litigation is hardly resorted to, even in the face of numerous acts constantly committed with impunity.

In any event existing tort law mechanisms are extremely limited, and no-fault compensation schemes requiring sophisticated insurance schemes are not a factor in the lives of victims of third-world societies like Sri Lanka. Besides, the financing of such schemes is definitely beyond the ability of the governments of most developing nations. Perhaps, a "toxic levy" based on the "polluter pays principle" as is available in the Health Damage Compensation Law 1973 of Japan may be a remedy. Although under our Criminal Law there is provision for obtaining a court order for abatement of specific activities likely to cause danger or injury to the public, there is an appalling public ignorance of industrial activity, toxic chemicals, etc. which must be corrected for the type of action that must be taken to prevent environmental hazards and which can be changed only by a new type of information policy. The choice for the location of factories and chemical industries is certainly not wide in the poorer countries due to lack of communication facilities, road networks and the cost of transport. Factories and industries are inevitably located in highly populated areas. At the same time the attraction of low wages in developing countries has led to the popularity of these countries being selected by multinationals for various operations. In this context there is all the more reason for the continuous monitoring of operations, for what may not be hazardous today can become dangerous subsequently with worn out apparatus posing new threats in the absence of replacement for instance. Closure of factories in the wake of appearing hazards is not a solution that developing countries can always resort to, for can any such country afford to add to its already existing unemployment problems?

Social control of science and technology, making development socially and politically accountable, novel approaches

to liability, departing from the traditional approaches of strict liability, negligence and product warranty, judicial innovations such as open letter jurisdiction providing opportunity for social action groups to sue on behalf of the public, legislation to create special funds for industrial and pollution hazards and the need for regional co-operation in areas of multinationals in industry are all equally significant in the promotion of environmental protection.

Other Crimes

Rampant bribery and corruption is another question which has received the continuous attention of successive governments. Sri Lanka has a special department, the Bribery Commissioner's Department, with its own investigators to deal with cases of bribery. Apart from surveillance cases, where bribery offences are detected on the spot by investigating sleuths, an investigation can commence only on the making of a complaint. Fear of reprisal, expense, inconvenience and delays in attending court, have all contributed to persons refraining from complaining. As stated in a recent departmental report, only the small fry operate in public places; big deals take place behind closed doors among co-conspirators who have vested interests in maintaining silence even if the favour sought was not forthcoming. Some deals take place in foreign climes, outside the pale of the department, such as commissions paid abroad or entertainment provided to officials on buying missions. As in all other areas, the fight against bribery and corruption, too, has been hampered by problems mainly attributable to lack of funds.

Finally, it may be relevant to mention very briefly our criminal justice system and some of the more significant problems in its administration. The key components in the system are the police, prosecution, judiciary, correctional institutes and community-based organizations. The acute shortage of trained manpower, inadequacy of resources, limited funds and lack of modern technology are a sample selection of the common problems now also escalating in the light of terrorist activities. Legal delays, a pressing and acute problem, received the attention of a high-level committee recently which made several recommendations for their elimination. Remand jails with 666% overcrowding contributing to avoidable recidivism both in the areas of conventional and non-conventional crime are another problem. In fact presently pending before the Sri Lanka Supreme Court is a fundamental rights application filed by a prisoner remanded seven years ago, alleging cruel, inhuman and degrading treatment in having to share with many others a cell meant for two. These are but a few of the evils reflecting setbacks in our criminal justice administration.

Apart from the conventional forms of punishment such as imprisonment, probation and fines, Sri Lanka also introduced, in the 1970s, laws enabling the imposition of community service orders as an alternative penalty. Also gaining steady popularity is a "rehabilitation through religion" programme which has shown remarkable success. Under this measure non-dangerous offenders are "committed" to religious institutions like Buddhist temples, where rehabilitation programmes directly under monks and priests include meditation and a daily oath to refrain from crime. Although the conciliation system which prevailed earlier under the law had to be abolished in 1977 due to various shortcomings, Sri Lanka is re-considering the diversion of appropriate cases to an extra-judicial body, a mediation panel with a view to settling disputes before they erupt into major crimes.

Among the institutes newly established for information and research are the Research and Development Centre under the Police Department and the Centre for Research and Training in Corrections under the Prisons Department. The Law and Society Trust was also established in 1982 to promote interdisciplinary studies in law and initiate social change. Legislation to create a Judges Institute with a view to providing, among other things,

facilities for the exchange of views and ideas on judicial and legal matters by judicial officers and the organization of conferences and lectures was also enacted in 1985.

Crime Prevention and Treatment of Offenders

*by Francis Mugugia**

Introduction

Can you imagine a world without crime? What would our lives be like without criminals and criminal justice? With all the policies and programmes, the political words and deeds, the rhetoric on law and order steadily belabouring it. To completely eliminate crime would deny part of our experience. Crime and its control I believe therefore are basic to the way of life in all societies today.

Crime is an issue perhaps I can not speak with authority on. However, to the extent that a policeman dealing daily with law and order problems within my own society and from my research on the theme of this paper qualifies me to speak on the matter my paper is presented on that footing.

Crime

The term "crime" may be described as an act, default or conduct which is a prejudice to the community and the commission of which by law renders the person responsible and liable to punishment. Law in the Papua New Guinea context refers to the country's criminal law under our criminal justice system.

This I believe is, however, a more conventially conceived and universially applied definition of the term crime. Therefore, for the purposes of this paper, I shall endeavour as far as possible to speak on the matter more from the Papua New Guinea context.

When we speak of crime in Papua New Guinea we ordinarily refer to the prevailing law and order situation at a given time within our communities. The term "law and order" in turn is defined or viewed in two senses. First, it is used to mean "peace and good order" and second, it is used to mean "peace and good order established by the State."

The first view is the more traditionally based conception of the welfare of our small communities. The second is one of the state, through its appropriate institutions and agencies, bringing about good order. For the purposes of this paper I would, however, use the term to mean both the peace and good order which citizens would like to see in their communities and the peace and good order that can be established by Government. The breach of which, of course, is sanctioned by laws of the state through our justice system.

In order therefore to fully understand crime prevention and the treatment of offenders in Papua New Guinea, it would be convenient to firstly look at the historical background of the country in terms of political, legal, economic and social developments. Then to examine the law and order situation since Independence with the view ultimately to make an analysis of these developments and their applications to the theme of this paper.

Historical Perspectives

Geographically Papua New Guinea is situated north of Australia. Part of the island is the state of Papua New Guinea whilst the other half is West Irian, part of Indonesia. The country consists of a chain of tropical islands that extend more than 1,000 miles (1,600 kilometres). It has a total land area of 178,260 square miles (641,691 square kilometres) and a population of three and a half million divided

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roughly into 1,000 different ethnic communities speaking 740 distinct languages. But for official purposes the three common languages of Pidgin, Motu and English are used. The last being the official one for administration and commerce purposes. About 98 per cent of the population are Melanesians. The others include people of Chinese, European and Polynesian origin.

Political Development

Western contact with Melanesian people of the country began in the mid sixteenth century with visits from Spanish and Portuguese naval explorers, but it was not until 1884 that the area came under European dominion. In that year Germany proclaimed a protectrate over the Northeast quadrant in order to check Dutch influence in the region (Irian Jaya was claimed by the Dutch in 1882) and established copra plantations particularly in the fertile volcanic offshore islands. Under pressure from the Australian colonies fearful of German expansionism and eager to preserve the Torress Strait as a strategic British waterway, Britain declared a protectrate over the Southeast quadrant in 1884.

The protectorate of British New Guinea became the Australian Territory of Papua five years after Australia's own independence. The German colony of New Guinea (Kaiser Wilhelmo Land) also came under Australian control in 1914 first through military conquest during the First World War and subsequently in 1921 under a Class "C" Mandate under the League of Nations mandate system after Germany had been divested of her overseas colonies by the Treaty of Versailles. The two territories were governed separately until they became a major battle-ground in the Second World War, and in 1942 the Australian New Guinea Administrative Unit (ANGAU) replaced the civil administration in the face of the Japanese invasion. With the war's end in 1945 the Territory of Papua and the New United Nations Trusteeship of New Guinea were amalgamated under a single Australian civil administration, the charter for government eventually being the Papua New Guinea Act 1949.

With the world-wide move towards decolonization and self determination of the people in full swing and the December 1972 election of the Labor Federal Government in Australia committed to freeing itself overseas commitment, hurried plans were made to grant independence to Papua New Guinea. By late 1973, the country attained self-government. Papua New Guinea finally gained her political independence from Australia on 16 September 1975 and adopted an autonomous constitution for the Independent State.

Legal Development

The end of colonialism, although it came amicably, it can be argued that it came late when compared with the rest of the Third World countries. By the 1960s, years of colonial neglect had been replaced by a strategy of intensive and hurried development as a preparation for independence. The legal changes amongst other changes initiated by the Australian administration were clearly intended to shape the post-colonial period, often on the bases of strategies developed elsewhere.

In the wake of all these developments, legal transformation was given a central and often a dominant position. Perhaps the most rhetorical statement of this grand restructuring of the legal system was colourfully expressed at a Port Moresby Seminar on Law and Development in Melanesia by a local poet and law school drop-out, John Kasaipualova, when in response to frequent demands at the seminar for a greater recognition of the country's customary Law said: We do not need an act for the recognition of Native Customs: what we need is a Whiteman's Customs Recognition Act." A similar statement was expressed by the first Papua New Guinea Minister for Justice, Mr. John Kaputin, in his inaugural policy speech at a gathering of judges, lawyers and politicians:

"The truth is that law has been used

throughout the ages as an instrument of domination and oppression by the ruling class ... In this country, the law was an instrument of colonialism and a means whereby the economic dominance of the whiteman was established over us. In other words, the law was no universal and abstract principle, it was specific and it made numerous distinctions between the white and the black. And not only did it deprive us of our land, but forced us to work for expatriate plantation owners to whom the law gave our land."

On the matter of legal development, the then Chief Minister (later to be Prime Minister upon Independence), Mr. Michael Somare, said in an address opening the aforementioned 1973 Waigani Seminar:

"We are facing at this very moment, the need to devise a system of laws appropriate to a self governing, independent nation. The legal system that we are in the process of creating must ensure the orderly and progressive development of our nation. But, in addition, it must respond to our needs and values. We do not want to create an imitation of the Australian, English or American legal system. We want to build a framework of laws and procedures that the people of Papua New Guinea can recognize as their own – not something imposed on them by outsiders."

Unfortunately the wisdom and the sentiments of the aforementioned persons have not in my view been completely fulfilled as the country's legal system is very much based on the models of the Australian and British legal systems. For instance the country's criminal law is really a transformation of the old Queensland Criminal Law. Despite that, changes and progress have been made in many areas of the legal system, such as the courts, legal training and so on.

In addition to the Criminal Code Act which is the country's main source of its criminal law, we also have subordinate legislation such as the Summary Offences Act which, as the name indicates, deals with all summary offences under summary jurisdictions within the courts system.

Economy

Papua New Guinea is basically a rural, agricultural state. The bulk of the population is rural people who raise crops for both living and cash economy. The colonial administration had never planned for economic development of the country. Instead it encouraged laws to enable its own race to get whatever they wanted or could lay their hands on at the expense of the local free labour. However, since Independence, various governments have taken positive steps in the area of economic development. Moves have taken place in developing the country's vast untapped natural resources in copper, gold, timber and fisheries. In the area of agricultural commodities we have coffee, cocoa, copra, tea, oil palm and rubber. All these developments are taking place at an accelerating rate.

Society

The towns of Papua New Guinea were originally colonial centres always planned by and for white men and thus essentially alien places. As in the rest of the Third World, despite the country's late start with so-called western civilization, substantial numbers of Papua New Guineans have, however, been moving into urban areas from their traditional villages since Independence. But the traditional rural life is still vigorous in the country as a whole, and people are not very likely to be forced into towns by social problems such as poverty or land shortage as in other parts of the world. However, the shift from the traditional villages to urban areas is already having great social effects on the lives of the local population. The most significant of these effects is the breakdown of traditional cultures and the social organization of our village communities which were the bases of our traditional way of life in the past.

Influences of These Perspectives

As it is for many other former colonies

that have gained independence from their metropolitan powers, Papua New Guinea on the eve of her political independence inherited most, if not all, of the western concepts of political, legal, economic and social structures of management and administration, including business and trade activities. Thus, the country's justice system which is composed of police, courts and corrective institution services which are the main government institutions dealing with law and order, is really an old replica of the Australian, western-orientated system as well. The legal system under which the justice system operates can also be said to be a transformation of the western-oriented system.

From the given background, I shall now turn to the law and order situation and its implications in the country.

Law and Order

The law and order situation in Papua New Guinea is at the moment considered a priority matter by the government; as criminal activity is considered a serious threat to the internal security of the country and its citizens.

Instances of serious crimes against persons and property, particularly in our urban centres in the very recent past, have created a climate of fear for life and property among all citizens. Therefore, dwellers in urban centres are being forced to live behind fenced homes or under whatever security measures that they can afford.

In 1984 the Papua New Guinea Institution of Applied Social and Economic Research, in conjunction with the Institute of National Affairs, initiated a study headed by an Australian Criminologist, Professor William Clifford, to investigate the extent and the causes of law and order problems and recommend to the National Government remedial measures. Their report shows that for the period 1976 to 1983:

- Homicide and attempted homicide increased from 44 cases to 275, an increase of 532%
- Rapes and attempted rapes increased from 102 to 465, an increase of 356%
- Assaults (bodily and grievous bodily harm increased from 156 to 500, an increase of 233%
- Unlawful wounding increased from 66 to 179, an increase of 195%
- Robberies (from 1982 - 1983) increased from 410 to 566, an increase of 38%.

Whilst crimes against persons have been receiving extensive publicity within the country and overseas, particularly in Australia, the frequency and the number of crimes motivated by desire for material gains are substantially on the rise. The Annual Police Crime Report for 1984 recorded 14,364 cases as opposed to 1,023 first category offences. Crime against property covers burglary, wilful destruction of property, armed robberies, vehicle thefts and white-collar crimes both within government institutions and the private sector. The prevalance of crime and criminal activity in both categories has since independence been steadily on the increase.

Police figures for the year 1984 recorded an increase in all types of offences; most significantly property offences, offences against persons with or without violence, and offences of a sexual nature. That significance is perhaps best marked by the government's concern in its 1985 total budget allocation when it allocated K32.406.800 to the Police Department alone for the maintenance of law and order from its over-all expenditure for the year.

A new, significant crime within the context of our law and order problem in the country is drug abuse. Ten years ago the names of drugs were almost unheard of. Today the names are quite common in the streets of our towns, particularly marijuana. Fortunately we have no real problems at the moment with other hard drugs. Marijuana on the other hand, because of the country's very favourable climatic conditions, is grown wild in nearly all parts of the country. Some five years ago the local population did not even know of the use of the plant, thus its abuses and

peddling were confined to the expatriate population and, on very small scale, to locals at some of our educational institutions or those locals who had been exposed to the drug overseas or through their association with expatriates. This trend unfortunately is changing fast as locals are now becoming involved either in its use or in the cultivation of the drug as an economic commodity. Due to the ideal geographical location of the country to Asia and its southern neighbours Australia and New Zealand, it has been used as a stepping stone for drug trafficking through its inhabited islands and those ports without stringent security measures and adequate surveillance facilities.

On the whole whilst marijuana abuse is confined only to a minority, it can be said that we don't have a real serious drug problem which aggravates other crimes, nor do we have any evidence of citizens being involved in international trafficking of hard-core drugs at the moment. But the future threat is there.

Crime Prevention

Generally speaking, crime prevention in Papua New Guinea is seen as the sole responsibility of the state through the police force. Hence the approach on this view can be divided into three main areas: (i) traditional, (ii) specific, and (iii) sociological.

The Traditional Approach

The traditional approach refers to the role of police in preventing crime and the effect that the "presence" of police has in preventing crime. In this approach it is very important to ensure that police remain where the people are and where the crime is so that they can have greater effect. This is generally known as "foot-beat patrol."

In order to make this approach effective there must be careful study of the nature of criminal activity in a given area to ensure that policemen are on duty at the right time and right place, so that their presence has a greater effect. This approach can have little or no effect on the crime of murder. However, it can have a very marked effect on armed robberies, burglary, motor vehicle theft and bike offences. In other words this is more of a punitive prevention, where fear of punishment is presumed to prevent the individual from committing crime which can be said to be part of the rationale of criminal sanctions.

The Specific Approach

The specific approach to crime prevention is a much more specialized area of work and is performed by the Crime Prevention Unit. This approach involves looking at specific premises, situations, crimes, etc., and eliminating an element that has contributed to the cause or has permitted crime to occur, or is likely to increase the risk of a crime occurring.

With this approach, some of the most important aspects are the removal of temptation, the removal of risk and the removal of the opportunity to commit crime. It is also important to increase the risk of detection if a crime occurs.

In this aspect of their work the Crime Prevention Unit visits the scenes of all serious "preventable" crimes and analyze the various circumstances and conditions that contributed to the crime occurring. They then decide what lessons can be learnt and what preventive actions can be taken.

They also analyze high-risk situations and try to eliminate some of the risks. For example, recommending that employees are paid by cheque instead of cash to minimize cash-in-transit, installation of security bars, the use of safes, alarms and so on.

The Crime Prevention Unit should spend time with architects and planners both in government and private businesses to ensure that due consideration is given to crime prevention in the design stage of projects. This work will help to eliminate the problem areas that are difficult to deal with after a project has been completed. This approach is more of a mechanical prevention where physical efforts are made to prevent crime from occurring in the first

place.

The Sociological Approach

The sociological approach to crime prevention is the third aspect and involves a more complex and indirect method of dealing with the problem of crime prevention. It involves attempting to identify the root causes of crime and eradicating these causes at their source. This is, of course, a long-term approach to the problem and one that involves not only police, but government and the community in general.

One of the main objectives of the police in this aspect of crime prevention is to motivate the community to be active in their approach to crime prevention, to help themselves and to help the police.

This involves many units in the police and is a dominant factor that affects police-public relations and the general concept of policing. One of the main grassroots units for motivating such a community action is the neighbourhood policing unit which is equivalent to the Kohban System in Japan. We have been doing some research into the applicability of such a system and hope to introduce it as a pilot project very shortly.

In the main this is corrective prevention where efforts are directed towards eliminating the influences towards criminal behaviour.

Treatment of Offenders

In Papua New Guinea imprisonment is seen as the main form of official punishment at the moment for offenders who are convicted and sent to jail by the courts. Therefore the issue of treatment of offenders in the country would be better looked at from that penal prespective and the consequences thereof.

The question of imprisonment as a main form of official punishment, I believe, is a matter of concern and debate in many countries at the moment, in particular the western-world countries, including Australia. Dissatisfaction is rife at the moment in Papua New Guinea and I would also assume the world over with imprisonment as the means of crime prevention, retribution or rehabilitation.

Some countries have called for the removal of prisons from the corrective systems to be replaced with other community-orientated corrective alternatives. It is, therefore, in the light of these developments that I wish to look at the issue of treatment of offenders in Papua New Guinea. Without going into the penal philosophies and the historical origin of imprisonment I shall commence by looking at the role and the development of the country's prison system which I believe is the basis of this issue.

Prisons in Papua New Guinea

The prison system in Papua New Guinea, commonly known as the Corrective Institution Services, is really an old replica of the colonial system and is very much based on the western correction model. Prisons were introduced into Papua New Guinea by western colonial administrators concerned both with establishing their own superior power and fostering the idea of a centralized state. The National Government, however, since taking over the system at Independence, embarked on using the system to develop the country in the context of the modern world. The prison institutions hence were to play a significant role in that envisaged purpose through their formulated policy objectives. These objectives are actually the functions of the Corrective Service Institutions.

Functions of Corrective Institution Services

The main functions of the Services are:

1) to contain or keep prisoners sentenced by the courts;
2) to train prisoners and prepare them to live normal lives upon release; and
3) to make prisoners productive by developing trade and agriculture projects in prisons.

These principle objectives in a more elaborated form could be stated as those of security in that the corrective institutions are to keep in secure custody at all times

all prisoners as a security measure to protect society at large. Secondly, the institutions are to train the prisoners to become good citizens and live normal lives as their other free and law-abiding counterparts upon their release from the prisons.

Thirdly, to use the prison population in agricultural work and trades in order to facilitate self-sufficiency and dependency within the institutions and the country as a whole. The objectives are security, rehabilitation and economic development. The third is intended to be at no labour cost to the state.

Development

The development of imprisonment as the main form of official punishment in Papua New Guinea can be best seen from the development of its Corrective Institution Services. Hence the then Corrective Services was formed in 1957 with only one major institution gazetted whilst the rest of the country was served by 150 lock-ups. These were administered by police and patrol officers of the then Department of Native Affairs.

A developmental programme in 1959 gradually paved the way to take the functional responsibilities of the service from the police. That shift included the personnel component which in 1960 became the nucleus of the service and consequently became an entity of its own styled as the Corrective Institution Branch. By 1969 the branch had 14 establishments throughout the country. To date the Corrective Institution Services (CIS) has a total of 24 institutions in the country. As a matter of clarity, these are the gazetted prison institutions as opposed to the old lock-ups (150). The breakdown of these institutions by status, thus, is: 2 major institutions, 10 central institutions, 8 major area institutions, and 4 minor area institutions.

Legislation

The main body of legislation is the Corrective Institution Act Chapter No.63. It brings together a number of previous legislative enactments and contains the basic provisions covering the service, including rural and police lock-ups. Part 3 of the Act provides for the National Minister by notice in the National Gazette to appoint/declare any premises or any part of a premises as either a correctional institutions service, rural lock-up or a police lock-up. The regulations basically provide for the administration of the service.

Effectiveness of These Functions

The first objective, to contain or keep prisoners sentenced by the courts, in my view, is a failure because our institutions are totally ineffective and unable to maintain all prisoners for their total terms of imprisonment without any incidence of escape at all, as our current rate of escape and jail break-outs is deplorable. The situation is further aggravated when the prisoners, upon their self-acquired freedom that is denied them by law, go on terrorizing the society with their continued or even greater criminal activities. Thus the unsafe and ineffective security systems in prisons are not only an adverse reflection on the system but are a more serious threat to the general security of the society which imprisonment is supposed to protect.

The second objective appears also to be a failure as there is no evidence to conclusively show that the system is 100% achieving what is hoped for. The failure, in my view, is not totally institutional failure but one of the justice systems as a whole, and more so, the courts' lack of discretion in the sentencing process. Because of the disparity and the lack of discretion in the sentencing process a very high proportion of offenders convicted in court are imprisoned irrespective of their being first offenders, the offence tried being very trivial in nature or a very serious and violent crime; they all go to jail.

Therefore, a prisoner upon his release, despite whatever skills he had been taught in jail, is really unable to fit into the society due either to the labelling notion or because of the differential association that he had been subjected to. To make matters worse the society in general, in

my view, is not prepared or geared towards accepting these people back into normal life. For instance, no company or department I know of will ever employ a person who has been to jail on a criminal matter.

Therefore, the only trade for survival left for the ex-prisoner is to return to crime and back to prison. Hence, it is my contention that prison is not the correct environment to impart skills and knowledge that can be accepted by the society and be usefully applied by a prisoner upon his release.

The third objective of custodial sentences within the institutions is costing the state more than it benefits it in terms of economic gain. For instance, to feed 156 prisoners at our main institution for one year will cost some K1,287,008.00 whilst the economic return for the same period and from the same number of prisoners is nil. This figure is for one institution alone. But if the rest of the institutions are included, the cost of just feeding prisoners would be exorbitant not to mention that there is no such thing as hard labour being carried out in the prisons.

It is, therefore, submitted that whilst imprisonment as a form of punishment in Papua New Guinea should remain, the Corrective Institutions Service notion that "criminals are corrected rather than punished" must be changed. Prisons must be a place where a person is punished for what he has done wrong against the society. Those who advocate prisoner reformation in jails must remember that prisons are not strictly speaking reformatory centres. They are supposed to be places which offenders are sent to serve certain periods of time under certain and exact discipline as a punishment and a warning to others, as well as for the protection of the society. The third function is, therefore, not socially and economically viable. The first function on the other hand should remain but be incorporated with or form a part of other alternatives, as I believe that the current rate of our prison escapes is not due to the system itself but mainly due to poor management, lack of sufficient funding and other problems being faced by the Corrective Institutions Service, the justice system and the society as a whole.

Other Alternatives

The subject of alternatives to imprisonment is of profound significance in the light of the world-wide controversy concerning the role and functions of the prisons as an instrument of social control. The first United Nations Congress on the Prevention of Crime and Treatment of Offenders, in adopting standard minimum rules for the treatment of offenders, has constituted a landmark in the process of penal reform. Hence its deliberations have brought to the fore the global search for effective alternatives to imprisonment at least in dealing with those offenders who do not endanger the peace and security of society.

There is no doubt that, in the wake of rapid industrialization, urbanization and technological changes resulting in the breakdown of social institutions, such as family, the clan and community, prisons appear to have been subjected to excessive use in the most developed and developing countries, and Papua New Guinea is, in my view, at the moment at the crossroads of that developmental stage.

The problems of rising crime, overcrowding in the prisons, the inability of the prisons to keep prisoners, and the seeming inability of the whole justice system to cope effectively with the new patterns and dimensions of criminality have further accentuated the controversy regarding the use of imprisonment.

In addition, the traditional arguments regarding the inherent contradictions in the custodial and rehabilitative functions of the prison, other factors such as dehumanizing aspects of incarceration, the debilitating impact of total institutionalization of the human personality, and the increasing awareness that imprisonment is unlikely to improve the prisoner's chances of living a law-abiding life or to reduce crime rates must be giving new force to the movement

towards the treatment of offenders "outside" prisons or "without" prisons.

The general thinking of this questions is, however, not free from an element of ambivalence while non-institutional forms of treatment are being widely recommended. The sanction of segregation from the community is still considered to be the strongest deterrent, both to the individual offender and the society at large, and imprisonment still appears to be necessary where the risk of repetition of dangerous offences is high.

The above considerations make it clear that the question of alternatives to imprisonment must be analyzed in the broader terms of society's response to crime and in relation to the constraints under which the criminal justice system as a whole is operating. In my view, crime as a social phenomenon has and will continue to challenge any society, be it Papua New Guinea or elsewhere. Therefore, in view of the rising crime rate, the preoccupation with imprisonment is growing, and any move to completely do away with imprisonment would be an easy scapegoat for the failure of the criminal justice system itself.

Instead, it is submitted that in the light of the apparent failure of the institutional approach, as earlier elaborated upon under the functions of the Corrective Institution Service, a re-examination is needed. That is the role of corrections in the criminal justice process; the relative balance of punishment and treatment as correctional objectives must be studied, and the effectiveness of programmes and practices must be re-examined and changes made to suit the country's contemporary needs.

Conclusion and Recommendations

In the final analysis, it is submitted that, although it has become clear that the prison system in the country has failed to achieve the objectives of rehabilitation, deterrence and reform, to do away completely with imprisonment will only be an excuse to escape from a more profound social problem.

Crime is a social problem and a feature of all societies. The causes and the complexity are such that the problem of crime cannot be completely eradicated. Therefore, as punishment follows crime or is a result of crime, the situation must be seen inevitably in the context of the other disciplines of economics, politics and culture. Papua New Guinea cannot look at the problem in isolation and solely from the traditional and cultural perspectives. Nor should it always blame the situation on the colonial rulers as a colonial legacy. The country has been independent for ten years now and, in doing so, it has taken its place in the family of nations. Hence, it would almost be impossible for Papua New Guinea to go alone in its reforms based on custom or traditional conceptions or sanctions. In any case, such an attempt would not, in my view, be a complete success given the status of custom and the traditional norms of punishment within the country's legal system.

The country, in adopting a universal economic system of investment and trade, has inevitably allowed for the emergence of new social consequences. Crime naturally is one of these social problems due to changing socio-economic conditions since independence.

Papua New Guinea's situation is also a unique one because the country for the last ten years has undergone tremendous changes in a very short period when compared to many other Third World countries which have been independent for much longer periods.

It is faced with many social changes such as local people migrating into urban centres leaving their traditional village lives. Our traditional values are being disturbed and gradually replaced by new ideas and ways of life.

Unfortunately the country cannot go back to its traditional ways, but to follow the current trend of development as a radical departure from adopted developmental strategies would not be compatable with the rest of the world. Crime therefore is a by-product of these social changes

which no society can completely do away with.

What should, however, be done is to maintain reasonable control and preventive measures on crime and criminal activity. Long-term and coherent policies on the control of crime are essential in this direction rather than for agencies and governments on the whole to react to the situations of crime on a "crisis management" basis every time there is an increase in crime or criminal activities. Thus, for Papua New Guinea I would recommend that:

1) Imprisonment as a form of punishment be retained, but the general prison system be done away with and replaced by a number of maximum security institutions to cater to hard-core and dangerous criminals only.
2) Courts should be allowed to exercise more discretion in the sentencing process.
3) Parole and probation from part of the official form of punishment so that first offenders and offenders convicted of offences of a very trivial nature can be engaged in more community-oriented projects.
4) Legislation and the whole legal system must be geared towards meeting the needs and the aspirations of the people of the country.
5) The society should not see the problem of crime and its control as the state's responsibility alone.
6) A Crime Commission must be established in the country to advise the government on policies concerning crime.
7) The whole justice system must be efficient and adequately prepared to deal with the law-and-order problem.

Finally, it is my belief that fear of being caught appears to be a better deterrent than punishment, as a person is not always conscious of the latter, only if the former is thought of in the first place. That rationale, I believe, would hopefully help in controlling crime as well. Crime is a feature of all societies; its causes and control are, therefore, basic to the way of life in all countries.

Sport and Recreation

Sport and recreation periods are treated as a privilege, for privileges are very few throughout the programme.

Library facilities are freely available.

Entertainment

There are no television facilities, cinema shows or other forms of entertainment.

Conclusion

The treatment programme I have outlined, a "SHORT SHARP SHOCK" designed especially for the 21 to 24 years old young adult male offender is, so far as I am aware, the only one of its kind in the world.

The programme is total in that it provides through-care including after-care. The responsibility for the success or failure of the programme rests squarely with the staff of the Correctional Services Department involved in it. The net result is that there is accountability and clearly demonstrates the effectiveness of 'professional staff' of various skills working as a team with the same goal.

Here we have an imported ideal from another country modified for a different age ground from that for which it was originally designed.

The "Quest for Effective and Efficient Treatment of Offenders in Correctional Institutions" is one well within our capabilities which we must grasp. Of course the programme I have outlined is a total programme which is unusual. The quest does not necessarily involve total programmes only. New innovations in the form of amendments of existing treatment programmes are extremely valuable providing they enhance their success.

But what of the success of the programme I have outlined? Since its inception in 1976, it has involved some 500 young adult male offenders. At the end of the supervision period (one year following discharge) some 94% had completed their supervision successfully. As a result of a 3-year follow-up at the end of which each file is checked with the Police Criminal Records Office, over 86% had successfully completed a period of 3 years following discharge without incuring any further conviction.

As regards the young male offender programme (14-20 years of age), the success rate is the same except that at the end of the 3-year period it is several per cent less. This programme owes much of its success to sound planning and a "no nonsense attitude." It is today almost identical to the programme as it was introduced in 1976. All attempts to interfere with it have been resisted. The result speaks for itself.

Correctional Services in the Asia and Pacific area are working towards more effective correctional programmes. However, at the same time as they advance and embrace new ideas they do not cast away the old values which are useful in the field of corrections. Change for the sake of change does not take place at least in most countries in the region. Through The Asian and Pacific Conference of Correctional Administrators which meets annually and in which the Australian Institute of Criminology and the United Nations Asia and Far East Institute for the Prevention of Crime and Treatment of Offenders both play an important role much is being achieved quietly yet progressively. I am confident that the time will come when the West will look to the East for ideas on how to solve their dilemma in the field of corrections.

Criminal Law, Crime and Punishment in Norway —A Brief Sketch—

*by Helge Röstad**

The Legal Background

A Brief Sketch of the Substantive Criminal Law

The Criminal Code of Norway – enacted 22 May 1902 – was the outcome of lengthy deliberations, partly stemming from the reform-movement, linked to the foundation in 1889 of "The International Union of Penal Law".[1]

The Code was structured according to a well-established pattern: the first part containing General Rules, the second containing provisions regarding "Felonies", and the third provisions regarding "Misdemeanours", i.e. less serious offences. This division of the offences – "Felonies and Misdemeanours" – is of fundamental nature, having relevance also for offences being described in acts outside the Criminal Code itself.

The Code has been amended on several occasions. Amendments have been related to reformulation of the provisions as to criminalized conduct ("criminalization") and in respect to the threat of the penalty which may be inflicted ("penalization"). New provisions for criminal conduct, considered necessary in the combat against dangerous or otherwise unwanted behaviour, have been inserted ("new-criminalization"), other provisions have been extended ("up-criminalization), still other provisions have been lessened ("down-criminalization") while some of the original provisions have been withdrawn ("de-criminalization"). Alterations of corresponding character have been made as to the rules stating the threat of penalty, thus embodying l.a. "depenalization"[2] as well as "down-penalization".

Developments within society, as well as within the arena of the combat against crime, have given penal provisions outside the Criminal Code a prominent place in the application of criminal law. The provisions of the Act on Road Traffic have thus gained a dominant place within criminal law in action.[3] The provisions in this Act have, particularly for procedural reasons, been put into the category of "misdemeanours", although a number of them not infrequently will be punished by imprisoment.

The age of criminal liability is 14 years – this rule has been upheld since the adoption of the Code, although there have been during the last three decades, several proposals for raising this age limit.

A new proposal has been announced, implying that the age should be raised to 15 years, combined with a rule forbidding use of imprisonment as well as provisional decision for youngsters below 16 years.

The ordinary penalties according to the law are imprisonment and fines. However, in practice the order should be the reverse, as a fine is the most frequently applied penalty, see below ...

The general rule concerning the length of terms of imprisonment states 14 days as a minimum and 15 years as the ordinary maximum. In a few provisions it is stated that imprisonment may be set up to 21 years – a length of term which is in fact infrequently used.

The Norwegian Criminal Code does not allow for the use of the death penalty, nor for life imprisonment. The last mentioned sanction was withdrawn 1981.

In 1892 Norway introduced the conditional (suspended) sentence as a sentence imposing a penalty, while suspending its execution for a fixed time limit. The field

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of application of this conditional sanction had gradually been extended, and, in 1955, Norway further introduced a conditional measure, restricted to conviction, suspending the sentence itself for a fixed time limit.

To both these types of conditional decision the court may attach special conditions to be fulfilled by the offender. The range of conditions comprises measures such as supervision – a parallel to probation. The provision also allows the court to state that the offender shall take residence in some of the "half-way houses" at the disposal of the Correction Service, its branch for "Care in Liberty". The service referred to runs about 10 such houses, where probationers, as well as parolees, may make their domicile for some period of time. According to the law, the court may also state that the offender shall undergo medical treatment, e.g. as to alcohol problems or to some kind of mental illness, but not so as to include insanity, which implies non-liability.

A very important condition lies in the clause that the offender may be obliged to pay compensation to the victim – a measure which is well in line with current crime policy, according to which the Criminal Justice System shall seek to further the interests of the victim.

The list of conditions mentioned in the rule on conditional sentence is not an exhaustive one. The court may, with due regard to the circumstances in the particular case, set other conditions for suspension, either of the execution of the punishment or of the sentence itself. This open wording of the rule on conditions made it possible – without any change in the law – to introduce, two years ago, "Community Service". This measure should, in appropriate cases, be settled as a condition for suspension of execution of imprisonment. Community Service was introduced as an experiment limited to a restricted area. The measure has stood its test, and it has now been put into operation on a national scale. At a conference for Chief Police Officers in June 1986, the Acting General Prosecutor advocated a wider use of this measure which, he argued, ought to be given a real chance as an alternative to imprisonment.

A Brief Sketch of the Formal Criminal Law

Criminal procedure is built on an Act of 1981, which was put into force as recently as 1st January this year (1986). This brand new Act embodies a lot of innovations, but, generally speaking, it reflects the principles on which the former Act of 1887 was built.

Our procedural Act is founded on the model of the adversary system – in contrast with the so-called inquisitorial system. Our adversary system has, however, some traits inherited from the inqusitorial system, thus presenting a modified adversary system, with several features giving our system a character differing from the adversary system operating i.e. in Anglo-Saxon countries.

Our former procedural Act, adopted 1887, introduced the principle of opportunity, leaving a great amount of discretion to prosecution authorities whether or not prosecution should be instigated. The principle of opportunity has successively won an even firmer position in law, through many amendments. Among them is an attempt to bring waiver of prosecution near to conditional sentence. Due to amendments waiver of prosecution may be granted in a conditional way, on the condition that the offender for a fixed period of time does not commit any further offence. With the aim of assisting the offender to a law-abiding life specified conditions may be settled, such as those specific in the rules on conditional sentences. Compensation to the victim is further within the range of conditions which may be imposed on the offender. With regard to conditions attached to waiver of prosecution, the prosecutor is bound to the conditions specified in the law. The administrative authority – the prosecutor – cannot, as may be the case for a court regarding conditional sentence, choose any condition which is not listed in the clause

itself.

The provision based on the principle of opportunity does not contain any limitations for granting a waiver. The rule allows for waiver towards offenders, without any restrictions, e.g. due to age, previous conduct, and towards offences in general, restricted neither in kind, nor in degree number. Our rule is thus not limited, as the case may be in many legislations where waiver may be granted solely according to the old maxim: "minima non curat praetor" (the judge shall not be troubled with trifles).

The provision contains, in other words, no limitations for granting a waiver based on the principle of opportunity. The only requirement set up in the provision is that "special circumstances "exist and that the prosecutor after a total evaluation, finds that overriding reasons recommend that no prosecution be instigated. The "special circumstances" may be related to both aspects of the case: its objective side (related to the offence) or its subjective (related to the offender).

The principle of opportunity has given rise to the notion of "waiver of prosecution". The same principle has produced a parallel measure to be applied to young offenders, particularly between 14 and 18 years, in "transfer to the Child Welfare Agency". According to this measure, the prosecution authority transfers the criminal case – the offender – to be handled by the Welfare agency. This agency will apply measures according to the rules and the practice based on the Act on Child Welfare.[4] Such a measure represents a kind of "diversion" which implies that the authorities may divert cases out of the ordinary channels within the Criminal Justice System. "Diversion" has, in recent times, been a subject of great interest. It was a topic for deliberation at the Congress for the International Association of Penal Law in Cairo 1984, after having been highlighted at a preparatory meeting in Tokyo.

A policy closely related to "diversion" has during the last decade led to the establishment of "community boards" with non-paid and non-professional volunteer councillors, handling cases of offences committed by youngsters. Ordinarily the police – but in some cases those who have been victimized by juvenile delinquency – can refer cases to the councils as an alternative to prosecution. The councillors arrange a meeting between offender and victim. The aim is to find an agreement satisfactory to both parties, offender as well as victim. This measure will thus also serve the goals of modern crime policy – to further an upgrading of the interests of the victim.

This measure, also coined "conflict solving", was launched by us in 1981 as a pilot project, and has been subsequently extended.

At the above-mentioned Conferense for Chief Police Officers the Acting General Prosecutor of Norway recommended a wider application of this measure.

According to our law, the prosecution authority is further authorized to issue an imposition as to economic sanctions, either a fine alone or confiscation, or a combination of these two sanctions. This kind of imposition regarding the penalty of fine is termed "writ of optional fine", an adequate new coinage might be "pretrial fine". To the fine may also be attached a fixed amount as compensation to the victim.

Whether or not the case shall be decided on the basis of such a "writ" is dependent on the will of the offender. If he agrees, the case will be settled at this level, thus allowing the prosecutor in some respect to act as a sentencer. If the offender disagrees, the case has to be brought before the court. It is this last-mentioned element – consent or non-acceptance by the offender – which underpins the view that this procedure should not be considered in conflict with the constitutional provision, "no punishment without sentence". It may be added that this procedure has been in operation for 140 years. The procedure allows for a speedy and smooth handling of cases, avoiding unnecessary labelling of the offender by trial in public. In its wide application (see below the section

"Sanctions Imposed by Prosecution and by Courts") the procedure significantly reduces the caseload of the courts.

Within the framework of a brief article it is not possible to draw a clear picture of the procedural system. I consider it, however, appropriate to mention two important elements in brief.

Our criminal procedure is characterized by the large participation in it of non-professional judges. In District Courts – the ordinary first instance – two non-professional judges – preside together with one professional judge. In High Courts – dealing with criminal cases – a jury, consisting of 3 jurors, will alone decide on the question of guilt, while sentencing is left to a panel, consisting of 4 jurors and 3 professional judges. The wide participation of non-professional judges – they are in the majority in both the above-mentioned courts – may contribute to a confidence within the public as to the operation of the courts and in some degree to an acdeptance of the decisions of the courts.

Mention should be made of the fact that a lot of cases will be decided by one professional judge alone. This procedure is, however, subject to the following conditions: the case must be under the jurisdiction of the District Court (that means that the punishment prescribed by the law must not exceed 10 years), the offender must have given an unreserved confession as to his guilt before the court: the reliability of the confession must be considered corroborated by evidence otherwise established; the offender must have requested such an adjudgment; and finally the judge must have considered it appropriate to try the case for conviction and sentence.

Having mentioned the term "sentence" I have to emphasize that according to our Act all sentences have to be given with reasons in writing.

The second point to be underlined is related to the appeal system. In criminal cases there are as a general rule two instances. In the first instance the case is adjudged either by the District Court (altogether 100) or the High Court (altogether 5), and in the last instance by the Supreme Court. The High Courts act in the first instance in those cases of more serious felonies for which the penalty may exceed a term of imprisonment for 5 years in cases where the offender has given an unreserved confession this upper limit is extended to 10 years. Due to the restricted maximum penalties within the Criminal Code, the District Court will be the dominant trial Court in criminal cases.

According to the rule that criminal cases in general shall be handled within two instances, attack on the conviction set by the District Court – denial as to guilt, the decision on the factual aspect of the case – must be lodged with the Higher Court, which will try the evidence in a new, full trial.

The Supreme Court is barred from trying any question of evidence related to the question of guilt. Appeal to the Supreme Court must be lodged on the grounds that there has been some irregularity in the interpretation of the application of criminal provisions, or in sentencing. Regarding the last mentioned ground for appeal, Norway has – to some degree due to its modest number of inhabitants – established a system differing from that operating in most other countries. In all appeals on sentencing – lodged either by the offender or the prosecution – both parties are entitled to appeal also as to sentencing. In this respect the Supreme Court acts as the sole appeal court, which gives the Court a prominent role in establishing a sentencing-policy.

With regard to the law itself, the Norwegian system is a very open one, apparently leaving great discretion to the judges. The latitudes in the provisions of the Criminal Code are extensive, and the Code contains no article on circumstances to be taken into account in sentencing. In practice, these wide discretionary powers are quite severely limited because of the sentencing policy of the Supreme Court, and sentencing does not show any great disparity, similarly because of our system of appeal the Supreme Court will

in its practice give some kind of guidelines for sentencing.

The Court will thus determine what kind of offences, on general preventive (deterrent) grounds, ought as a general rule – with room for exceptions in special cases – to merit unconditional imprisonment. The Court will further give clear indications for use of conditional (suspended) sentences. The Court will likewise indicate the scope for the application of special rules for lowering the penalty fixed in law, due to special mitigating circumstances.

The decisions by the Supreme Court will in general set what could be called "the normal level of penalty" for particular offences, thus giving the traditional element in sentencing a prominent place. In the practice of the Court clear indications may further be found for factors having relevance and weight in meting out the right penalty fit for that concrete particular offense.

The influence of the Court in sentencing may be better understood by an examination of the way in which the sentences are formulated and communicated. The Court gives detailed reasons for its sentences. The English criminologist Nigel Walker has published in his book on sentencing a transcript of a decision of the Norwegian Supreme Court, which in his opinion "illustrates the consciousness with which the trial judge's reasons and the prosecution's arguments are examined".[5]

The decisions are published in a special periodical which is widely distributed within legal circles. The decisions will thus be studied by officials working within the Criminal Justice System – either within police, prosecution, courts and corrections – as well as by lawyers who normally or occasionally act in criminal cases.

It is self-evident that a system like this one – with one appeal court, giving detailed reasons which have a wide distribution – furthers equality in sentencing.

A Brief Sketch of the Development of Crime

Some General Observations

Norway is a country of huge distances but only a small population, about 4 million inhabitants. These facts, together with a rather homogeneous population, have for many years been responsible for only a modest level of criminality.

We have for more than a century had quite comprehensive statistics as to criminal cases resulting in imposition of sanctions (Statistics on Sanctions). Since 1957 we also have statistics on criminal cases investigated, with information about the outcome of the investigation, and different decisions taken by the prosecution (Statistics on Reported Felonies; also called Police Statistics)

The criminal statistics, in either form, present an unclear picture of real criminality, linked as they are to cases where crime has been observed or reported to one of the two ps within the Criminal Justice System, police or prosecution, whose work later will bring cases and persons before one or both of the two cs: courts, corrections. A great amount of crime will be hidden to the authorities, lying in darkness – "hidden criminality", "dark field". Studies performed during the last decades, based on "self-reported studies" as well as on "victim-studies", have proved that registered crimes comprise only a fragment of the real number of crimes.

Police Statistics

According to these statistics – which should be "nearer" to real criminality than the statistics on sanctions – the number of crimes has risen substantially during the last 25 years, in absolute as well as relative numbers, related to the number of inhabitants. Nor should the rise in quantity only call for concern, since there has been a considerable qualitative change with an increase in felonies[6] of a serious character. The female rate reached in 1983 a higher level than in previous years, 11%.

During a period in such development as

to the quantity and the quality of felonies has taken place, the rate of clearing cases unfortunately had dropped considerably – a factor which is well able to weaken the general preventive effect stemming from the operation of the Criminal Justice System.

Statistics on Sanctions

1) Cases of Misdemeanours

These statistics give evidence of an increase in crime, in felonies as well as in misdemeanours.

With regard to misdemeanours, numbers have been influenced by many factors – "new criminalization" and "long-criminalization", as well as losses in categories of misdemeanour through "decriminalization", and "depenalization" amendments which owing to the frame work of this article have solely to be touched in passing.

Suffice it to say that the great majority of these cases will be settled within the prosecution, on the basis of "writ of optional fine" ("pretrial fine") in about 90% of the cases. Fines will also be applied in cases of misdemeanour brought before the courts. Fines are altogether used in 92% of cases of misdemeanour.

Unconditional imprisonment is applied only in 4% of cases of misdemeanours, that 4% being, in the great majority, related to offences within the Act on Road Traffic. Norway has a rather strong penal practice with regard to drunk driving – an offence which contributes greatly to the size of our prison population – a factor related to the number of offenders rather than the length of their prison term. The terms of imprisonment in such cases are of a short duration – in general within the interval 21^7 – 36 days.

2) Sanctions in Cases of Felonies

The development within this category is characterized by a general increase, as well as regard to more serious felonies, and further by an increase among juveniles (14-17 years and 18-20 years age-groups).

During the last fifteen years we have also experienced a new type of crime – traffic in drugs – a felony towards which Norway has instituted a strong penal practice.

Drug abuse has grave side-effects, since a lot of abusers commit crimes with the idea of acquiring the means to purchase more drugs. Their crimes may in their turn lead to other crimes-larcenies committed by abusers may thus lead to sale of the stolen items, bringing the buyers into the position of persons "receiving stolen goods".

Larcenies – and related felonies – are the dominant category of felonies, comprising two thirds of all felonies. Violent offences comprise about 10%, and sex offences represent about 2%.

Sanctions Imposed by Prosecution and by Courts

As already mentioned, the prosecution has been granted a wide range of discretion regarding "waivers" and "writ of optional fine" ("pre-trial fine").

As to the total number of offences – felonies and misdemeanours – 86% of the cases were in 1983 settled on the level of prosecution: 4% by waiver and 82% by "pre-trial fine". The high percentage of fine at this level is – as already mentioned – to a great extent linked to "misdemeanours", which comprise the great majority of cases. Altogether, only 14% of the total number of criminal cases were brought before the courts.

Within the category of felonies the percentage of cases settled at the level of prosecution was, of course, considerably lower: in 1983 a little more than one fifth of felonies were settled on the level of prosecution.

Use of Punishments

Some General Observations

Imprisonment has during a period of more than a century been a rather ordinary penalty towards offences of some gravity. In recent years there has been criticism of the wide application of this penalty. Such criticism arises out of three main factors:

i) a growing humanitarianism, ii) the development of behavioural sciences with their awareness of the origins and complexities of human behaviour, and iii) practical considerations as to the high economic burdens linked to sanctions of imprisonment.

Such considerations have been the advocates of restraint imposing imprisonment as a criminal sanction. Imprisonment should – according to this view-point – be considered as an ultimate sanction, be used less often than formerly and – as far as possible – for shorter periods than formerly.

In many countries great efforts have been made to substitute alternative measures (for imprisonment). This trend has also manifested itself at the international level, for example, in resolutions adopted at the Sixth UN Congress in Caracas (1980) and at the Seventh Congress in Milan (1985).

The Committee on Crime Problems within the Council of Europe has for some time been studying the topic of alternatives to imprisonment. Based on a comprehensive report the Council of Europe in 1976 adopted a Resolution on Alternatives to Imprisonment, Resolution 1976.[10]

This resolution advocates an extended use of probation and fines. The resolution recommends looking into the possibility of imposing various deprivations (such as withdrawal of driving license) as well as confiscation as independent substitutes for prison sentences. Recommendations are further given to special measures, such as, for example, "deferment of sentence" after guilt has been established and community work. Governments were also recommended" to consider what contribution could be made by semi-detention, as a milder form of punishment than total imprisonment which would enable the convicted offender to preserve or take up again his links with society as a whole".

Two further points in the Resolution in my view deserve quotation. Governments were recommended first "to develop arrangements for associating the judiciary with the continuing process of developing measures alternative to imprisonment", and "to make efforts to inform the public of the advantages of alternative measures, so as to ensure its acceptance of these measures".

Different Alternatives to Imprisonment

The topic of alternative measures has been on the agenda at several of the Conferences for Directors of Prison Administration in Member States of the Council of Europe. Such Conferences are held every second year, and at the last one (held in 1985) the topic of alternatives was highlighted, on the basis of a paper presented to the Conference by Mr. J.P. Robert, representing Prison Administration, Ministry of Justice, France.

In a lecture given at the 72nd Course at UNAFEI, I made reference to this paper, where Mr. Robert had made a well-structured grouping of different kinds of alternatives. In his paper[8] Mr. Robert found that the alternative measures, being applied by Member States of Council of Europe, could be divided into three types, according to their proximity to or remoteness from imprisonment.

The first type – comprising measures with proximity to imprisonment – covers measures which are decided at a stage after the sentence itself. These measures may be considered as some kind of privilege within imprisonment. As examples the following measures were given: "Semi-detention": detention which enables a prisoner to work outside prison, or follow a course of instruction. The time spent in prison will often be strongly limited.

"Work-release" which allows a prisoner to be employed outside prison.

"Weekend detention". This measure allows the convicted person to serve his sentence on weekends only.

"House arrest", which enables a convicted person to serve a short sentence at home.

"Serving of a sentence in an outside institution or care centre", for example, some form of hospital, in lieu of a prison.

The second type covers measures constituting sanctions different from custodial

penalties. Such measures are often ordered as a sanction, when the normal sentence would have been a custodial sanction. Also this type comprises measures of a different character:

"Financial and related penalties". Fines are used to a considerable degree in many Member States. The amount of money which the offender has to pay to the State may be meted out in different ways, also as a "day fine system". There are other measures related to fines: compensation or restitution to the victim. Mention may also be made to confiscation of proceeds of the offence.

"Sanctions restricting or taking away rights". Such measures may be used in combination with a penalty, but in circumstances which legislation defines, also as the sole sanction, for example, loss of an official appointment.

"Probation", the first real alternative to custodial penalty, has a two fold objective: to avoid imprisonment and to afford moral or material assistance designed to facilitate rehabilitation. The last mentioned element gives the measure a positive character, which also can be demonstrated in the role to be played by the probation officer: to advise, assist and befriend the offender. In some countries probation (or supervision) will be combined with suspended or conditional sentence.

"Community service". According to this measure the offender will be deprived of some of his leisure-time, to perform work to the benefit of the community. In this paper Mr. Robert described "community service" as "the most progressive alternative measure introduced in European criminal law in the last ten years and the one which seems to offer the most possibilities.[9] In relation to probation, community service constitutes a step forward in the non-custodial system, enriching it from two points of view: through the idea of compensation for the harm done to the community, with the positive potential for the creation of the sense of responsibility in the offender, and in line with the trend towards protection of victims; and through the idea of associating the community in the legal process, since it will be actively involved in the execution of a sentence and also in the rehabilitation of the offender".

The third type was coined as "Measures avoiding imposition of a penalty". This heading covers a whole range of measures. Mention may be made of the suspending of prosecution and waiver of prosecution; conditional or suspended sentences. Some states have further instituted measures which take into special account the interests of the victim with the consideration of teaching the offender a lesson about his offence. Reference may be made to measure such as arbitration and mediation, as well as so-called "conflict-solving" measures.

Imprisonment and Alternatives Used in Norway

In Tables 1 and 2 have given percentages relating to types 2 and 3 of the grouping presented by Mr. Robert in the paper referred to under the section "Different Alternatives to Imprisonment".

Table 1: Application of Sanctions in Cases of Felonies

Year	Waiver incl. "diversion" ("type 3")	Fines ("type 2")	Conditional sentences incl. probation community service ("type 2")	Unconditional imprisonment
1981	17%	5%	42%	36%
1982	19%	5%	40%	36%
1983	15%	8%	38%	39%

Table 2: Application of Sanctions in Cases of Felonies towards Young Offenders

Age group /Year	Waiver incl. "diversion" ("type 3")	Fines ("type 2")	Conditional sentences incl. probation community service ("type 2")	Unconditional imprisonment
14–17 years				
1981	55%	2%	34%	9%
1982	57%	2%	33%	8%
1983	53%	5%	33%	9%
18–20 years				
1981	1%	6%	53%	40%
1982	5%	6%	50%	39%
1983	4%	9%	46%	41%

Table 1 and 2 refer to cases of "Felonies" only – crimes of more serious character.

"Type 3" covers waivers, including "diversion" described under the section "A Brief Sketch of the Formal Criminal Law".

"Type 2" covers first "Fines". Also in cases of "Felonies" "writs of optional fine" (see the section "A Brief Sketch of the Formal Criminal Law") are used to some extent. The increase in application of fines in 1983 is due to an extension in law for using "writ of optional fine". "Conditional sentences" briefly described under the section "A Brief Sketch of the Substantive Criminal Law" comprise a considerable part of "type 2".

The numbers given in Table 1 indicate that crime policy in Norway is characterized by "a tendency towards leniency". This tendency appears even more clear in Table 2, presenting the application of sanctions towards young offenders, 14-17 years and 18-20 years. Within the last mentioned age-group there will be many recidivists – towards whom measures of type 3 and 2 have earlier been applied, once or more times. This factor may explain the wider use of unconditional imprisonment for this age-group.

The moderate use of imprisonment is accompanied with a trend towards use of short terms of imprisonment, as shown in Table 3.

In spite of an increase in felonies in general – and an increase in more serious offences – there has been a rather modest increase in sentences of long prison terms.

The two factors mentioned above – moderate use of imprisonment, linked with short-term prison sentences has led to there being only a small prison population with 48 prisoners detainees included per 100,000 inhabitants. This number places Norway among the countries in Europe with the lowest prison population.

Some Observations as to Alternatives Connected to the Serving of a Sentence

Table 3: Use of Unconditional Imprisonment in Cases of Felonies 1981-1983

Year	Below 6 mos.	6 mos. 1 yr.	More than 1 yr. 3 yrs.	More than 3 yrs.
1971	74%	16%	8%	2%
1982	63%	23%	11%	3%
1983	61%	22%	14%	3%

of Imprisonment

Within the frame-work of a brief article, no comprehensive description can be given of alternatives linked to type, mentioned under the section "Different Alternatives to Imprisonment" – alternatives with proximity to imprisonment. We in Norway use such measures to a great extent.[10] I will briefly make reference to some measures.

First, Norway makes no use of measures such as weekend detention and house-arrest.

However, we do widely apply measures involving semi-detention; and work-release. One of our open institutions is primarily used for prisoners who may be entrusted to spend time –equal to ordinary working-hours – outside the institution for education, either academic or vocational. Some of our larger institutions – with places for 50-200 inmates – have special sections for prisoners who either perform studies in the outside community or work outside. The Prison Act of 1958 gives special provision for work outside: "In special cases and where there is no reason to fear abuse, an inmate may according to specific rules be permitted to work for an employer outside the institution".

Among measures within type 1 there is one special measure that ought to be mentioned specifically. This is the rule allowing for the serving of a term of imprisonment in an institution outside the prison service. The Prison Act contains such a provision which has been used quite extensively, particularly with regard to offenders with alcohol or drug-related problems, who can thus be transferred to institutions under the health service. The provision states:

> "When it is found appropriate because of his health, mental state, capacity for work, adaptability, or other special reasons, a person serving a prison sentence may be transferred[11] to a security institution, nursing or health institution, or other institution offering treatment for the remainder of his term of punishment".

Applying this provision, the offender will serve his sentence of imprisonment – day for day – in an institution outside the prison service.

Parole may be considered as a form of extramural treatment. We use parole as an integrated part of a sentence on imprisonment. Parole will in general be granted to prisoners who have served two thirds of their sentences, in which full deduction is made for time spent in custody before sentence. The minimum time period of a sentence is now 60 days. Parole may further – on the basis of a more thorough evaluation of the case – be granted when the prisoner has served half of the time stated in the sentence – here, too, with full deduction for time spent in custody. Parole as a form of extramural treatment appears quite clearly when the released prisoner is given admission to "half-way houses" which the branch within the Corrections Service has as its Corrections in Liberty, disposed and for which it has coined the term.

NOTE

1. See remarks p. 82–83 in article by the author "The history of international special emphasis on the activities of the International Penal and Penitentiary. Foundation", printed in "Course on United Nations Criminal Justice Policy" HEUNI 1985 No. 6 . 79–89.
2. See remarks p. 149–150 in a paper by the author in HENUI-publication 1984 No. 3 "Effective, Rational and Humane Criminal Justice".
3. It ought to be mentioned that offences related to this Act cover a little more than 3/4 of all offences in which punishment has been inflicted during the period 1979–1983.
4. Further information on the measures, referred to, as to the rules and their application, have been given in an article by the author "The Principle of Opportunity (or Expediency), Considerations on Waiving of Prosecution related to the procedural System of Norway", in: Cahiers de Societé Internationale de Defense Sociale, 1985, p. 27–35.
5. Nigel Walker "Sentencing in a Rational Society", London 1969

p. 158–159 and p. 223–225. See also Mueller and le Poole-Griffiths "Comparative Criminal Procedure", New York, 1969, p. 214–215 and 226–230, where i.a. it is stated: "The Supreme Court considers the particulars of each offender and offence and decides what should be the principal objective of punishment in that particular case. If there is a reasonable possibility of rehabilitation, the Court tends to let this consideration prevail over reasons of general prevention".

6. The Police statistics are restricted to cases of felonies, while the statistics on sanctions give information about both categories of offences: felonies as well as misdemeanours.
7. The law provides (for these cases) a higher minimum penalty than for other offences. The ordinary minimum is – as formerly mentioned – fourteen days.
8. The paper is presented in "Prison Bulletin", December 1985, p. 6–72, published by Council of Europe (Strasbourg, France).
9. As President of the International Penal and Penitentiary Foundation I may mention that the Foundation will arrange a Conference on Community Service as an Alternative to Imprisonment, to be held in Coimbra, Portugal September this year (1986).
10. Aspects of prison service in Norway have been presented in a paper in Japanese by Yukio Nomura "Correction Administration in Norway, Jurist, 1985 No. 851 p. 113–117.
11. Due to a later amendment the offender may be directly placed in such an institution without any previous period in prison.

SECTION 2: PARTICIPANTS' PAPERS

The Prison Service in Brunei Darussalam

*by Abdul Wahab bin Haji Md Said**

Introduction

Brunei Darussalam has a total area of 2,226 sq. miles. In the year 1982, the estimated population of Brunei Darussalam was 200,390, there being 106,990 males and 93,400 females. Malays make up the majority with 130,089; followed by Chinese with 40,784; other indigenous with 16,084 and other races with 22,486.

Brunei Darussalam is an oil-producing country and has a relatively small population, the standard of living is considered one of the highest in the world with an average per capital income around B$20,000 per year.

Brunei Darussalam is an Islamic State, where religious customs and traditions are widely observed among the people. Public holidays revolve around the Muslim Calender and religious celebrations are marked as an important event and celebrated in a grand manner.

PART I: Prison Institutions

The State's ;Prisons are situated at Jerudong, Mile 11, Jalan Tutong. They house all categories of male prisoners, female prisoners and juvenile offenders. Female prisoners are accommodated in female prisons. The total number of prisoners today is 145. The NCA (normal certified accommodation) for male prisons is 100 while the female prison can hold 16 prisoners.

Functions

The Prisons Department is headed by the Director of Prisons, assisted by the Assistant Director of Prisons and complement of administrative and custodial staff. The Prisons Department is responsible to the Ministry of Home Affairs for: i) the proper management of prisons and enforcement of Prisons Act 1978 and Prisons Rules 1978, ii) safe custody of all persons duly committed to prisons, and iii) the treatment and rehabilitation of offenders so that they can return to the community as a law-abiding and useful persons on discharge.

General Principles of Prison Administration

The general principles of prison administration is stated under section 3 (i) and (2) of our Prisons Rules 1978 which says:

3. (i) The Rules shall be applied, with due allowance being made for the difference in character and respect for discipline of various types of prisoners, in accordance with the following principles:

(a) discipline and order shall be maintained with fairness but firmness, and with no more restriction other than what is required for safe custody and to ensure a well-ordered community life;

(b) in the control of prisoners, prison officers should seek to influence them, through their own example and leadership, so as to enlist their willing co-operation;

(c) at all times the treatment of convicted prisoners shall be such as to encourage their self-respect and a sense of personal responsibility, so as to rebuild their morale, to inculcate in them habits of good citizenship and hard work, to encourage them to lead a good and useful life on discharge and to fit them to do so.

* Director of Prisons Department, Ministry of Home Affairs, Brunei Darussalam

2. These Rules shall apply to every person duly committed to, or ordered to be detained in prison:

Provided that the provisions of any Part of these Rules relating to any particular category of prisoners shall, where the provisions of such part are in conflict, or are inconsistent, with any other provisions of these Rules, apply to prisoners of such category.

Rehabilitative Process

In the light of the above principles it is clear that the modern concept of our prison, which is primarily for the protection of society, is finally reformation and rehabilitation of offenders so that they can return to the community as law-abiding and socially useful persons on discharge. In Brunei Darussalam these rehabilitative aims can be achieved through:

1) Work
2) Education
3) Religious activities
4) Recreation.

1) Work

Work is the primary medium through which rehabilitation is effected. With this in view various training schemes such as carpentry, rattan work, tailoring, metal work and welding, laundry, cooking, gardening, etc. were introduced in the prison hoping that by employing and teaching them in these various jobs suited to individual needs that prisoners would be socially rehabilitated. They are assigned to any one of these jobs in accordance with their ability, character and adaptability with consideration being to give each prisoner the best industrial training which his sentence, his capacity and the resources of the prison will allow. Female prisoners are employed and taught domestic duties such as general cleaning of the female prison, cooking, tailoring, embroidery and flower arrangement. As the number of female prisoners is so small a proper training programme could not be designed. Today we have only 6 female prisoners. Prisoners receive payment for their work at the rate of B$1.50 per day for unskilled, B$2.00 per day for semi-skilled and B$2.50 per day for skilled prisoners. Training in skills is imparted by apprenticeship method. It is hoped that prisoners who acquired skills in a certain job while in prison will be able to get a similar or better job on discharge. Apart from the abovementioned jobs, some sort of community-based project is also carried out whereby prisoners are engaged in cleaning the compound of a mosque and cutting grass on a school playing ground as and when occasion demands.

In August 1985 first ever exhibition of prison made goods was held for 5 days. The main purpose of the exhibition was on one hand to introduce prison-made goods to the general public and on the other to make the public aware that prison is not a place for dumping criminals but an institution where offenders are being trained and rehabilitated. As the exhibition was successful, it is now proposed that it become a yearly project. Early this year another new project of fruit tree plantation was started which covers an area of about 10 hectres. This project was made possible with the assistance of the Agriculture Department who provided plants and expertise. Hopefully when these trees are fruiting the produce will be sold to the general public. These projects are carried out with the further belief that the social rehabilitation of offenders will be well understood and recognised by the society at large and that the responsibility of social rehabilitation does not lie entirely in the hands of the government or the prison authority but is the responsibility of every individual in the community and not forgetting the understanding and recognition of various agencies such as Police, voluntary organisations, Judiciary, Legislators, the government of the State and its various departments. What this requires is nothing less than the close co-operation of every individual in the community to readily accept the discharged offenders in the community. What happens to offenders after discharge from prison is even more important than what happens to them in prison.

2) Education

Apart from vocational training, prisoners are encouraged to attend Malay medium and English classes conducted in the evenings by the Education Department. Besides preventing physical and mental deterioration of inmates the aim of education is also to eradicate illiteracy. Prisoners who want to further their studies are encouraged to do so and some of them are taking up further studies through correspondence courses. Prisoners are allowed to borrow books from the prison library as well as from a mobile library operated by the Language and Literature Bureau. Newspapers in Malay, Chinese and English are also provided. Last year (1985) one prisoner took up '0' Level examinations. However, he managed to get through only in one subject.

Section 154 of the Prison Rules allows the Director to appoint a sufficient number of prison visitors of both sexes as voluntary teachers for the purpose of visiting prisoners regularly during their imprisonment, and for conducting such classes as may be approved.

3) Religious Activities

It is found in Brunei Darussalam that most prisoners committed to prisons have very little or very poor religious background. Being a Muslim country, religion plays an important part in our daily lives. Religious (Islamic) classes are conducted in the prisons in the evenings and at weekends by the Religious Department. Muslim prisoners are given facilities to say their prayers and during the month of Ramadan (fasting month) they are allowed to observe the fast. For non-Muslim prisoners they are also allowed to follow their religious observance in the prison if they so desire.

4) Recreation

Facilities for physical activities and recreation are provided, as this is important in providing a positive outlet for the energies of the inmates. Inmates participate in both indoor and outdoor activities. The most popular games played by prisoners are basketball, badminton, sepak takraw and table tennis. Sporting activities are important in their impact of abiding by the rules of the game; also they provide a wider opportunity for the staff and prisoners to develop a better relationship. Listening to the radio is permitted daily so that it develops to some extent a proper interest in the outside world. Film shows are given weekly.

Other Facilities

In addition to the above rehabilitative programmes the inmates are also allowed visits and letters in accordance with the Stage in which they are serving. All visits are to take place in open conditions in the presence of a prison officer. Members of the Visiting Justices visit the prison monthly to look into inmates' welfare.

A senior Hospital Assistant pays 2 visits a week to the prisons to give treatment to prisoners when required. All cases requiring medical attention are referred to Government General Hospital for treatment.

Unconvicted Prisoners

Treatment of prisoners such as debtors, persons on remand or awaiting trial, vagrants and persons detained for safe custody or for want of sureties are covered under Part 18 of our Prisons Rules 1978. These people are referred to in our Prisons Rules as "unconvicted prisoners" and shall in no case be confined in association with convicted prisoners. The excerpts of part 18 of our Prison Rules 1978 are as follows:

"**174.** (1) Debtors, persons awaiting trial, persons on remand and persons committed for safe custody or for want of sureties, who have not been convicted by any Court in this Part referred to as "unconvicted prisoners", shall in no case be confined in association with convicted prisoners.

(2) Unconvicted prisoners may be permitted during their periods of exercise to associate together in an orderly manner and to smoke under such conditions as the Director may prescribe.

175. Unconvicted prisoners shall not be required to do any labour other than what is required to keep their rooms, furniture and utensils clean.

176. (1) When it is practicable and safe, employment shall be provided for unconvicted prisoners, should they desire it, and an account of the value of the daily labour of those accepting it shall be kept by the Officer-in-Charge, and a sum equal to such value be paid to each such prisoner upon his discharge.

177. An unconvicted prisoner may receive or purchase such luxuries, in the way of books and papers, clothing, food and stimulants, as are consistent with good order and discipline of the prison; but all such articles may be received or bought through the Officer-in-Charge subject to the following conditions:-

(a) the prisoner shall give such notice beforehand of his requirements as the Officer-in-Charge may prescribe;

(b) at any meal for which the prisoner is not supplied with food at his own expense; he shall receive the ordinary prison diet, but he shall not receive any prison allowance of food at any meal for which he is supplied with food at his own expense;

(c) spiritous liquors shall not be permitted unless otherwise directed in particular cases by the Medical Officer by order in writing; and

(d) articles obtained under this rule: (i) shall be received only at the times prescribed by the Officer-in-Charge; (ii) shall be inspected by a prison officer; (iii) shall be subject to such restriction as may be necessary to prevent luxury or waste; and (iv) may be paid for out of the money belonging to the prisoner in the hands of the Officer-in-Charge.

178. (1) An unconvicted prisoner shall be permitted to wear his own clothes and to procure for himself or to receive at proper hours such articles of clothing as the Officer-in-Charge may approve:

Provided that an unconvicted prisoner not having proper clothing of his own shall be provided with prison clothing.

(2) Bedding shall be provided for all unconvicted prisoners.

179. An unconvicted prisoner, who does not elect to provide his own food, shall receive the same scale of diet as a prisoner undergoing imprisonment.

180. A prisoner on remand or awaiting trial shall, if necessary for the purposes of his defence, be allowed to see a registered medical practitioner appointed by himself, or by his relatives or friends, or legal adviser, on any weekday at a reasonable hour, in the sight, but not in the hearing, of the Officer-in-Charge or an officer detailed by him.

181. When an unconvicted prisoner wears his own clothing in prison, the Medical Officer may, for the purpose of preventing the introduction or spread of infectious disease, order that the clothing be disinfected, and, during the process of disinfection, the prisoner shall be allowed to wear prison clothing.

182. Nothing in these Rules relating to remission of sentence or the Progressive Stage System shall apply to an unconvicted prisoner.

183. (1) A prisoner charged with a capital offence shall be kept under special observation at all times.

(2) All letters written or received by a prisoner charged with a capital offence shall be carefully examined by the Officer-in-Charge personally.

184. (1) Any privilege allowed under this Part may at any time be withdrawn by the Officer-in-Charge if satisfied that there has been an abuse thereof.

(2) The Officer-in-Charge may modify the routine of the prison in regard to an unconvicted prisoner so far as to dispense with any practice which, in the opinion of the Officer-in-Charge, is clearly unnecessary or unsuitable in the case of the particular prisoner.

In Brunei Darussalam it is not practicable to give employment to unconvicted prisoners as we lack of facilities for this class of prisoners. Under section 175 of our Prison Rules unconvicted prisoners are not

required to do any labour other than what is required to keep their rooms, furniture and utensils clean. However, if they so desire to work, an account of the value of the daily labour should be kept by the Officer-in-Charge, and a sum equal to such value be paid to each such prisoner upon his discharge. The percentage of unconvicted prisoners for the year 1980–1985 is shown in appendix (Table 1 A). In Brunei Darussalam we are fortunate that most cases were cleared by the Courts in a very short while except for more serious cases where at times it took up to 6 months. Unconvicted prisoners are given all reasonable facilities for seeing their relatives, and friends and legal advisers and if alien, their consul representative, and for sending and receiving letters, consistent with the discipline of the prison.

Everybody has a problem or problems; and so do unconvicted prisoners. The problems normally faced by unconvicted prisoners in prisons are family union disruption, employment break down; break off of communications with outside world (although not total); psychological problems; being forced to live in an undesirable environment, and so forth. However, these problems could be solved or narrowed down with the assistance of prison officers. It is the duty of all prison officers to treat all prisoners with kindness and humanity, to listen patiently to and report their complaints or grievances but at the same time to be firm in maintaining order and discipline, and enforcing the provisions of the Act, Prison Rules and Prison Standing Orders.

With regard to the operational side of the prison, unconvicted prisoners also pose certain problems especially in overcrowded prisons:-

(i) Accommodation and security problems.
(ii) Segregation of convicted and unconvicted prisoners could not be carried out effectively.
(iii) A waste of human resources as unconvicted prisoners are unemployed in the prisons.
(iv) Unconvicted prisoners are subject to discipline concerning prison offences in the same way as convicted prisoners. However the punishment set out in the rules cannot be awarded fully as these unconvicted prisoners are not entitled to such privileges for instance, forfeiture of remission, reduction in Stage, or postponement of promotion in Stage, forfeiture of earnings and reduction in earning grade. Thus this is quite unfair to convicted prisoners who are found guilty for committing similar disciplinary offence as these prisoners could be awarded heavier punishment.
(v) Medical and escort problems.

Young Prisoners

Young Prisoner (Y.P.) according to our interpretation means any person who, in the absence of proof to the contrary, is under the age of 18 years and whether

Table 1-A: Unconvicted Prisoners 1980–1985

YEAR	1980	1981	1982	1983	1984	1985
Young prisoners	33	76	35	21	30	52
Total no. of prisoners	150	371	332	281	604	706
% of young prisoners	22%	20.49%	10.54%	7.47%	4.97%	7.37%
Remand prisoners	22	78	100	49	179	61
Total no. of prisoners	150	371	332	281	604	706
% of remand prisoners	4.67%	14.67%	21.02%	30.12%	17.44%	29.64%
Road traffic offenders	5	29	12	4	5	4
Total no. of prisoners	150	371	332	281	604	706
% of road traffic offenders	3.33%	7.82%	3.61%	1.42%	0.83%	0.57%

convicted or not, under detention in any prison. With a view to facilitating training and minimising the danger of contamination, having regard to their age, character and previous history, young prisoners (Y.P.) are segregated from adult prisoners. Because the number of Young Prisoners (Y.P.) is very small as could be seen in Appendix (Table 1-A) and furthermore the sentences are short, a proper training programme for the rehabilitation of Young Prisoners (Y.P.) could not be designed. Furthermore due to the smallness of our prison coupled with the limited facilities available, segregation for both at labour and in location as required by the rules could not be implemented effectively. It is quite expensive to provide all the necessary facilities for such a small number of prisoners and furthermore the sentences are short-term, and as such proper facilities could not be afforded separately. However, other privileges such as letters and visits are permitted in accordance to the stage in which they are serving. Education, religious teaching, recreation, earning schemes, etc. are afforded as circumstances of the prison will allow. All visits are to take place in

Total Admission of Convicted Prisoners and Remand 1985

	Local	Foreigner	Total	%
Male	71	591	662	93.77
Female	14	30	44	6.23
Total	85	621	706	
Malay	73	285	358	50.71
Chinese	8	32	40	5.67
Iban	4	258	262	37.11
Others		46	46	
Total	85	621	706	
> 18 Yr. (Y.P.)	9	43	52	7.37
18–20 yrs.	23	148	171	24.22
18–20 yrs.	32	347	379	53.68
31–40 yrs.	14	66	80	11.33
41–50 yrs.	6	13	19	2.69
51– <	1	4	5	0.71
Total	85	621	706	
Under remand	19	42	61	8.64
> 1 mo.	18	94	112	15.86
1–> 6 mos.	34	469	503	71.25
6–12 mos.	11	11	22	3.12
13–24 mos.	2	3	5	0.71
2 yrs,	1	2	3	0.42
Total	85	621	706	
Imprisonment 1st	66	583	649	91.93
2nd	13	27	40	5.66
3rd	4	8	12	1.70
4th	2	3	5	0.71
Total	85	621	706	
Brunei	85		85	12.04
Malaysia		382	382	54.11
Indonesia		200	200	28.33
Philippine		25	25	3.54
Thailand		11	11	1.56
Hongkong		1	1	0.14
China		1	1	0.14
British		1	1	0.14
Total	85	621	706	
Under remand	19	42	61	8.64
Theft	30	19	49	6.94
Retaining stolen property		1	1	0.14
Drugs	1	1	2	0.28
Religious	17	5	22	3.12
Immigration		539	539	76.35
Cheating	1		1	0.14
Voluntarily cause hurt	1		1	0.14
Culpable homicide not amounting to murder	1	2	3	0.43
Housebreaking by night	1	1	2	0.28
Corruption	3	2	5	0.71
RTE	2	2	4	0.57
Rape	1		1	0.14
Using counterfeit money	1	6	7	0.99
Others	7	1	8	1.13
Total	85	621	706	
%	12.04	87.96		

open conditions in the presence of a prison officer. And with regard to medical treatment a Senior Hospital Assistant pays twice weekly visits to the prisons. All cases requiring medical attention are referred to government general hospital for treatment.

The working age in Brunei Darussalam is 18 years. It is therefore not possible to get a job for those under 18 years on discharge.

However, a gratuity in accordance with the Progressive Stage System (B$6.00 per month) is paid on release to every Young Prisoner sentenced to imprisonment (whether originally, or in default of payment of a fine or fines) for one month, but less than 6 months, and such young prisoners who spend the whole of such a term in hospital are also eligible for the gratuity.

Drug Addicts

Drug addicts who were sent to prison are all convicted by the Court. The number of drug addicts admitted to prison is very low. This can be seen in Appendix (Table 1–B). Drug addicts are new to our prisons and no proper facilities are available for this type of prisoner at present. The treatment programme for all drug addicts/abusers consists of 5 stages. This programme is very similar to that being carried out in Singapore with few modifications to suit our local conditions. Our officers were trained in Singapore. The 5 stages are:

Stage 1

One week of detoxication or "cold turkey" treatment. During this first week, they are not allowed to receive any visitors. Detoxication without supportive medication is mandatory for all abusers who are under 55 years of age and who are certified medically fit by a medical officer. The inmates at this stage are segregated from the others in self-contained wards. If the withdrawal effect is found to be too much for the offender that it might endanger his health, than he will be sent to hospital for treatment after which he will be brought back to the prison immediately.

Stage 2

One week for recuperation and re-orientation. The re-orientation will be conducted by the staff to condition the inmates to be more receptive to subsequent treatment. The staff will explain to them the code of discipline and the rules and regulations of the Prison.

Stage 3

One week of intensive indoctrination. This is to drive home to them the evils of the drug habit, the realities of life and the social obligations of every citisens. This will be conducted by the Prison Officers.

Stage 4

From the fourth week to the third month – inmates will be given a military form of physical fitness training to inculcate in them discipline and to promote their physical well-being.

During the first week of this state, training will consist of callisthenics, maintenance of precision drill. Thereafter and until the end of this stage – exercise such as running, jogging and obstacle course will be given. Time limits will be set for completion of these exercises.

During the stage, domitory and kit inspections will be conducted every morning. In the case of untidy kits, the defaulters will be penalised.

Stage 5.

During this stage, inculcation of work discipline is the main feature of treatment. At this stage, inmates will be assigned to various jobs. Flag raising ceremony, singing of the National

Table 1-B: Convicted Drug Offenders

Drug offenders	2	18	28	11	13	2
Total no. of prisoners	150	371	332	281	604	706
% of drug offenders	1.33%	4.85%	8.43%	3.91%	2.15%	0.28%

Anthem, and physical exercise will be carried out before commencement of work. Evenings will be set aside for games and other recreational activities. Inmates who have basic qualifications and are keen in pursuing their education may join education classes carried out in the prison.

Prisoners are assisted to find suitable jobs outside on release if they require.

Road Traffic Offenders

The number of road traffic offenders admitted to prison is small. This figure is shown in Appendix (Table 1–A). The sentences are very short, ranging from a few days to one month. Looking at the figure of admissions, accommodations and facilities available in our prison, it is not possible to segregate completely such offenders from other types of criminals. As such these offenders are placed together with other types of offenders normally with minor offence type of offenders and treatment follows suit.

Future Planning

As a long-term policy and looking at our past experience and shortcomings, as well as looking at new developments in the reformation and rehabilitation of offenders in other parts of the world, especially in the Asia and Pacific region, and further, with a view to achieving improvement for effective and efficient treatment of offenders in Brunei Darussalam, it is considered necessary that a new prison be built where all shortcomings will be eliminated and necessary facilities including qualified staff incorporated. However, local conditions must be taken into account in all aspects after due regard has been made to the provision of the UN Standard Minimum Rules for the Treatment of Offenders.

PART II: Recruitment and Training of Correctional Officials

The prisons Department of Brunei Darussalam is responsible for the recruitment of prison officers into the Prison Service. Vacancies are normally advertised in government newspapers (Pelita) which draw good response from interested Bruneians who wish to take up a career as prison officers.

If the applicants appear to satisfy the basic requirements, they will be invited to the prison where they will be interviewed by a Selection Board consisting of a number of senior prison officers headed by the Director of Prisons. They will also be given a short written test.

Names of selected candidates will be submitted to His Majesty The Sultan and The Yang Di-Pertuan for his approval.

The importance of training should not be taken lightly as the lack of it could cause or create problems in prisons. Training of staff at all levels should be comprehensive and be given sufficient priority.

Through training, all staff will understand the nature of their jobs and will provide them with all the necessary skills and knowledge required by every prison officer and as such will enable them to use their skills and knowledge positively in the management, control and treatment of offenders. Furthermore training gives confidence and self-respect to staff in performing their duties and this is a basic part in job satisfaction.

The modern concept of our prison is the reformation and rehabilitation of offenders so that they can return to the community as law-abiding and useful persons. In view of these facts, various training schemes such as carpentry, tailoring, brick laying, motor mechanic, laundry, metal work, education and religious classes, etc. were introduced in the prison hoping that by employing and teaching them in these various schemes suited to individual needs that prisoners would be socially rehabilitated.

In the light of this modern concept it is felt that the purpose of rehabilitation can only be carried out by a properly trained staff who have knowledge of social, economic and psychological causes of crime. If we want our prisons to produce good

results, we must ensure that the prison staff, especially senior officers who are responsible for the treatment and rehabilitation of prisoners, be made up of a well-selected group and trained on principles of modern methods of rehabilitations.

In considering the training of prison staff it is appropriate to divide them into 2 groups. The first group consists of senior officers from the ranks of Principal Officers right up to the top level (Director) while the second group consists of junior officers from the ranks of Chief Warder down to the Warders.

The tasks of senior officers in this present day concept are complex and demanding and in order to meet this situation the officers must possess a relatively advanced level of education. The training of officers should be to generate thinking about the whole penal system which could be got through lectures and discussion on objectives of the prison system such as historical objectives, ideas about crime and society, different system of prisons such as closed, open, parole, working outside prison, etc. The programmes must include lectures on a variety of relevent subjects on the Prison Act and Rules, structures and organisation of prison services such as functions and responsibility of senior prison officials, the social and economic framework of the country and its influence on crime and delinquency, the treatment of prisoners, problems of reform and training. The training should also include visit to or observation of various prison establishments, Social Welfare Department, Courts, Hospitals, etc. as this will enable them to have accurate observation and description besides providing information about other services. Other practical skill desirable in prison officers are first aid, craft and hobbies, recreational skill, self-defence, riot drills, etc. and these are included in the training programmes. The period required for this training would be between 6 - 8 months. Wherever possible they should be encouraged to take up further studies in Social Studies or Social Science.

The junior officers would be trained and given lectures on Prisons Act and Rules, security, routine procedures on locking and unlocking, escorts, court duties, supervision party control, searching, patrolling, use and care of firearms, etc. besides semi-military training. Other practical skills desirable and included in training programmes are self-defence, first aid, riot drills, fire drills, etc. followed by an examination to ensure that information presented has been properly understood. This training would take between 4–5 months.

At the end of the training it is assumed that the officers will have acquired sufficient knowledge of the mechanics of the prison job from which they will be able to put it into practice.

In Brunei Darussalam, the senior officers are sent overseas for training because the number of officers we have at present does not warrant us to have our own training programmes. As such the department is always looking to every opportunity for suitable courses. Apart from providing officers with relevant skills and knowledge of the prison job the officers are also encouraged to attend seminars and short courses on management within the country run by the Training Unit of the Establishment Department. It is felt that sufficient knowledge of management will greatly help officers in carrying out their duties more efficiently and effectively.

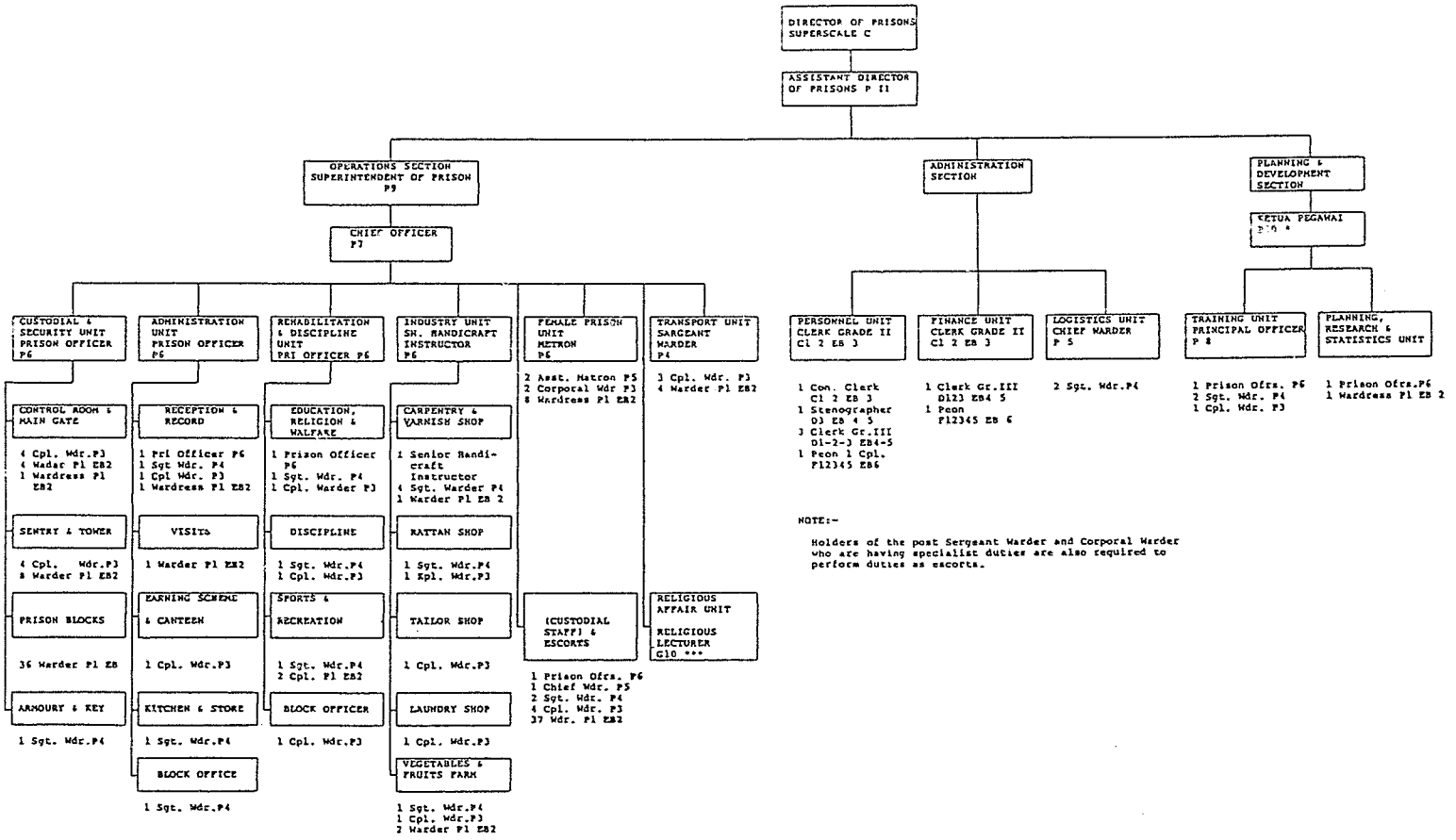
In respect of junior officers, they are also sent overseas either to Malaysia or Singapore for training after completing departmental basic training for a period of 4 months. Our basic training programmes, besides semi-military training, includes lectures on Prisons Rules, State Customs (Adat Istiadat) and Islamic religious class. There is also technical instruction in such matters as security, prisoner classification, escorts, court duties, supervision, party control, use and care of firearms, and visits to various government departments and educational institutions. At the end of the training an examination is held to ensure that information presented is well understood.

In addition, the following suggestions can help the prison staff, in particular the small countries of Asian and Pacific regions

to improve and be more effective in the running of their institutions:-

1. To promote technical co-operation among countries of Asian and Pacific regions in order to share relevant common experiences and exchange of information.
2. Developed countries of Asian and Pacific Regions with capability and resources should provide and extend their activities not only in organising conferences or meetings but also seminars and short courses.
3. The need to provide materials and information in the form of Newsletter or Journal dealing specifically with the problems of prevention of crime and treatment of offenders in the Asian and Pacific Regions.

Prison Organisation Chart, Brunei Darussalam



An Overview of the Tanzanian Prison System with Particular Reference to the Treatment of Prisoners in Police Custody and Correctional Institutions

*by Anthony Bahati**

Tanzania comprises Tanzania Mainland (formerly known as Tanganyika) and Zanzibar. The two parts form what is called the United Republic of Tanzania. The union of these two countries was achieved on April 26th, 1964 after Zanzibar's Revolution on January 12th, 1964. The total area of the United Republic of Tanzania is over 360,000 square miles and the population today is over 20 million people.

The Legal System

The legal system of Tanzania has at the bottom of the ladder the Primary Courts; then there are the district courts, one in each district; the Resident Magistrate's Courts, one in each Region; the High Court, with its registry in the capital and 7 sub-registries or district registries as they are called, and the Court of Appeal of Tanzania which, as its name shows, only hears appeals from the High Court. Most offences are tried in the primary courts, district courts and Resident Magistrate's Courts. Serious offences such as murder and treason are tried in the High Court only. The District Courts and the Resident Magistrate's Courts are on the same level namely the intermediate level and they are also the appellate courts as far as the Primary Courts are concerned. The High Court is an appellate court of the District Courts and Resident Magistrate's Courts, while the Court of Appeal is the appellate court of the High Court cases and it is final court.

Prisons Department

The prisons department is under the Ministry of Home Affairs (or Interior Affairs) and is headed by the Principal Commissioner of Prisons. Although penal institutions were there in Tanzania Mainland long before the First World War when the then Tanganyika was ruled by Germans, the Prisons Department actually came into being in 1931 when the British colonialists decided to separate it from the Police Department. The colonialists enforced their oppressive rule by incarcerating anti-colonial elements among the people. Their sentences were accompanied with hard labour, torture and degradation, as deterrence to the prisoners and the rest of the population. One illustration of this penal approach can be seen in the 1933 Prison Ordinance (Cap 58) which had its major flaw in its application of double-standards in the treatment of inmates simply on grounds of race. With independence of the country in 1961 the prisons institution because a correctional institution, basically aimed at rehabilitating inmates by reformatory treatment. It was thus assigned the job of ensuring the scientific deployment of the inmates' human resources and striving to become a model of mobilization and implementation of national policies in the political, economic, and cultural fields.

Following major structural changes by the government in 1974 and 1981, the Prisons Department is now made up of six directorates. These are Administration, Law and Rehabilitation, Agriculture and Livestock, Buildings, Industries, and Political Education.

*Judge, High Court of Tanzania, United Republic of Tanzania

Zanzibar's Correctional Institutions

In Zanzibar, prisons were renamed as correctional institutions (Vyuo Vya Mafunzo) in the early 1970s. Correctional Institutions in Zanzibar are managed separately from the Prisons Department on the mainland because Prisons affairs are not union matters to be managed by the Union Government. It is the Zanzibar government which manages correctional institutions in Zanzibar along with other non-union matters.

Educational Institutions of the Prisons Department on Tanzania Mainland

By the end of 1982 the Prisons Department had 121 Educational Institutions of its own.

These were:

1) 99 Nursery schools
2) 16 Primary schools
3) The Ukonga Prisons staff College in Dares Salaam for the Upgrading and for Foreign Students' courses
4) The Kiwira Staff College for basic training
5) The Ruanda Staff Technical College for various trades
6) The Ruanda Inmates' Technical College
7) The Wami Reformatory School in Morogoro for Juvenile Delinquents
8) The Driving and Auto-mechanic Training College Morogoro which has sections for Staff and Inmates

Inmates: Population and Welfare

The basic duties of the Prisons Department are safe custody of inmates and rehabilitation of convicted prisoners through reformatory treatment. The Directorate of Law and Rehabilitation is the key body in these issues. But its activities are closely complemented by the Directorates of Industries, Buildings and Agriculture and Livestock. The theoretical and practical training of inmates, the deployment of their human resources and construction and renovation of prison buildings, all fall under the combined efforts of these directorates. Rehabilitation programmes are formulated by the Law and Rehabilitation Directorate which officially came into existence in 1981.

Inmates: Prison Population Figures

The total number of persons committed to all prisons in Tanzania Mainland for various reasons in 1982 was 96,559 as against 87,106 in 1972. The breakdown of the total committals for 1972 and 1982 was as shown in Table 1.

Table 1

	1972	1982
For Imprisonment	32,107	31,423
For Safe Custody (subsequently discharged)	51,653	64,687
For Debt (civil prisoners)	15	17
Mental Patients	3,331	432
Total Committals	87,106	96,559

Table 2 shows a breakdown of the total number of committals in 1982 to all prisons indicating whether they are males or females or juveniles.

Table 3 shows the total number of conviction 1982 and in particular the length of the sentence.

Table 2

	Males	Females	Juveniles	Total
On conviction	29,949	1,479	–	31,423
On remand (excluding those sentenced to imprisonment or caning)	59,931	2,917	1,839	64,687
Civil debtors	14	3	–	17
Total	89,894	4,394	1,839	96,127

Table 3

	Males	Females	Total
U. < 1 mo.	269	39	308
1–6 mos.	12,549	947	13,496
6 mos. – 2 yrs.	8,878	341	9,219
2 yrs.–	8,019	147	8,166
For caning	234	–	234

Note: females may not be caned.

Classification of Convicted Prisoners

Convicted prisoners are classified by the existence or non existence of previous convictions into recidivists and first offenders. The former are prisoners who have had one or more previous convictions. The convicted prisoners are further divided into "Star" and "ordinary" categories for purposes of treatment and training. The former include first offenders and all those with criminal records and characters suitable for the same treatment with first offenders. The rest are "ordinary" prisoners. All convicted prisoners are entitled to one-third remission of their whole sentences as an inhibition against misbehaviour in prison which would result into gradual or abrupt loss of the remission.

From 1980 to 1982, the comparative figures for convictions were shown in Table 4.

Table 4

	1980	1981	1982
First offenders	24,105	24,386	23,243
Recidivists	5,200	5,113	8,180

The segregation and classification of prisoners goes beyond convicts. There are remand prisoners awaiting trial, juveniles (persons under 16 years), young prisoners (between 16 and 21 years) males, females, civil debtors, detainees, mental patients, condemned prisoners, and those whose health necessitates their isolation, e.g. lepers, T.B. cases etc.

In theory, each of these categories should be given separate accommodation and resting places as well as accorded different treatments. Apart from making otherwise coherent rehabilitation programmes clumsy, overcrowding also poses the risk of contamination of first offenders by recidivists and hardcore or habitual criminals. There is a lot of overcrowding in the prisons. As for the Juveniles, despite there having special Remand Homes under the Ministry of Labour and Social Welfare, they are faced with the risk of contamination because it is sometimes necessary to admit them into prisons for safe custody to await trials of their cases.

Women have completely separate accommodation in all prisons that admit them. But those with long sentences are transferred to the only Women Prison at Kingolwira in Morogoro region.

Persons not involved in criminal proceedings but suspected of being of unsound mind are detained in prison while being observed and treated. When certified by the medical officer to be of unsound mind they are sent to psychiatric institutions. But persons who are found not guilty of an offence due to having been insane at the time of doing the act constituting the offence are by orders of detention sent to the Isanga Institution in Dodoma Region which caters for criminal lunatics.

Discipline

A total of 7,443 inmates were punished in 1982 for breaches of Prison regulations, out of which 6,351 were involved in minor offences while 1,092 were involved in major offences.

Review of Sentences

The report of prisoners serving indeterminate sentences or long sentences of eight years and more are submitted at specified intervals to facilitate review of their respective sentences. The respective intervals are as follows:

a) Reports for Young Prisoners serving indeterminate sentences are sent as soon as a prisoner has completed one year of his sentence and thereafter at annual intervals.

b) For adult prisoners serving specified sentences, reports are sent as soon as a prisoner has completed four years of his sentence and thereafter at four-year intervals.

c) For adults serving indeterminate sentences, reports are sent at four-year intervals as soon as a prisoner has completed one year of his sentence.

Extra-mural Labour

First offenders serving short sentences of six months and below may be released to serve their sentences outside prisons by doing public works. A Prisoner's request for this alternative imprisonment can only get consent when such labour is in demand. Extra Mural Labour serves two purposes simultaneously. It relieves prisons of further unnecessary overcrowding and avoids the undesired contact between the benefiting offenders and hardcore criminals in prisons.

Health and Diet

Medical care and the improvement of the necessary infrastructure for the maintenance of good health for the prison population is the concern of the Prisons Department and the Ministry of Health jointly. While the Prisons Department trains its own medical staff to man health units in prison stations, the Ministry of Health takes charge on serious issues and its medical officers are assigned to permanent overall observation duties of general health in prisons. A computation of the 1982 health reports from the government Medical Officers in charge of prison stations throughout the country shows a general calmness except for some epidemic outbreaks that were timely checked. Cholera skin diseases, dysentry and diarrhoea appeared in several stations in 1982 and the reports attribute them to three main reasons: a) overcrowding, b) inadequate supply of water, and c) epidemics imported into prisons by incessant incoming and outgoing of remand prisoners.

Inspection Visits

A system exists whereby some members of public institutions (the Executive, Party, Legislature and Judiciary) pay inspection visits to prisons to ensure that conditions there are acceptable and that laid down regulations are adhered to by the prisons authorities. During 1982, appointed Visiting Justices paid a total of 77 inspection visits to 20 prison stations. There were 98 prison stations in mainland Tanzania in 1982. These visits were made in 10 regions. Also members of Parliament and Party leaders made 10 visits to 8 stations in 5 regions and also there were some 20 inspection visits by members of The Judiciary to 16 stations in 9 regions in the same year.

Prisons and Prison Buildings

The Prison Stations in the country are grouped into first, second and third classes on the security basis and the types of inmates accommodated. Most of the third class category prisons are simply specialised camps catering for hand-picked convicts.

Of the total number of prisons, 46 (main prisons) were built in the 1950s and before. They are therefore in need of renovations to be able to cater for a more sophisticated prison population as well as overcrowding.

Inmates' Rehabilitation and Manpower Utilization

The convicts' labour is utilized in industrial, agricultural, buildings, domestic and miscellaneous works, both within the Prisons Department and in various government departments. Care is taken to ensure that their deployment follows a fore-planned pattern which takes into consideration each convict's particulars and length of sentence so that he would eventually benefit. Coupled with political orientation a convict's stay in prison is designed to make him resourceful and morally and psychologically acceptable back in society. Convicts are thus exposed to training in different trades and to practical experience of a cross-section of the country's various fields of occupations so

Table 5

Masonry	875
Electricity	270
Carpentry	443
Signwriting and Painting	256
Plumbing	257
Total	2,101

that they may contribute to the country's economy and enhance the Prisons' role of becoming a model in implementation of national policies.

By the end of 1982 the Ruanda Inmated Technical College had trained 2,101 convicts in five disciplines. (Table 5)

After-care Service

The Commissioner of Social Welfare does assist released prisoners to obtain employment or to establish themselves for normal life in Ujamaa Villages.

All prisoners on discharge are provided with free transport to their home districts and subsistence allowance sufficient for their journeys. In addition, prisoners who show an exceptional ability in a certain trade, on discharge, are given an award of money or equipment to help them stabilize themselves in the profession or trade which they have learnt.

However, there are not enough welfare officers to adequately meet the demands of the large prison population.

Treatment of Offenders in Police Custody and in Correctional Institutions

Constitutional Rights

The treatment of offenders is an important aspect in any modern community because most modern communities have in their countries' constitutions a provision on the Bill of Rights. In Tanzania our Constitution known as the Constitution of the United Republic of Tanzania of 1977 contains some clauses on the Bill of Rights. This is contained in part three of the 1977 Constitution as amended by the 5th amendment of the Constitution namely Act No.15 of 1984. Clause 13 (b) (d) refers specifically to the equality of human beings and requires that the respect and dignity of an individual be safeguarded even when a person is in custody and being investigated. Clause 13 (b) forbids specifically anyone to be tortured or punished brutally or to be given punishments which are just meant to put him to shame or degrade him.

Offenders under Arrest

The Tanzania Criminal Procedure Code has even more elaborate sections on the treatment of offenders under arrest. There are, for instance, provisions regarding the questioning of suspects. In s.52 of the Act subs.(1) requires the police officer investigating a suspect in his custody not to ask him any questions unless he has first informed him that he may refuse to answer any questions put to him by the police officer. Right from the time of his arrest the prisoner is protected by the law as to what may be done to him or how he may be treated. Section 12 of the Act provides that a person arrested shall not be subjected to more restraint than is necessary to prevent his escape. Then there is section 21 which provides that a police officer or other person (arresting a suspect) shall not, in the course of arresting a person, use more force, or subject the person to greater indignity, than is necessary to make the arrest or to prevent the escape of the person after he has been arrested. Section 23 (1) provides that the arrested person must be informed of the grounds of arrest. Section 26 provides for mode of search of female suspects, namely that they must be searched by another woman with strict regard to decency.

In section 50, the Act goes on to provide for periods available for interviewing a person in custody. The section puts 4 hours as the basic period for interview, but this period may be extended to 8 hours if it appears to the officer in charge of investigation of the offence that it is necessary that the person be further interviewed. The police officer is forbidden frivolously or vexatiously to extend the basic period available for interviewing a person and he is liable to payment of damages for doing so. The police officer may alternatively apply to a magistrate for a further extension of that period after the basis period available for interviewing a person has expired or is about to expire. Section 53 talks of persons under restraint to be informed of their rights which include the right to communicate with a relative. Then there is section 54 which provides for the right by a person under restraint to communicate with

a lawyer, relative, or friend of his choice. Section 55 provides specifically that a person under restraint shall be treated with humanity and with respect for human dignity and that he shall not be subjected to cruel, inhuman or degrading treatment. It further provides that a police officer must take such reasonable action as is necessary to ensure that a person who requests for medical treatment while in custody or who appears to the Police officer to require medical treatment etc. is provided with medical treatment advice or assistance. In case of a child in restraint, section 56 provides that a police officer in charge of investigating an offence in respect of which a child is under restraint shall forthwith after the child becomes under restraint, cause a parent or guardian of the child to be informed that he is under restraint and of the offence for which he is under restraint.

The Act goes on to provide for records of interviewing in s.57, statements by suspects in s.58, power to take finger-prints, photos etc. of suspects in s.59, identification parades in s.60, persons convicted on mistaken identity to be compensated in s.61, medical examination of suspects in s.63, police bail of suspects in s.64, and security for keeping the peace and for good behaviour in s.70. There are of course also the elaborate provisions concerning the procedure at the trial of the accused. I may refer to them in more detail later if space allows.

Monitoring and Control Measures

It can be seen in all that I have set out above that there are elaborate provisions in the law of Tanzania regarding the treatment of prisoners under arrest or awaiting trial. That is the position as far as the law goes. But what is the actual practice? It is not surprising to find that a great part of these rules regulating the actions of authorities, especially the police, on people in custody are not followed. Even worse is the fact that there is no effective way of monitoring whether the rules as set out in the above paragraphs are being observed or not and what steps are taken against the breach of them.

It is submitted in this paper that ways and means of monitoring and controlling the actions of authorities dealing with offenders in custody should be found and applied to combat any breach of the set down rules. Right now many people are tortured by the security forces in order to make them disclose facts which may lead to their conviction in court. It is not easy to set out examples of torture cases. But there have been extreme cases of torture which have led to prosecution of the torturers culminating in the torturers conviction and imprisonment. There were the famous Mwanza region and Shinyanga region cases in northern Tanzania in which suspected offenders were tortured to death or permanent disability. This led to the prosecution of the torturers who were security forces of the government (*vide* Republic and others vs. Ihuya as an example.) There was also the case of a bank employee who was suspected of having collaborated with Defence Forces personnel to steal almost a million shillings from the bank. The bank employee survived the torture but he was castrated and rendered permanently impotent to date. The torturers were successfully prosecuted and sent to jail.

The above analysis clearly shows how committed the government is in ensuring that the rules with regard to treatment of offenders in custody are followed by everyone involved in the handling of offenders. Unfortunately it is not easy to get concrete evidence in each case where torture or maltreatment of offenders is in issue. It is therefore the exception rather than the rule to find any action being taken against offenders of the rules regarding the treatment of suspected persons in custody. It is submitted here that a system should be devised to ensure that the rules on treatment of persons in custody are followed and that those who break them are punished accordingly. It may not be easy to devise such a system because of the secret nature of the breaches. The prisoner is dealt with in private such as in a prison room or a Police cell. This makes it difficult for anyone to get evidence of maltreatment or torture because the wrongdoers (those breaking

the rules) would ensure that they hide all that which they do to the prisoner. Even if the prisoner attempts to provide evidence of his torture or maltreatment, he may not get very far in this, because he is likely to be contradicted by very responsible officers, and he is unlikely to be believed by anyone because he is generally taken to be of bad character. But despite these apparently insurmountable impediments a system could be devised which would ensure that breakers of the rules are caught. It is quite possible, for example, to put in every place where suspects are kept welfare officers whose job is to monitor and watch the treatment of offenders in those places. The system could provide that no dealing with the prisoner is allowed except in the presence of such welfare officer.

Court Procedure

I said above that there were very elaborate rules and procedure of dealing with an accused person when taken to court. I do not intend to elaborate this point more than to say only a few words about it because I believe in every country there is such a procedure and rules. If I were to go into detail about procedure in a court trial of a prisoner, I would be missing the theme of the main topic in this paper which is not to write a paper on the criminal procedure code of my country. Suffice it to say, therefore, that the court procedure in the trial of offenders is virtually impeccable and is out of necessity followed to the letter because of the safeguards involved such as the public glare and the appeal court which tend to ensure compliance with the rules rather than breach of them. I will now go on to examine the position in the case of prisoners who are serving a sentence of imprisonment.

Treatment of Convicted Offenders

Just like the Constitution of Tanzania and the Criminal procedure Act, there are elaborate rules with regard to the treatment of convicted prisoners to be found in the Prisons Act of 1967 (Act No.34 of 1967). Like in the case of the rules provided in both the Constitution and the Criminal Procedure Act, the rules set out in the Prisons Act are never followed to the letter for similar reasons as those I have tried to show in the case of the other legislation. I will set out in a concise form some of the rules in the Prisons Act to demonstrate what I am going to discuss in the following paragraphs.

Section 13 of the Prisons Act requires prison officers to use such force against a prisoner as is reasonably necessary in order to make him obey lawful orders which he refuses to obey or in order to maintain discipline in prison.

Section 14 requires the use of reasonable force in the exercise of the power to take photographs, fingerprints etc. of a prisoner.

The corollary to these two sections is that excessive force is prohibited. Then there is section 20 which talks of Medical officers to be attached to each prison and sections 21 which provides for the medical examination of prisoners, and in particular the examination is required to be daily for those prisoners in solitary confinement or hospital or reported sick.

The Act goes on to provide in section 33 for punishment of prisoners for prison offenders. But section 35 gives the prisoner a right to apply for review of his case by the Commissioner of Prisons. In case of persistent offenders against prison regulations, a Magistrate is empowered to punish them and such prisoners are to be brought before the Magistrate. That is the import of section 36. Section 37 provides for the prisoner to be given an opportunity to be heard, and section 38 requires medical examination before punishment, and no corporal punishment is to be carried out unless the prisoner has been certified to be medically fit to undergo it (section 39(3)).

Then there is part IX the Act talking about privileges of prisoners and remission of sentence. This is elaborated further by providing in section 44 that facilities for worship according to the religion of a prisoner must be made available. More and more privileges are given in the following sections such as privileges to receive and send letters and to receive visitors contained in section 45, postage stamps for letters of

prisoners to be borne by the government in section 46, remission of 1/3 of the sentence for good conduct and industry in section 49. Also there is review of sentences by the President on the report of the Commissioner of Prisons in section 51, removal of sick prisoners to hospital in section 53 and training and treatment and employment of prisoners in section 61. The Act goes on to provide for women prisoners to be only employed on labour suitable for women in section 63. Then there is provision for medical officers to excuse employment i.e. the doing of any work and in other cases to allow only light labour for a prisoner. This is contained in section 64. Section 65 talks about clothing, bedding and dietary scales for prisoners, and section 66 talks of payment of gratuities by the government to prisoners in accordance with rates prescribed.

With regard to the confinement of convicted criminal prisoners, section 67 requires that they be confined in cells or wards which are to be illuminated at night. There is also provision in section 72 for persons sentenced to short terms of imprisonment (up to 6 months in all) to opt for extra mural penal labour in lieu of imprisonment.

Unconvicted and Civil Prisoners

There is also Part XII which deals with detention and treatment of unconvicted and civil prisoners. Section 75 provides for segregation of civil and unconvicted prisoners from other classes of prisoners. Section 76(1) provides for the maintenance of unconvicted prisoners from private sources in that the prisoners may purchase food, bedding and necessaries from private sources. Subsection (4) of section 76 provides that civil or unconvicted prisoners are not to be given prison clothing or to be compelled to wear the same. And subsection (5) of section 76 provides that a civil prisoner (debtor) may be issued with a bedstead or be permitted to supply himself with one. From section 76 we move to section 77 which states that civil and unconvicted prisoners shall be required to keep their cells, precincts of cells, furniture, clothing and utensils clean; other employment may be given to them at their own request. There is also section 80 which states that where a prisoner on completion of his sentence is discharged from any prison situated in an area other than that in which he usually resides he shall be provided at government expense with (a) a travel warrant to his home, and (b) subsistence allowance for the period of the journey.

Summing-Up

We can see from the above provisions of the Prisons Act 1967 that there are quite elaborate regulations regarding the treatment of convicted prisoners and unconvicted or civil prisoners. Unlike in the case of Police officers dealing with the suspects of crimes by way of investigation, however, there is reasonable compliance of the prison regulations or rules by Prison Authorities. The reason for this different behaviour is not far to find. Whereas in the case of the Police there is always the desire to gather evidence to be able to obtain a conviction, there is no such desire in the case of the prison authorities whose only interest is to see that whoever comes as a visiting justice to the prison will be able to see and observe good administration of the prison. That does not however mean that there are no breaches of these regulations. Breaches are bound to be there because of the human factor and also because of problems of shortages which may lead the prisoners to live a very hard life in prison. Breaches occur in the area of diet which in most cases is well below the minimum standard required by law. Also sometimes politics play a role in maltreatment of prisoners in prison to an extent of giving very inhuman punishments. In such cases the prison authority is impotent to do anything because dictatorial and unlawful orders may be issued at a very high level in the government. It is therefore important that everyone including politicians are educated on the standard Minimum Rules for the Treatment of Prisoners and on the general rules of treatment of prisoners in any country to impress on them the importance of abiding by such rules. In a recent informal discussion on thieves and

robbers at one gathering at the home of a bereaved family, one old man was heard to remark that habitual criminals such as habitual thieves, habitual burglars or robbers should be executed secretly in prison to rid the society of such bad and troublesome elements. But when one of the participants who happened to be the Chief Justice of Tanzania pointed out to the first speaker that his statement could not be convincing to the speaker if the habitual criminal in question were his own son or close relative, the first speaker had to admit that he would not want his suggestion to apply to his son or close relative. The Honourable Chief Justice pointed out to him that he (the first speaker) would not think of secretly poisoning his notorious son even if there were no danger of being discovered by the law enforcers. The first speaker admitted quite frankly that he would do nothing of the sort and that he would put up with his robber – son or thief – brother for as long as he lived. This was a typical and indeed classical example of how education of a person on a particular subject can change that person's attitude towards such a subject.

It is not easy even in the case of prisons to monitor adherence and compliance with the prison regulations as provided by the Prisons Act. But I am confident that a way can be found to deal with such a situation, for, where there is a will there is a way, as the saying goes.

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Corrections for Youth Offenders: The Philippines Experience

*by Delia T. Jimenea**

Introduction

In the Philippines, the correctional system is one of the pillars of the criminal justice system that is responsible for rehabilitating the deviant behavior of offenders. The correctional system is divided into three (3) sub-systems – each system caters to different offenders and administration, to wit:

1) National prisoners are under the general supervision and control of the Bureau of Prisons, an office under the Ministry of Justice. The Bureau operates one exclusive institution for female offenders known as the Correctional Institution for Women. Male offenders are placed at the National Penetentiary or the New Bilibid Prison in Muntinglupa, Metro Manila and in seven (7) other prisons and penal farms. Offenders with penalties of more than three (3) years are confined in these prisons and penal farms.
2) Provincial prisoners with penalties of three (3) years and below are confined in the provincial jails located in 72 provinces all over the country. These jails are under the Ministry of Local Government and are administered by their respective provincial governors assisted by the wardens.
3) City/Municipal prisoners are confined in City/Municipal jails which are administered by the Integrated National Police (INP), pursuant to Presidential Decree No. 765 dated April 8, 1975. the PC/INP Director General provides the direction, control and supervision of the city/municipal jails and all other prisoners arrested or apprehended by the INP. The PC/INP orientation, time and commitment is geared more toward law enforcement rather than rehabilitation.[1]

A need to integrate these jails and prisons under a central body was felt since their present set-up creates problems in the integration of resources and the application of a unified treatment and rehabilitation programme. The Ministry of Justice and the Technical Panel on Crime Prevention and Criminal Justice of the National Police Commission proposed a bill for approval of the defunct Batasan Pambansa (Parliament) that would ensure and facilitate effective supervision of correctional services, development of effective programs and services, maximization of existing resources, implementation of standards and policies in the handling of offenders and effective delivery of services.[2]

Various government, civic and religious organizations and concerned individuals are involved in correctional work in the Bureau of Prisons. They are helping in the rehabilitation of offenders through spiritual, economic and educational programmes. The Ministry of Education, Culture and Sports extend academic and vocational classes inside the institution. Income generating projects funded by private agencies involv-

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[1] Source: Draft National Strategies on Criminal Justice System, Technical Panel on Crime Prevention and Criminal Justice of the National Police Commission.

[2] *Ibid*

ing offenders are on-going inside the institution, such as handicraft projects.

Main Laws Related to Diversion Service

The awareness of the damaging effects of temporary or prolonged institutionalization upon the offender led to increase use of diversion service and availability of other treatment alternatives outside of the correctional system.

The following laws were promulgated as diversionary measures:

1) *Adult Probation Law or Presidential Decree No. 968* which took effect on January 3, 1978 provides for first time offenders who are 18 years of age or over who are sentenced with imprisonment of not more than six (6) years and one day, the opportunity to rehabilitate themselves in the community and become again its law abiding and productive member.
2) *Republic Act 6425 as amended otherwise known as the Dangerous Drugs Act of 1972* provided for the confinement, treatment and rehabilitation of a drug dependent in a center without criminal liabilities, if he voluntarily submits himself for such. In the event however, that he is charged with an offence and is found out at any stage of the proceedings to be a drug dependent, all proceedings shall be suspended and he is referred to the Dangerous Drugs Board (DDB) for medical examination. If determined to be a drug dependent he is committed to a center for treatment and rehabilitation through the court. Proceedings of his criminal case shall be continued after his release from the center. For first time minor offender the court may defer sentence and place him on probation or order his confinement, treatment and rehabilitation in a center under the supervision of the DDB. Upon release from the center on order of the court he is referred to the Ministry of Social Services and Development for after-care and follow-up for a period of not exceeding 18 months, as provided in the DDB Board Regulation No. 7 dated November 11, 1982.
3) *The Board of Pardon and Parole* is an advisory body for executive clemency cases. The Board adopts a compassionate policy in carrying out its responsibility of releasing offenders on parole. Special consideration is given to the youth offender, aged, infirm and the physically handicapped prisoners.
4) *Presidential Decree No. 603 as amended otherwise known as the Child and Youth Welfare Code*

The youth offender under the code "is a child, minor or youth, including one who is emancipated by law who is over nine (9) but below eighteen (18) years of age at the time of the commission of the offence". The Code further spells out the rights and responsibilities of the child and the parents and the duties of the law enforcement agency concerned. The law provides that a youth offender immediately after apprehension shall be referred for physical and mental examination and be committed to the Ministry of Social Services and Development or detention center in the province or city which shall be responsible for his appearance in court.

The youth offender passes through the proper proceedings and if the court finds out that he has committed the act charged against him, the court shall determine the imposable penalty. Instead of pronouncing judgement of conviction, the court suspend all further proceedings and shall commit the minor to the care and custody of the Ministry of Social Services and Development or to any training institution operated by the government or duty licensed agencies or any responsible person until he reaches the age of 21 years or sooner as the court may deem proper after considering the report of the agencies/person concerned under whose care the minor is committed.

Furthermore, the Code mandates the Ministry of Social Services and Develop-

ment to establish regional rehabilitation centers for youthful offenders in collaboration with the local and non-government entities. (Please See Appendix A)

Ministry of Social Services and Development (MSSD) Programs and Services to Youth

The MSSD through its Bureau of Youth Welfare (BYW) has developed and implemented the Integrated Human Resource Development Program for Youth (IHRDPY) which is aimed in providing the youth with better quality of life and developing their potentials for national development.

The programme has four components which respond to the social, economic, physical, intellectual, moral and spiritual development needs of the youth. Such programme services are either preventive and developmental, early detection and intervention, rehabilitative, and post rehabilitative in approach depending on the needs and situation of the youth.

The preventive and developmental components of the programme are addressed primarily to the out-of-school youth and other needy and disadvantaged youth. The early detection and intervention components is for the pre-delinquent, abandoned, neglected, abused and exploited including street children. The objective of the programme is to detect at an early stage exploitative and hazardous conditions which will expose the youth to physical, emotional, moral and psychological risks.

The third component is rehabilitative which is the treatment and rehabilitation of youth with special needs such as the youth offenders, mentally retarded, the emotionally disturbed and the unwed adolescents. The treatment and rehabilitation of these minors takes place in either the community under close supervision of the social worker with the co-operation of the parents or guardian, or in an institution for those needing such kind of service.

The post rehabilitative component is implemented through after-care and follow-up service for released minor drug dependents and youth offenders from treatment and rehabilitation centers. This is done through close supervision of the social worker with the co-operation of the parents or guardian to ensure that the minor will continue his growth and development.

The programme is implemented nationwide through the regional, provincial and municipal offices of the MSSD by the youth welfare specialist, youth welfare officer, youth development worker and the social worker. (Please See Appendix B)

Services to Youth Offenders

MSSD community and residential-based programmes and services are made available for the treatment and rehabilitation of youth offenders.

Services to youth offenders are integrated in the IHRDPY. It provides preventive and developmental services with emphasis on the utilization of community-based services as a major tool in the helping process. The programme also calls for a level of intervention addressed to the law enforcement agencies, courts and other agencies involved in the programme and to the individual youth who are in danger of becoming a "career criminal" if not properly reached.

Delinquency is viewed by the MSSD as a manifestation of an unwholesome relationship between the youth, family and community, thus as a community phenomenon the solution of which is likely to be found in the community.

Among the community-based programmes and services are:

1) Diversion Service – the social worker immediately provides intake service to the youth who come in contact with the police and/or courts. Her major role is to divert the youth, especially those with less serious offence, from the court system and work for his release to the custody of the family, guardian or a responsible person in the community. This action requires the joint decision of the police, court, the youth and his family. Once diverted, the youth and

his family will be involved in the MSSD community-based programme as provided for in the IHRDPY.

2) Informal Probation – this is related to diversion wherein the court requires the youth offender who does not undergo trial after he admitted the offense to report regularly to the MSSD social worker for supervision on a pre-scheduled basis for a given time under the condition of the court. The social worker then provides casework service to the youth and his family and refer the youth to the Youth Development Worker (YDW) for integration to existing youth groups in the community being supervised by the YDW.
3) Probation Service – the probation service for youth offenders starts after formal adjudication. Instead of committing him to the regional rehabilitation center, the court release him to the custody of his family, guardian or any responsible person in the community. He is directly supervised by the MSSD until such time that the court terminates the case upon proper recommendation of the MSSD social worker. While on probation, the youth follows the treatment plans drawn by him, his family and social worker. Likewise, referral for job placement, provision of capital assistance to start an income generating project is made available upon his request and medical and psychological services are extended to supplement the efforts of the social worker.

Although MSSD believes that a community-based programme is the best treatment and rehabilitation for youth offenders, it does not preclude the fact that there are youth who need to be institutionalized, separately from adult offenders such as those with threats on their lives/safety in the community and/or danger to peace and order, or if they could not benefit from custody probation service as nobody in the community is willing to take on custody and supervision.

The first national institutions established by the MSSD to cater to youth offenders on suspended sentence are the National Training School for Boys now known as Vicente Madrigal Rehabilitation Center (VMRC) in Tanay, Rizal and the Marillac Hills for girls in Alabang, Muntinglupa, Metro Manila. With the promulgation of PD 1565 providing for a national programme for social services and development for the Filipino children and youth, the MSSD expanded its rehabilitation centers to nine (9) regions in the country. The establishment of the regional/community based residential treatment facility has decongested the National Training School for Boys while at the same time bringing the offenders closer to their families. Parents/relatives could easily visit them due to the short distance involved.

The goal of the Regional Youth Rehabilitation Center programme is to rehabilitate its residents in relation to personal re-evaluation of behaviour and attitudes which have been deemed counter productive and destructive by the values of society and the minor offender himself. Specifically, it aims to develop the capabilities and abilities of the minor offender to effectively assess his potential for growth and development; motivate and assist him to develop realistic goals and to achieve these goals by a socially approved means; and develop his sense of responsibility toward family members and the community as a whole.

To achieve the above-mentioned objectives, the center carry out the following integrated programmes and services, to wit:

1) Social Services – this is primarily carried out by the social workers of the center. The worker plays a vital role in providing comprehensive social services to the youth and his family in co-ordination with the center rehabilitation team and the field workers. The services includes intake study, casework and groupwork, co-ordination with the court,

law enforcement, counsels, preparation of social case study and progress reports to the court, court appearances and case conferences.

While the center social workers work closely with the minor, the social workers in the field contact and work closely with the family, the victim and his family and the community, in preparation for the eventual discharge and reintegration of the youth offender to the family and community. Casework service and other services are provided depending on the needs and problems that may have surfaced while working with them.

2) Health Services – this service is provided to the Y.O. upon his admission and while in residence. Medical examination, diagnosis and treatment, proper health care and dental services are provided as part of the service. When the center has no physician, dentist or nurse in residence, purchase of services of these professionals are resorted to or local health centers and/or hospitals are utilized for the purpose.
3) Homelife Services – the daily living chores related to the physical care and well-being of the residents. The cottage wherein they are staying is their home and the value of cleanliness and a proper work attitude and habits are instilled in them by the houseparents. Thus cottage/room upkeep, laundry and other household chores are part of their daily living. This service also includes recreation and social activities, guided group discussion on concerns and development issues which affect their daily living. With their experience in homelife activities they are already ushered to vocational skills and job related opportunities and productivity projects.
4) Psychological and Psychiatric Services – the services that assist other desciplines in the therapeutic handling of residence in care, such as administration and interpretation of oral and written tests to determine degree of intelligence, vocational interest, occupational preferences and attitudes of minor offenders. Interviews with the Y.O. are also undertaken to appraise his personality structure pertinent to guidance and counselling. Results of these are discussed in a case conference and used by the rehabilitation team in the planning of activities with the Y.O. and in the handling of his behaviour and attitude.
5) Educational Services – residents are motivated to continue their academic schooling and in the absence of a school inside the institution, they are enrolled in the school located in the community. Special education for those who do not know how to read and write and for slow learners are also provided for in the center by volunteers.
6) Dietary Services – every resident is given a chance to work in the kitchen and taught proper food preparation and management.
7) Practical skills and Job Placement – a non-formal vocational training in practical skills is made available to the residents along economic productivity either for open or self-employment upon discharge from the center. Training provided offers welding, tailoring, bakery, piggery, agro-farming, handicraft and janitorial services. School uniforms and other clothing needs of the residents are made by the trainees in the Training Course as a requirement in the completion of the training.
8) Self-Employment Assistance – residents who are interested in undertaking income generating projects in the Center such as piggery, poultry, etc., are provided with capital assistance to start such projects. Project management and simple bookkeeping procedures are taught and income generated from the projects are deposited at the administrative office

for safekeeping. A simple banking procedure is followed and withdrawals are only made when they need to buy other personal needs. Remaining savings are given to the residents upon discharge from the Centre.

9) Physical Fitness and Sport Development – daily in-door and out-door sports activities are undertaken by the youth to promote camaraderie and sportmanship. The activity is also a venue where they channel their excess energies in a healthful manner. Sport competitions with other youth in the community are also arranged to foster closer relationship with the community.
10) Socio-Cultural and Recreational Activities – residents are given a chance to develop and harness their talents in dramatics, literary arts, dancing and singing. They are also given the opportunity to display such talents acquired on special activities at the centers, during community affairs and in other civic or religious activities.
11) Religious Services – separate weekly religious services and instruction to all residents with consideration to their affiliation, such as Bible study, catechism and religious retreat, are also made available to the residents.

Some privileges are also extended to the residents such as:

1) One day or overnight out-on pass – this is extended to the youth offenders who have shown good/positive behaviour while in the center, during Christmas or important family affairs and emergency cases.
2) Work Pass – this is being piloted by the VMRC. Minors awaiting discharge are given the privilege of joining the group of residents rendering janitorial services at the MSSD office in Manila for a period of three days under the supervision of Center staff.
3) Family Day – this is held once a month on a week-end on which parents, family members and relatives come and spend the whole day with the minor. There is an open-house and a programme is prepared by the minors themselves for their visitors. This activity enables the minor and his family maintain and strengthen their ties and for the parents themselves to find out for themselves the kind of treatment and rehabilitation their children are undergoing.

When the youth offender has shown proper human values, change of attitude and behavior after a given period, a final report is submitted to the committing court for proper disposition and/or dismissal of his case. Upon discharge, an after-care and follow-up service is provided by the field worker. Plans are reviewed and other services under the IHRDPY are provided for his re-integration to the community or services of other agencies/entities existing in the community are sought. (Please See Appendix C)

Staff Complement and Training

A Regional Rehabilitation Center for Youth is staffed with a Head Social Worker acting as Center Director, Social Workers, Houseparents, Psychologist and Clerk, security guards and a driver as support staff. Use of volunteers or purchase of services are part of the Center's programme.

In order to effectively carry out the Center's programmes and services and to provide the youth with a meaningful and productive experience, the staff, especially the social workers, are trained along with other field workers in the handling of youth offenders' cases.

An 8-day training is provided geared toward enhancing their skills and enriching their knowledge in working with Y.O. The course content covers: rules, regulations and procedures of the pillars of the juvenile justice system; understanding the psychodynamic behavior of the Y.O., skills in interviewing, recording and establishing

rapport with the client and family; and treatment and rehabilitation modalities.

Built into the training programme is a three-month on the job training. Workers are fielded in their respective areas and put into practice what they have learned during the training and further enhance their skills in working with the Y.O. and their families. Another is a three-day evaluation workshop wherein the workers share their experiences and insights gained in actual work with the Y.O. Likewise, the workshop is also a venue in determining the effectiveness of the training in relation to actual programme implementation.

In addition, the MSSD-BYW programme staff conducts a regular programme audit to determine the effectivenss of the programme and management of cases. The output is utilized in providing technical assistance to further improve and strengthen social service delivery.

Collaboration with Other Agencies

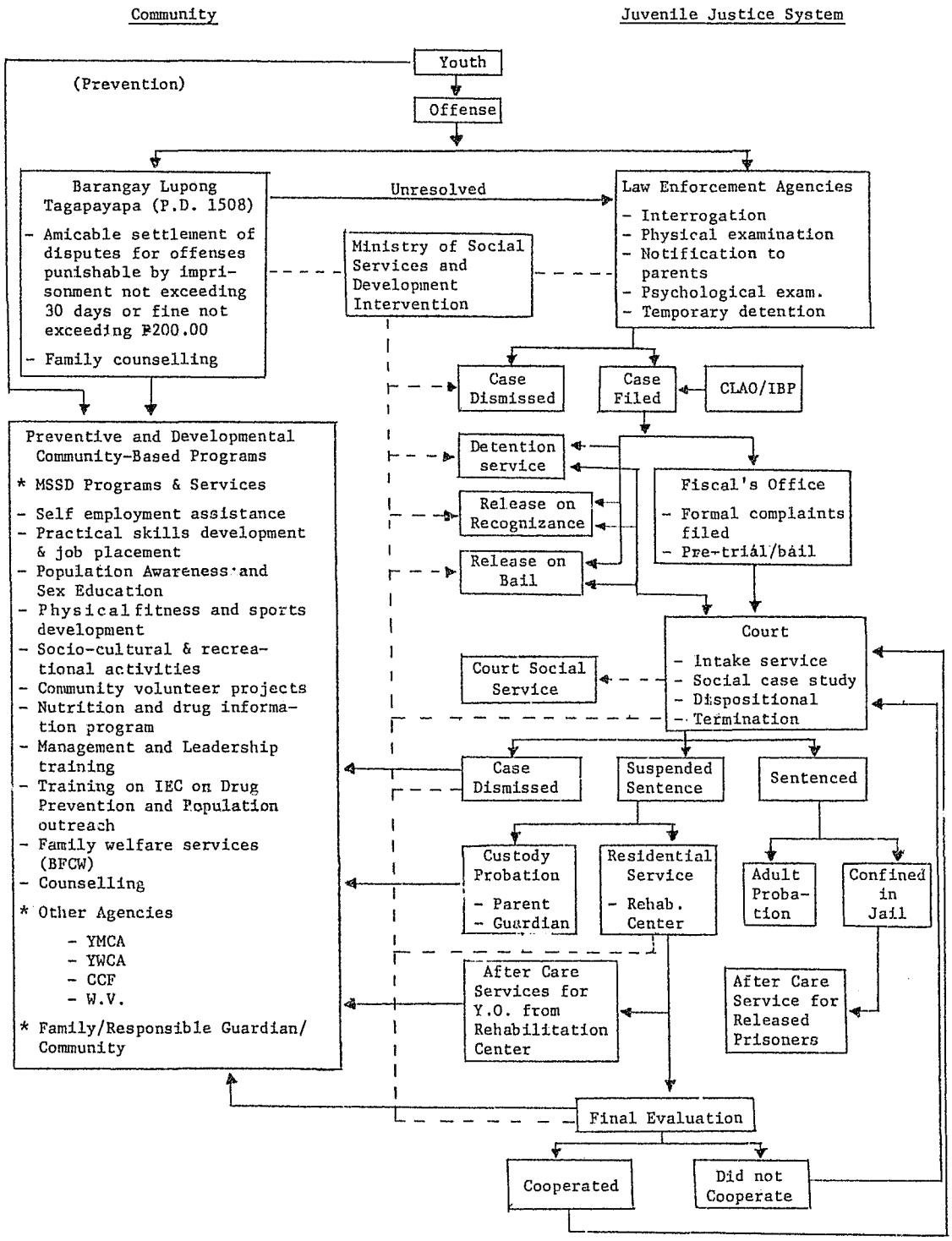
The MSSD does not have the monopoly of services for youth with special needs. There are other agencies, government and non-government, that provide social services to youth offenders. As an agency tasked with licensing and accreditation of youth serving agencies, the MSSD has been working closely with them in providing technical assistance in either their residential and community-based programmes and services to ensure effective delivery of services.

Likewise, dialogues with the different pillars of the juvenile justice system have continuously been conducted to further improve and strengthen collaboration, trace problems and gaps and discuss solutions/measures to problems identified to ensure speedy delivery of justice and services to youth offenders.

In spite of all these, however, there is still a lot to be done and improvements to make to provide a wholesome and productive experience for this group of people, so that eventually they become law abiding citizens and productive members of society.

APPENDIX A

Corrections for Youthful Offenders



APPENDIX B

Integrated Services for Youth

COMPONENT	: Preventive	Early Detection/Intervention	Rehabilitation	Post Rehabilitation
CLIENTELE	: Out-Of-School Youth Needy Vulnerable Youth	Pre-Delinquent Minors Abandoned/Neglected/ Abused/Exploited including street children	Youth Offenders Mentally Retarded Unwed Adolescents	Released Minor Drug Dependents and Youth Offenders
PROGRAMS AND SERVICES	: Self-Employment Assistance Practical Skills/ Job Placement Population Awareness and Sex Education Sulong-Dunong Drug Information Nutrition Education Socio-Cultural and Recreational Activities Physical Fitness and Sports Development Leadership and Skills Enhancement Workshops such as: * Management and monitoring of Group Projects and Activities * IEC on Population outreach * IEC on Drug Dependency among Youth	Outreach Project Diversion Service	Community and Residential-Based Services * Regional Rehabilitation Centres * Marillac Hills * Elsie Gaches Village * Nayon Ng Kabataan	After-Care and Follow-up Service for Released Minor Drug Dependents and Youth Offenders
SOCIAL WORK INTERVENTION	: Group Work/Community Organization	Casework/Group Work/ Community Organization	Casework/Group Work/ Community Organization	Casework/Group Work/ Community Organization
IMPLEMENTORS	: Youth Welfare Specialist Youth Development Officer Youth Development Workers	Youth Welfare Specialist Social Worker	Youth Welfare Specialist Social Worker	Youth Welfare Specialist Social Worker

APPENDIX C

Flow Chart of the Treatment and Rehabilitation Process