

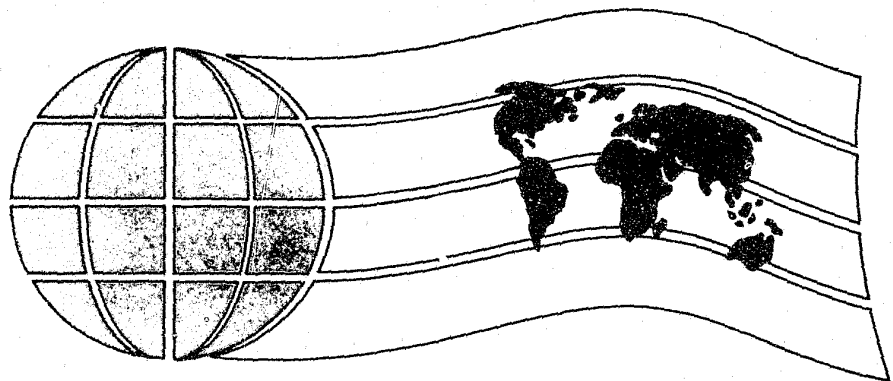


U. S. Department of Justice
National Institute of Justice

International Summaries

A Collection of Selected Translations in
Law Enforcement and Criminal Justice

Volume 4



a publication of the National Institute of Justice

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A Collection of
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Volume 4

National Criminal Justice Reference Service

August 1980

**U. S. Department of Justice
National Institute of Justice**

National Institute of Justice

Harry M. Bratt

Acting Director

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INTRODUCTION

This volume, the fourth in the series of International Summaries published by the National Criminal Justice Reference Service (NCJRS), describes diverse aspects of international criminal justice of interest to practitioners and researchers in the United States.

The International Summaries series affords American criminal justice professionals and students the opportunity to make cross-cultural comparisons of various aspects of law enforcement and criminal justice. For example, this volume enables researchers to compare the definitions, incidence, and sanctions for white-collar crime in six countries with those in the United States. Similarly, although our own concept of justice seems far removed from justice as practiced in Poland and South Vietnam, these countries have adopted procedures involving lay judges--a topic of current interest in the United States.

Documents are selected for the International Summaries series on the basis of their relevance to topics of current interest to the American criminal justice professional, timeliness, and substantive nature. Selections are translated and/or summarized from books, reports, manuscripts, or articles in reputable, scholarly foreign journals. NCJRS maintains exchange agreements with 80 foreign organizations that conduct criminal justice research or issue criminal justice publications. In addition, NCJRS continuously attempts to identify additional document sources and to establish liaison with government or private agencies and commercial publishers.

The 31 summaries in this volume originated in 12 nations--Australia, Belgium, Costa Rica, Finland, France, India, Israel, Italy, Jamaica, The Netherlands, Switzerland, and West Germany. Collected from journals, anthologies, pamphlets, symposia, and conference proceedings, the summaries offer a wide range of international opinion and discussion on such themes as white-collar crime, sentencing, corrections, and law enforcement. Although most of the documents represented in this volume are translations as well as summaries, there are also several summaries of English-language publications produced abroad in an effort to make this significant segment of criminal justice literature more accessible to criminal justice professionals and students in the United States.

A group of summaries dealing with white-collar crime make up the first part of volume. Following three general discussions that focus on definition, criminological problems, research, and social aspects, specific geographically oriented summaries trace the development and significance of white-collar crime in Austria, India, Switzerland, and Australia. The section concludes with a comparison of white-collar crime in the United States and West Germany and a discussion of a West German police program to counsel citizens on fraud prevention.

The next section presents an international review of crime and criminal justice. The first summary discusses the spread of crime beyond national

borders, and subsequent articles describe crime trends in Finland and Guyana. Communist nations are represented in summaries of crime prevention in the Soviet Union, the administration of justice in Poland, and the new penal system of South Vietnam. Crime as viewed from the municipal perspective is the subject of summaries from West Germany and The Netherlands, and the concept of insurance protection against violent crime is explored in a Belgian article.

The current international interest in the fields of sentencing and corrections is reflected in the next group of summaries. Various aspects of sentencing--individualization, disparity, and suspension--form the basis of summaries from Switzerland, Australia, and France. A discussion of the development of prison sentences in The Netherlands follows. The corrections area is addressed in articles from Costa Rica, Switzerland, and France. Specific themes include evaluation of training for prison staff members, community participation in probation and conditional release programs, the effect of penal convictions on the police record and curtailment of rights, and treatment of inmates in medium- and minimum-security prisons.

The final section contains a series of summaries on various law and law enforcement issues. A West German article discusses the assistance--and hindrance--the police can expect from the public and the media, and a subject of continuing interest, terrorism, is addressed in a summary from Israel. The German Federal Data Protection Law of 1977, intended to protect citizens from abuses in the processing, storage, and use of personal information, is described in a summary of a government pamphlet. The final article in the volume presents the results of an opinion poll of West German police officers on the organization of the police force and the functions of individual police officers.

Publication information appears on the title page of each summary for readers who would like to refer to the full-length documents. All of the documents represented in this volume are also available from NCJRS on inter-library loan. When requesting document loans, be sure to include the foreign language title. Requests for document loans should be directed to:

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The efforts of several staff members are worthy of note: James Brantley identified the documents for translation; Monique Smith coordinated the translations; John Slone assumed responsibility for final editing, layout, production, and the introduction. Cover design is by Susan Carpenter.

--Marjorie Kravitz
Supervising Editor

Part I

White-Collar Crime

White-Collar Crime—Problems of Definition and Lines of Research

By Giuseppe di Gennaro and Eduardo Vetere

Introduction

Despite a few isolated "pioneers" who anticipated the emergence of white-collar crime, society has become aware only recently that delinquency is not limited to police and court reports, that criminals may be found outside of prisons, and that incalculable social harm is being done by prestigious and respectable individuals and organizations who enrich themselves freely, with almost no interference from public authorities or their victims.

Even criminologists were late in reaching the conclusion that white-collar crime is by and large the most harmful of violations and deviations, not only because it is the most costly, but also because it threatens and destroys faith in the bases of economic life, and because there appears to be no adequate defense against it.*

The Problem of Definition

Scholars have suggested two different approaches to solve the problem of defining white-collar crime. Some have proposed ad hoc definitions from time to time based on different goals, but without regard for society's demand for justice against white-collar criminals. Others have preferred not to define, but to proceed by

"La criminalità economica--Problemi di definizione e linee di ricerca" (NCJ 52982) originally appeared in Quaderni di Criminologia Clinica, n. 4:503-549, October-December 1977. (Quaderni di Criminologia Clinica, Via Arenula, 71, Rome, Italy) Translated from the Italian by Alexis Mazzocco.

*S. Dinitz, R. Byrnes, and A. Clarke, Deviance: Studies in Definition, Management, and Treatment (New York: Oxford University Press, 1971), 111.

analytic methods. They have identified and treated certain typologies of behavior, assuming that they are allied to the concept of white-collar crime, but disregarding the fact that this sort of choice is based on the unproven presupposition that they fall within the limits of a given definition.

Studies conducted on the basis of these two approaches group serious and scandalous behavior with marginal and negligible acts, and rich and powerful subjects with poor ones. The resulting confusion favors symbolic variety in terminology. Numerous terms appear in the literature, including such noteworthy designations as criminality of barons, criminal capitalists, criminality of gentlemen, occupational crimes, criminality of corporations and bureaucracies, white-collar delinquents, business crime, economic crime, and gilded crime.

In referring to white-collar crime as a criminal phenomenon consisting of various and complex means to enrichment, and their distortion, it is necessary to identify a concept that encompasses the varieties of these transgressions in one homogeneous category of "undesirables."

The problem of definition normally is raised after the object to be defined has been identified. A definition is, in fact, a description of the features of a particular entity. Once the object has been identified and a description formulated, it is possible to arrive at a nomenclature which serves as an artificial means of referring to the defined object. However, an unusual situation exists when white-collar crime is considered: a nomenclature has been formulated (with a few variants), but since the object has not yet been identified, it has not been defined.

In the area of white-collar crime, therefore, the problem of definition is a question of substance. This paper is intended to contribute to the identification of white-collar crime. It is in this sense that the word "definition" is used.

Scope of the Study

A precise formulation of the scope of study must be attempted to overcome the vague nature of both the formulas designed to identify white-collar crime and the means for such identification. Formulating this scope is indispensable to the goal of providing sociocriminological and legal research with a homogeneous object of study. It is also indispensable, therefore, to those responsible for legislative decisions.

The first step in this task is a review of the imposing body of literature on white-collar crime. An international bibliography on the subject containing 523 citations was published in Sweden

in 1976.* Other important bibliographies have appeared in Germany and in the United States,† and the number increases if bibliographies included in works dedicated to white-collar crime are considered.‡ Despite such a vast body of work, it is astonishing to note that, according to various authors, not the slightest degree of agreement has been reached on the definition of the object of all this study.

A Concept of White-Collar Crime

An examination of the literature and of conference proceedings reveals an extremely important fact: laymen and experts alike perceive an area of illegal activity that the longstanding penal tradition, and the more recent criminological tradition, have neglected almost totally.

This observation is based on the premise that the defense of fundamental individual and social rights previously has been directed almost exclusively toward the punishment, under the penal system, of various types of injurious or harmful behavior, excluding the fraudulent and sophisticated activities of certain persons who enrich themselves at the expense of society.

Their impunity is sometimes de facto, since the appropriate penal sanctions are not applied, but more often the impunity is legal because their acts have not been criminalized.

This concept nevertheless is still vague inasmuch as it neither has been developed with sufficient clarity nor had its scope of interest adequately prescribed to identify an object and a goal for research.

Sutherland's Work

Although Edwin H. Sutherland was not the first scholar to cite the problem of white-collar crime, his work is noteworthy in that it appeared when the time was ripe for popularization of the

*Lisa Stearns, Economic Crime: A Bibliography (Stockholm: Scandina-
vian Council for Criminological Research, 1976).

†Max Planck, White Collar Crime: A Bibliography [in German] (Freiburg Institute, 1975) and Dorothy Campbell Tompkins, White Collar Crime: A Bibliography (Berkeley, California: University of California, 1967).

‡See especially Gilbert Geis, ed., White Collar Criminal, 2d ed. (New York: Atherton Press: 1975) and "Symposium on 'White-Collar Crime,'" The American Criminal Law Review 11, 4 (Summer 1974).

problem.* Sutherland's efforts were directed at reforming the theory of criminal behavior and nothing more, even though this may have implications for social reform.

The elements of his definition of white-collar crime are as follows:

- The subjects are individuals who belong to the upper class or white-collar class, who are businessmen or professionals, and who are respectable or at least respected.
- The illicit behavior entails the violation of formal or implied faith, is carried out in the course of professional activities, or involves the violation of the rules governing professional activities.

As indicated previously, Sutherland's principal intent was to discredit the current theories of criminal etiology. These theories, dating from the early days of criminal anthropology, involved, with varying emphasis, certain biological and sociological factors--pathological heredity, mental disturbances, personality psychopathology, poverty, ignorance, and other deficiencies on the level of social adjustment and social growth. The white-collar criminal obviously lacks any of these characteristics.

Sutherland considered it sufficient to demonstrate, by identifying a typology of author and action, that traditional theories were not subject to generalization and that the theoretical framework which could be generalized was the theory of "differential association." His definition therefore, opened a new and important chapter in criminology. It redeemed this science from an unconscious classist position that had, up to that time, led it to the study of crimes by the "different" and the powerless.

Post-Sutherland Work

Sutherland's thesis produced an immediate and prolonged reaction. The majority of the commentators, instead of building on the rough elements of his definition, criticized it mercilessly. In addition, many attempts were made to improve and complete Sutherland's definition, either by narrowing or broadening its scope, or by proposing other objectives.

*Sutherland's significant writings on white-collar crime include "White Collar Criminality," American Sociological Review (February 1940); "Is 'White Collar Crime' Crime?" American Sociological Review (April 1945); and White-Collar Crime (New York: Holt, Rinehart and Winston, 1949).

Delmas-Marty's definition of white-collar crime presupposes "that at the onset the act is honest, neither false nor fraudulent, and that, when an affair is dishonest from the beginning, it must be considered a 'common crime'."*

In searching for this definition, it is interesting to examine the literature of Western European socialist countries, where the concept of white-collar crime must be approached from a totally different perspective.

Antal Fonyo and Miklos Vermes trace the effect of legislation on white-collar crime in Hungary, dating from the first governmental decree on economic protection in 1948. According to 1971 modifications of the Hungarian penal code, violations of the economic order involve such activities as production and use of materials, credit management, the observance of standards relating to production quality, the socialist distribution system, the system of price controls and consumer protection, and the provision of basic necessities.†

Janez Pecar of Yugoslavia denounces "cases of professional deviance and criminal conduct of individuals who come from certain levels of our society, usually the highest, and who enjoy favorable socioeconomic conditions which assist them in committing acts that frequently constitute fraud and illegal appropriations of various goods."‡

Council of Europe and United Nations Initiatives

Review of the contributions of the Council of Europe and the United Nations reveal that even those organizations are unable to resolve the problem of definition.

Council of Europe. The Council of Europe's first interesting document, taken chronologically, is the proposition of the Eighth Conference of European Ministers of Justice at Stockholm, which was adopted in September 1973 by the Committee of Ministers of

*M. Delmas-Marty, "White Collar Crime" [in French], Review of Criminal Science and Comparative Penal Law (January-March 1974).

†Antal Fonyo and Miklos Vermes, "The Economy and the Law: Aspects of Penal Law" [in French] Review of Criminal Science and Comparative Penal Law (January-March 1974).

‡Janez Pecar, "White Collar Crime and Social Control," International Journal of Criminology and Penology (1974).

the Council of Europe: "The European ministers of justice recommend that the Committee of the Council of Europe designate the European Committee for Criminal Problems study in depth the problem of white-collar crime. This study must be concerned specifically with certain aspects of this type of crime, i.e., fiscal infractions and the problems created by multinational corporations." The committee charged with the task began by submitting a list of infractions to the member nations, and asking them to comment and add to the list if necessary.

Along the same lines, the conclusions of the 12th Conference of Directors of Criminological Research Institutes, released in January 1977, refer to white-collar crime and request the committee to identify appropriate strategies necessary to confront this crime, which is otherwise undefined.

This is a clear preference for the approach described earlier as analytic. A legitimate opportunity to suggest strategies for research or for action seems to be lacking, however.

United Nations. The United Nations brought white-collar crime to the attention of the world at the Fifth Congress on Crime Prevention and Treatment of Criminals held in Geneva in September 1975. The Congress adopted as its theme "crime as business on the national and transnational level, organized crime, white-collar crime, and corruption."

In its deliberations, the Congress suggested that previous definitions of economic crime under the designation "white-collar crime" often have been vague and ambiguous, and indicated that the expression "crime as business" is an appropriate description of activities characterized in a preparatory document. These activities resemble organized crime in that they are carried out with a high degree of preparation, secrecy, and sophistication. Crime as business "is said to be only a part of the more general definition of economic or property crime."

More recently, the United Nations Committee on Crime Prevention and Control, in its session of June-July 1976, returned to the theme of "means to combat special forms of crime." Although it did not address the problem of definition, it did refer to crimes dangerous to national and international economy.

Problems of international white-collar crime cannot be understood outside the context of world economic and political reality. The enormous imbalances in the distribution of world resources among rich and poor countries lead to serious doubt regarding the power of governments and international organizations to develop policies or mechanisms for a just and efficient distribution of those resources.

In May 1974, countries from every part of the world, through their United Nations representatives, agreed that a need existed to establish a more just and rational world system--"A New International Economic Order." They adopted "The Bill of Economic Rights and Duties of States" in the same year.

When the International Convention on Economic, Social, and Cultural Rights took effect in 1976, a new category of human rights was added. It was based on the principle of international solidarity and implied active participation by national governments.

This is the context in which new methods of control against international white-collar crime are proposed and developed. An international code of conduct for multinational corporations is in preparation, along with a definition of international standards of accountability and control. In addition, in 1975 the General Assembly of the United Nations condemned unlawful practices engaged in by multinational or other companies. The General Assembly asked the Economic and Social Council to formulate recommendations to prevent such practices.

These actions have prompted the Sixth Congress of the United Nations on the Prevention of Crime and the Treatment of Criminals, to be held in Sydney, Australia, in 1980, to include on its agenda the theme "Crime and the Abuse of Power: Are Crimes and Criminals Beyond the Reach of the Law?"

Proposals for a Plan To Develop a Definition

A definition is considered valid if it encompasses all aspects of its subject. A review of the literature indicates that what has been proposed thus far fails to meet the goal of encompassing in one sociocriminological category the "undesirables" to which the previously cited concept of white-collar crime refers.

It is worth repeating that the concept produces an insistent demand for justice, a demand which obviously is not satisfied by existing laws.* It is also worth repeating that concrete meaning cannot be given to the concept unless the scope of interest is delimited. If this is not done, advancements in etiological and interpretive studies in this area will be impossible. Accordingly, a specific type of penally proscribed deviation must be defined, and the research must explore the true meaning of the concept.

*F. Ferrarotti, "Participation at a Meeting on 'Functionalism and Correctness of Public Administration'" [in Italian], Justice and Constitution (1977).

The research. The initial research phase involves separating white-collar crime from "criminality for gain," which it closely resembles. The difference between these two types of crime is that ordinary crime is based on fundamentally illicit acts, whereas white-collar crime is based on formally lawful acts. In the former category, this is true even for organized crime, which is based on the economic laws of the market. This distinction introduces the first characteristic element of white-collar crime: the "professional" condition which presupposes and occasions the crime, and which, therefore, recalls the concepts of "occupational" and "special opportunity" crimes.

The assumption that white-collar criminals are always respectable and respected is no longer realistic. This does not mean that respectability and the violation of trust do not characterize implicated individuals such as public officials and well-known professionals.

Examination of the positive aspects of the "intuition" reveals an intent not only to protect society's economic interests, but also to guarantee the true function and dignity of professional activity in modern society.

Regarding economic enterprise, it also must be determined whether a further distinction should be made between activities initiated in a lawful way which deviate on the basis of previously nonexistent intentions, and activities that adopt lawful forms but are abused from the onset.

Another problem concerns the difficulty of translating into meaningful precepts the business and professional conduct which results in white-collar crime when violated. It is obvious that, aside from legislative problems, delicate political problems exist whose solution depends on the socioeconomic system of a country.

The proposed line of research begins with a thorough examination of the vast body of literature and seeks to assimilate, more comprehensively than before, every definition given. Common characteristics should be identified through comparative analysis in order to verify points of agreement among scholars. The most significant and widely accepted research results might also be referred to. These materials should be used to construct research instruments to verify the public's attitudes and opinions, with a view toward allowing the elements of the concept to surface.

In this way it would be possible to define the criminological object, which is one of the principal points for building a foundation for subsequent research on the prevention, control, and repression of white-collar crime.

Subsequent research might begin with an investigation of the current role of vigilance and control agencies, as well as of professional and business societies and associations. This research would attempt to determine the extent to which these organizations perform their duties and--regarding the professional and business activities in particular--the extent to which they engage in questionable dealings rather than carrying out their functions honestly.

Conclusion

White-collar crime is a volatile topic involving fundamental problems that must be viewed from a political and moral standpoint. William M. Hannay challenges Sanford Kadish's statement that white-collar crime is "morally neutral behavior" and consequently not liable to penal sanctions. Hannay argues that Kadish has failed to grasp the change in modern society's concept of morality.* The motives for white-collar crime have been given extraordinary impetus by industrial progress, technological expansion, and materialism. The acquisitive fever that has contaminated even the socialist countries endangers the very future of the world.

To make the problem of white-collar crime less elusive, a new definition of it must be adopted, and our attitudes toward it must change drastically. It would be inappropriate in a criminological discussion to predict the future of the human race. It must be noted, however, that the spread of white-collar crime is one of the effects of materialistic consumer society. White-collar crime cannot be fought effectively with prevention and penal repression unless they are accompanied by a new perception of the world and of life. In his work To Be and To Have, Gabriel Marcel has placed on a metaphysical plane the relationship between man and the reality which surrounds him. The same subject has been addressed by Balthazar Staehlin, who has recently published a work by the same title. Finally, Erich Fromm has entitled one of his essays Having or Being, restating the same problem from a psychological perspective.

Materialism, based on the desire for objects and power, on egoism, waste, greed, and violence, is moving toward destruction. The salvation of society lies in a nonmaterialistic way of life

*William M. Hannay, "The American Bar Association's Symposium on White Collar Crime," The American Criminal Law Review (1973) and Sanford Kadish, "Some Observations on the Use of Criminal Sanctions in Enforcing Economic Regulations," University of Chicago Law Review (Spring 1973).

which emphasizes enrichment of the human spirit. Sociopolitical systems must be constructed in such a way as to assist in achieving this cultural reform. Unless this reform comes about, law will be of little value.

Criminological Problems of White-Collar Crime

By Klaus Volk

INTRODUCTION

"We have no reason to assume that General Motors has an inferiority complex or Alcoa Aluminum Company a frustration-aggression complex or U.S. Steel an Oedipus complex or Armour Company a death wish, or that Dupont wants to return to the womb."*

Although it is a platitude, Sutherland's observation from the pioneering era of research on white-collar crime is still worth quoting as the sign of a Copernican revolution in Anglo-Saxon criminology. However, its sarcastic point no longer creates the proper effect. Instead, this caricature of psychopathological theories expresses the growing suspicion that none of the great "classic" theories of criminology can explain the phenomenon of white-collar crime adequately.

Criminological theories are generally insufficient. After some brief observations on the reasons for this situation, this paper will outline requirements for research on white-collar crime, discuss criminal policy considerations, and offer suggestions.

"Kriminologische Probleme der Wirtschaftsdelinquenz" (NCJ 44459) originally appeared in Monatsschrift für Kriminologie und Strafrechtsreform, v. 60:265-278, October 1977. (Karl Heymann Verlag KG, 5000 Cologne 1, West Germany) Translated from the German by Kathleen Dell'Orto.

*Edwin H. Sutherland, "Crime of Corporations," in Albert Cohen, Alfred Lindesmith, Karl Schuessler, eds., The Sutherland Papers (Bloomington: 1956), 70.

THEORY PROBLEMS

The complaint about the lack of empirical verification for criminal theories is general, as is the objection that the available concepts are so far removed from reality as to be virtually untranslatable into practical decisions. This situation has been aggravated by discussions of the labeling approach. Whether the representatives of the etiological paradigm or their opponents who favor the control paradigm are right is not worth considering. The definition approach has made the shortcomings of causal theories so apparent simply because it uses an incomplete theory itself--determining the conditions for the definition of behavior is pointless without considering the actual conditions for behavior. The argument barely could be verified even in the discussion of "classic" theories. One of the few areas of theoretical agreement was--and is--the desirability of a "middle range" theory. The unfortunate side effect of a "dilatory formula compromise" is linked to this pragmatically intelligent limitation, however. Criminologists must carefully determine the differences in the ranges of theories and the theoretical, methodological, and sociological assumptions that are included in each.

Such a comparison of theories can be successful only if it is associated with the discussion of particular problem areas. And this presents an interesting prospect for criminological interpretation of white-collar crime. It is known that a feedback effect sets in when the attempt is made to justify theories. Accordingly, in explaining the behavior of street corner groups, refugees, stutterers, or thieves, it is not particularly difficult to construct a plausible theoretical superstructure. This kind of specific theory "protected" by the material itself does not exist for white-collar crime. Attempts to explain white-collar crime are based on tentative application of an existing theory to a new one, or to a newly recognized area. For that reason, the preconditions for criticism and comparison of theories are favorable, but reliable data on which to base theory are rare.

WHITE-COLLAR CRIME IN THE DISPUTE ABOUT THEORIES

It is probably because of this dearth of data that researchers, starting with Sutherland, first devoted their attention to the offender. Social criticism encouraged the trend to designate certain types of crime as offender oriented. Of course, no serious attempt has been made as yet to explain white-collar crime in psychological, psychopathological, and psychiatric terms.

Mergen's interpretation of the personality of the white-collar criminal attracted some attention, but a brief quotation should suffice to illustrate that his concept was not particularly profound. Mergen stated that the offender's personality is

. . . primitive and has remained at the egocentric here-and-now level. In any case, emotional development is stunted. . . . White-collar criminals generally have disturbances in their interpersonal relationships. . . but they do not remain in "cold isolation." They develop their primitive state dynamically, with a love of action.*

Despite this, Mergen believes it is erroneous to expect businessmen to be clever and coolly calculating: "Their egocentric optimism makes them blind to dangers so that they take risks without thought. . . .

The fatal error of this psychogram is neither the categorical formulation nor the fact that the method of explanation and the case material remain unexplored, but rather the dangerous inclination of criminologists to avoid the most interesting problems of a personality theory.

It is doubtful whether it will ever be possible to determine where the white-collar criminal lies on the scale between the offender with unconscious neurotic conflicts and the one with a psychopathic defect. Psychoanalysis reveals another significant difficulty for white-collar crime. The diagnosis is complicated when "parts of the superego itself, depending on the crime-inducing environment, can be oriented to criminal norms."†

If the theoretical framework is expanded and the theory of differential socialization is considered, a superficial parallel becomes evident. It is tempting to draw the parallel because this concept can explain the behavior of repeat offenders. In some cases, it has been proven that white-collar criminals belong among such offenders, but in other instances no statements can be made as long as the circle of offenders cannot be identified because of the dispute about the definition of white-collar crime. But even in the area of repeat offenders, defects in the socialization process are at best

*Armand Mergen, "The Personality of the White-Collar Criminal" [in German], in White-Collar Crime: A Discussion of Problems (Bern and Frankfurt: 1972), 27-34.

†Tilman Moser, "Psychoanalytical Criminology," [in German], KritJ 3:399-405 (1970).

matters of speculation. White-collar workers are apparently well adjusted. On the other hand, it is possible that the lack of internalization of norms plays a role.

The Anomie Theory

Lack of internalization possibly has meaning in the anomie theory, which, as Opp recently emphasized, is far superior to other theories in truth, information, and precision.* Indeed, the anomie theory has been highly regarded for decades as the finest example of a sociological theory for deviant behavior. Its shortcomings are now known, and Opp's study portrays them clearly rather than eliminating them.

The symptoms of anomie appear when there is divergence between culturally alleged goals and the means for attainment provided in the social structure. According to Opp, this basic pattern should permit differentiation of such variables as the intensity of the goals, the intensity of legitimate and illegitimate norms, and the number of perceived legitimate and illegitimate possibilities. The probability that white-collar crime will occur can be derived from their relationship.

Aside from the question of whether such a theory can be confirmed empirically, a more serious problem is that the theoretical connections are insufficiently described. This type of anomie theory yields only a rudimentary, diffuse, rigidly formalized description of decision behavior. It is not even capable of differentiating simple decisions involving risk or uncertainty. For better understanding of decision behavior in the area of borderline morals, the individual, offender-specific projection of the economic world must be established, the degree of internalization of norms shown, and the subcultural version of these norms determined. Common sense criteria are not sufficient, but there is no criminological "dictionary" which would make it possible to transform economic concepts into criminological principles. It would also be useful to know whether white-collar criminals develop neutralization techniques, and the nature of those techniques as well.

One of the reasons for this new crisis of the anomie and other theories may be that it was conceived because of the pressure toward deviant behavior present in the lower classes. Whether the change to the perspective of the upper class requires modifications remains unclear.

*Karl-Dieter Opp, The Sociology of White-Collar Crime [in German] (Munich: 1975).

Other problems independent of this sociocultural framework also are evident. The anomie theory not only makes it necessary to break new ground, but also crosses theoretical no man's land. But the absence of a metatheory is apparent in the attempt to define its very complex basic principles. Typical reactions in anomic situations are innovation, rebellion, ritualism, and apathy. These are personal consequences of social pressure which cannot be explained with the help of sociological tools alone. But a more differentiated description would make it clear that the anomie theory does not reveal the basic causes of criminal behavior.

The Theory of Learning

The theory of learning fails in the same point. Sutherland's theory of "differential association", i.e., the view that criminality results when contact with persons who define criminal behavior in favorable terms is more intense than contacts with those who regard crime negatively, may be valid as a partial aspect of criminal theories, but it is outdated as an independent explanation.*

Psychology of learning approaches, on the other hand, are currently popular, although their value for explanation is probably overestimated. Proponents of the psychology of learning believe that the model of operant conditioning (learning from success) is not suitable for interpreting white-collar crime. This is accomplished, they claim, by using the concept of learning from a model. The decisive reinforcing factors are labeling of offenses as "cavalier," the crime-inducing effects of numerous legal regulations, the slight chance of discovery and punishment, and finally, the fact that criminal behavior remains profitable despite sanctions. This consciously traditional review of criteria according to learning theory shows that a new model is only being constructed with arguments long familiar in criminological discussions.

Of course, one frequently cited phenomenon makes the learning theory more convincing: the suction effect, i.e., the suspicion that persons performing illegal acts exert pressure on their competitors to commit these acts as well. The spiral effect then occurs as each person involved becomes a new suction center. These effects fit the criteria for a learning model, but the lack of an empirical foundation becomes increasingly apparent as white-collar crime grows more complex. The poor coordination of criminological and criminal policy arguments is particularly evident in the area of competitive offenses. It is indeed likely that the institution of competition is the

*Edwin H. Sutherland, White Collar Crime, (New York: 1949).

best guardian of competitive norms, but this cannot be correlated with the premise that the competitors learn from each other.

The theories of learning from a model and "differential association" leave a minor but decisive question unanswered: Where does the model come from? Questions of this nature are exactly what the labeling approach has criticized as a sign of a basically false strategy. To explain crime, theory advocates say, it is necessary to study scientifically the practice of combating crime. This is a prerequisite, but is not in itself sufficient.

The Labeling Approach

Matters can be simplified by working from the central thesis of the "German" labeling approach that only the social context defines what is and is not a crime. Crime is not a characteristic of persons, but a negative property that is distributed. There are instances of negative social control which tend to make crime thrive. The simple conclusion is that white-collar crime "exists" merely to a decreasingly small extent. Paradoxically, prevailing opinion tends to assume that white-collar crime is almost ubiquitous, thus accepting in a limited sense one of the basic postulates of the labeling approach. But this approach cannot explain white-collar crime.

The proponents of the control theory attempt to mask this dilemma by asserting that the classic theory does not actually classify white-collar offenses as "criminal acts." The second aspect of the argument has been overlooked in the attempt to prove that conventional criminology is a "science of legitimation." As these traditionalists rely on data produced by social control, they only reproduce the image of crime which they themselves project. The reaction approach had strayed from this starting point but retained the direction of thought--like many of the criminal theories mentioned previously, it analyzes deviance or control of the lower class. For this reason, friction arises when the theory is reversed and applied to the upper class.

The theory nevertheless provides points of departure for explaining why the processes of white-collar crime are not elucidated to the desired extent. The delinquent clearly has considerable potential for "power of definition and control." The labeling approach cannot resolve why deviant behavior, despite a lack of labeling, is familiar throughout the economic sector and regarded as criminal. The approach also is relatively neutral with respect to questions of criminal policy. A theory encompassing behavior and the definition of behavior is therefore required.

STRATEGIES FOR COMBATING WHITE-COLLAR CRIME

A functional dependence exists between the definition and the theory of white-collar crime, but both problems remain unsolved. There is neither a model theory which can be used as a constant for outlining a definition nor a definition validated in criminal policy upon which other theories could be based. A few central definitional elements relating to the act itself are discussed below: the misuse of trust, victimization, and the extent of damage and disruption of the economy.

The Misuse of Trust

No one tries to suppress the moralizing tone associated with the misuse of trust. This stereotype is intended to further intensify a general awareness of socially damaging effects. But it probably cannot be verified that white-collar crime as such is characterized by misuse of trust. Instead of being based on the broadest collective concept, case histories are established according to the modus operandi and the victims affected. If the acts are committed within the business world against the business world, it can be assumed safely that distrust had to be overcome. The same is true of tax offenses, subsidies, and price setting by multinational corporations. There is a gray zone between this area and the area in which it is plausible to assume a basis for trust. The gray zone is considered safe with the catchall term "trust"--it is a catchall because the space is neither occupied by intact rules of the business world nor by business norms preestablished in criminal law. In such cases, the direct applicability of criminal law is always questionable.

The interpretation of the system theory by which trust is based on "institutional distrust" should be examined with regard to various norm groups. At the moment the situation is characterized by an undifferentiated mixture of arguments with overlapping normative expectations and descriptions. A typical example is the discussion about rules for "insiders." Trust and distrust of the investors are mentioned together, with reference on the one hand to a desired attitude and on the other to a factual position.

Victimization

Better understanding of the function of trust can only be gained from analyses which consider victimization. There are some areas in which the offender and the victim are almost interchangeable, whereas in others the unfortunate position of

victim can be eliminated by shifting the damage to others. For this reason, white-collar crimes are committed anonymously, when "the" state or "the" economy is affected. The question is whether the consequences are to be regarded as especially punishable behavior or as a mild disturbance of the legal order.

The Extent of Damage and Disruption of the Economy

Similar doubts arise about the publicized demand for extensive and energetic white-collar crime prevention when the argument that immense damages result from such crime is examined. It does not matter which of the growing estimates is closest to the truth--the lowest numbers are impressive enough. But concrete damages are hard to localize in many cases; the first person affected can put them into circulation in the economy, where they are atomized and stop somewhere. For that reason, the largest common denominator is calculated, and damage to the whole economy indicated. The pressure to balance out the consequences of every act, which are occasionally positive, sometimes causes the damages to disappear. The first effects of damages are thus defined: disruption of the economy is decisive and, in addition, reference is made to immaterial damage, which is supposed to be even more serious than the material harm.

In attempting to cover all forms of crime, the formulation becomes so broad and vague that legally and economically normal processes are included. Imposing penalties accordingly would lead to a broad and vague formulation which exaggerates the extent of social damages rather than marking bounds. Corruption, not only of material criminal law but also of the principle of legality, would result. And even if all of the presently discussed behavioral forms unanimously regarded as criminal were criminalized, the second consequence would be inevitable. For example, it was recommended that unfair insider activities be prohibited under penalty of law. Extensive supervision by specially appointed authorities has not been undertaken on account of well-founded fears of an inflated bureaucracy. Instead, State's attorneys must assume this function, despite the knowledge that this restriction will spell sporadic action.

PERSPECTIVES FOR CRIMINOLOGICAL STUDY

At the moment, there is too little empirical material to decide which of the known theories best explains white-collar crime. Moreover, available data are insufficient to establish empirically further guidelines necessary to combat white-collar crime. The observation that all theories of criminality suffer from empirical shortcomings has become trite. On the other hand,

the fact that empirical research presupposes an underlying theory is no longer questioned. In this dilemma, one of the theories discussed earlier must be selected as a heuristic principle. This decision, however, has far-reaching consequences for criminal policy that extend beyond the dialectics of "pure" theory and empiricism. The social critical components of those theories--whether it is the anomie theory, the labeling approach, or the theory of learning--appear to be futuristic concepts when the question of therapy arises. As the learning theory prescribes, if the concrete social conditions do not permit the growth of social motivation, they must be altered. This is not the place to discuss how such a theory can be called "practical." But criminology which also claims to be effective in the area of criminal policy must provide pragmatic temporary solutions. For white-collar crime, at least, this calls for an eclectic approach. There is no point in objecting that this concept is adverse to theories. Multifactor research is not a theory, but it involves theory. Despite protests that theoretical guiding principles sometimes remain hidden, this mistake can be avoided easily. Criminologists concerned with white-collar crime should analyze portions of competing explanatory systems and support them empirically. By so doing they will perform the preliminary work for development of a specific theory of white-collar crime, perhaps even contribute to a comprehensive criminological theory, and probably clarify the conditions requiring application of criminal policies.

Malaise and Concealment: Perceptions and Practices in Social Control of White-Collar Crime

By M. F. Armand and P. Lascoumes

INTRODUCTION

The limitations of the traditional criminological approach are particularly glaring in the study of white-collar crime. Emphasizing identified or prosecuted infractions is of limited use considering the volume of hidden crime and the inadequacy of social control. Moreover, white-collar crime is not considered felonious either in terms of its perpetrators, its victims, or the authorities responsible for its suppression. Limitations also exist from the perspective of institutionalized social reaction since the administrative and legal records which form the bases of such studies provide little information on the nature of white-collar crime. Finally, investigators infiltrating the business world to identify the underlying processes of fraudulent activities must determine which businesses to observe and what data to collect.

This study approaches white-collar crime from the standpoint of the social control exercised over it--particularly the activities of specialized organizations such as regulatory agencies, police, banks, customs, and unions. The basic concern of the study is identifying the processes which enable white-collar crime to escape social stigma, both formal (administrative and penal sanctions) and informal (social behavior linked with the dominant ideology. Consideration is given to violators and in particular to control agencies.

The study was limited to the Bordeaux region of France. The methodology involved reconstructing the network formed by various

Malaise et occultation: perception et pratiques du controle social de la délinquance d'affaires (NCJ 52981) originally appeared in Déviante et Société, v. 1, n. 2:135-169, September 1977. (Médecine et Hygiène, 78, Avenue de la Roseraie, Case 229, 1211 Geneva 4, Switzerland) Translated from the French by Deborah Sauvé.

entities responsible for controlling white-collar crime and then defining the role of each entity and their interaction. The next step was to collect and analyze statements reflecting the perceptions of both specialized control agencies and the public about white-collar crime and its control. This article concentrates on the latter aspect of the study.

CONTROL AGENCIES' PERCEPTION OF WHITE-COLLAR CRIME

The malaise or sense of uneasiness of agencies responsible for control of white-collar crime is striking. The basic aspects of this malaise will be discussed first, followed by an effort to clarify the problems connected with government regulation, which appears to be the essential link of society's reaction in this area.

Basic Elements of the Agencies' Malaise

In the interviews conducted, the malaise was evident on three levels: in the instruments for control of white-collar crime, in the organization of this control, and above all in the control's very foundations.

The instruments of control. Representatives of the control agencies feel their mission is compromised at the outset by a lack of funds and staff. Certain agencies, such as the Service for the Suppression of Fraud, seem particularly handicapped in this respect. Others feel inundated by a flood of minor cases; because of a lack of resources, they cannot give sufficient attention to important matters.

According to the agencies contacted, legislation dealing with white-collar crime is either nonexistent or excessive. In both cases, however, the legislation appears inadequate, since violators can always avoid detection. The agencies generally prefer integration and simplification of existing laws to new legislation.

The agencies unanimously recognize the weakness of the penal sanctions. When an individual is charged with several offenses, the offenses are considered collectively and a single sentence is pronounced, thus "favoring" the defrauders. Moreover, the fines assessed are slight because they are levied several years after the beginning of the proceedings. Certain government agencies have the power to fine commercial enterprises accused of fraud. Professional restrictions and prohibition of certain activities may be used against business criminals, but the laws regulating these security measures are complex and rarely applied.

The organization of control. In practice, the agencies clearly perceive their relationship to other organizations in controlling white-collar crime. Accordingly, they try not to encroach upon what they believe to be the jurisdiction of others; however, they do not systematically transmit information which could be useful to the other organizations. This is due, in part, to the specialized nature of the agencies, as well as to serious rivalries which are deplored but still exist and which result in the absence of control in areas of conflict. Each specialized agency seems more preoccupied with strengthening its particular function and gaining recognition than in improving its effectiveness.

This narrowing of responsibility is often the result of insufficient resources or the failure of past efforts caused by lack of liaison or interagency competition. In effect, each agency acts in relation to the image it has of its own role and the role of others in combating white-collar crime. If an agency's accomplishments do not meet its expectations, there is dissatisfaction, and the results are disappointing.

The foundations of control. The agencies' malaise in dealing with the white-collar crime problem reflects a fuzzy perception of white-collar crime itself and the absence of an overall policy regarding it. For those in the business world, the only problem is one of regulation--they believe they should be allowed to regulate themselves since self-regulation is informal but solid, and more effective than rigid laws imposed from the outside.

Representatives of the so-called specialized agencies contend that crime exists and must be suppressed either by the criminal justice system or the agencies themselves, and preferably through collaboration of the two.

Members of the judiciary system or of agencies short of funds, such as the Service for the Suppression of Fraud, believe that white-collar crime is caused by the excessive pressure of economic competition.

Officials of financial agencies with investigative capabilities are convinced that economic infractions are a threat to society and should be suppressed by those most able to do so, i.e., the financial agencies themselves.

Specific Malaise Connected With Penal Justice

The application of penal justice, whether wanted or unwanted, always appears to be basically inadequate. On the one hand, its laxity regarding white-collar crime is questioned, and on

the other, the problems of specialization for judges and jurisdictions in economic matters become manifest.

Inadequacy and laxity of criminal justice. Agencies unanimously lament and often complain about the small number of prosecutions and, especially, the lenient sentences pronounced. Most of the agencies admit to being overly cautious: they prosecute only the most solid and clear-cut cases, those most likely to result in conviction. Regarding penalties, the actions taken by the criminal justice system appear to be mere tokens as evidenced by the small number of cases brought to trial, the lenient sentences pronounced (fines and frequent suspended sentences), and the fact that major offenders go free while minor ones are designated as scapegoats.

The relative inactivity of the criminal justice system seems to spring, in part, from technical incompetence and the perceptions of those in the system about the seriousness of this form of crime. By levying even mild penalties on the incompetents and the petty "crooks," the justice system diverts attention from the actions of larger operations, which essentially escape serious punishment.

Specialization of judges. Public prosecutors and examining magistrates fully recognize the "special" nature of the business world and lament the absence of a special financial element in the prosecutor's office. The judges do not feel competent to deal with financial matters and only recently became sensitive to the problems of white-collar crime. A danger exists in having specialized prosecutors, however--a tailor-made justice system which allows offenders to escape punishment under common law could result.

An attempt to solve the problem was made in 1975 with the creation of specialized sections for prosecuting, examining, and sentencing persons accused of offenses related to economic and financial matters. Several superior courts have jurisdiction in matters pertaining to major white-collar offenses. The categories involved are:

- Private and commercial companies as well as those associated with bankruptcy.
- Banks, financial establishments, the stock market, and loan institutions.
- Economics, bankruptcy, swindling, breach of trust, and violations of manufacturing, commerce, or art regulations.

- Fiscal, customs, or foreign financial matters.
- Construction and urban development.

However, specialized examining and sentencing will apply only in very complex cases. In addition, since the law does not provide for assignment of contract accountants to the financial sections of prosecutors' offices as in German law, the problem of excessive time to obtain expert assistance remains unresolved.

The agencies tend to agree that more severe measures against white-collar crime are required, but a coordinated policy with clearly conceived and defined objectives and methods does not exist.

The agencies' dissatisfaction with white-collar crime control measures is limited to the amount of fines and the number of penalties. It would appear that the problem would be solved with additional personnel and harsher penalties. The agencies are not considering redefining the notion of white-collar crime--their perception of it is based exclusively on the law, and they view it as a system of offenses to be punished.

Reconciling a liberal economy with surveillance of the business world is a delicate matter. It is especially difficult to implement a system of control aimed at protecting free enterprise in a world dominated more and more by monopolistic and multinational initiatives.

PERCEPTIONS OF WHITE-COLLAR CRIME AMONG THOSE NOT DIRECTLY PARTICIPATING IN ITS CONTROL

Two sources of information formed the basis for this part of the study: a sampling of local business executives and union representatives, and the regional daily newspaper, Southwest, a quasi-monopoly which simultaneously reflects and helps form public opinion.

Local Business Executives and Labor Leaders

These officials perceive white-collar crime on three levels: the notion of white-collar crime itself, the reasons for its existence, and the control exercised over it.

The notion of white-collar crime. A definition of white-collar crime was given to those interviewed: white-collar crime is carried out within a commercial activity, with the intent of diverting money from financial and commercial channels or escaping

legal obligations. It involves considerable sums of money and is based on an arrangement involving other activities such as companies, banks, government agencies, and political organizations. As a result of the definition, two views of white-collar crime emerged:

- A broad view centering on the social consequences of white-collar crime, including the various ways of manipulating the economic system for personal gain. Four types of manipulation were cited in particular: (1) impeding free enterprise through agreements, abuse of power, and monopolies; (2) various forms of speculation or methods of obtaining low-interest loans which make profitable investments possible; (3) intensive advertising which supports the sale of expensive and often useless products; and (4) pollution and poor working conditions which permit savings on net costs.

- A perception concentrating on the legal aspects of the problem and encompassing the classic ideas of violation, exploitation, and bending of existing laws, especially fiscal, customs, and commercial offenses and offenses related to price and product regulations.

The first view is that of political and labor organizations, the second of business management. For both groups, however, the notion of business crime is very new, and the word "crime" seems too strong.

Reasons for the existence of white-collar crime. Three primary explanations for the existence of white-collar crime emerged from the interviews: (1) white-collar crime is perpetrated by swindlers who are able to infiltrate the business world because "morality" has disappeared; (2) the economic situation favors certain fraudulent activities, and economic pressure causes some companies to cheat in order to survive; and (3) white-collar crime exists because it is a politicoeconomic necessity.

Control of white-collar crime. The business executives and labor leaders interviewed unanimously deplored the weaknesses of the penal and commercial justice systems. Moreover, these systems were the only elements of social control perceived. The almost total absence of visibility of other control agencies is noteworthy.

Local business executives expect the justice system to be more severe in dealing with white-collar crime. The unions, on the other hand, feel that the penal system "serves to settle the

accounts of big business" and criticize it for being particularly lenient with white-collar crime; the severity of penalties is not an issue with them.

Efforts to suppress white-collar crime seem to focus on minor cases, areas which previously were tolerated (e.g., consumption, pollution, safety), or offenses of such magnitude and visibility that they exceed the level of popular tolerance of legal irregularities. In the last case, suppression is stronger because it usually is supported by those who benefit from it. This explains the fury directed toward a few scapegoats and the uproar over a few symbolic suppressions.

The Image of White-Collar Crime in the Regional Press

Stages in the analysis. Southwest devotes only 2.2 percent of its editorial coverage to criminal justice issues; local business crime has a very low visibility--8 cases in 8 years. This study proposes to identify the underlying ideas in the reports analyzed by determining how their reasoning is organized, i.e., the presence or absence of certain terms or the content of themes chosen a priori. As a starting point, the structural and argumentative methods of analysis were adopted. The informative elements of each story were identified according to the way they were balanced and organized.

Two types of reasoning. The first type may be described as "a scandal." In this case, the press report reflects clear disapproval of the offense, which is reported as being well established and of great consequence. This reasoning concentrates on the individual offense and tends to establish a scapegoat who is considered responsible for the entire matter. Apprehending the offender is made to appear the main objective of the responsible control agency.

The second type may be termed "an affair." The press report is much more reserved and measured in its value judgments. It often criticizes the control agency for premature or inadequate intervention, and is so generalized as to limit the significance of the offenses and--most important--to preserve the reputations of those implicated.

The distinction between "scandal" and "affair" is most clearly observed in cases that are extremely important at the local level. When the local implication is insignificant, the difference between the two types is less evident. This leads to two categories of reasoning:

• In the area of "scandal," the cases reviewed involved two important real estate swindles, corruption of a public official, and a sauna club suspected of prostitution. By concentrating on swindlers, weak and easily tempted persons, and immoral adventurers, the press reports avoid posing more general problems. Everything is reduced to a problem of individual immorality, which logically leads to a demand for punishment. The principal authors of the offenses in question, the scapegoats, were sentenced to prison terms ranging from 4 months to 7 years; the courts determined that the "accomplices" had acted in good faith but were abused and tricked.

• With respect to "affair," the cases reviewed involved two wine industry swindles, illicit rate increases by a private hospital, and unlawful importation. The press reports of these cases are muddled or obscured. The discussions are general in nature, i.e., they try to conceal the problem by discussing it in general terms, which causes it to lose all specificity (e.g., strict European regulation of the wine industry). Moreover, the press uses such cases to reaffirm the foundations and existence of a socioeconomic order challenged by the intervention of social control (e.g., an independent medical profession, free trade in wines, etc.). With one exception--one of the principal perpetrators of the Bordeaux wine swindle who played a partial role as scapegoat--the sentences pronounced were fines for lesser amounts than had been asked in the indictment, and they were often reduced on appeal.

CONCLUSION

In general, the business world seems to be controlled or is capable of being controlled. The cases dealt with by the legal system illustrate this control. In fact, it must be recognized that these "public executions" of unlucky miscreants, although exceptional, often are carried out with a great deal of public clamor. The uproar, notably journalistic, is an essential dimension of the symbolic function performed by these "demonstrations of impartiality"--making it known loudly and clearly that the legal apparatus is concerned with more than mere "popular illegalities."

Modern society seems to accept the absence of control of legal irregularities in the business world. This is not based on simple tolerance, but because the financial success of a certain number of businesses rests on a vast network of such practices. Legal irregularities are acceptable because they are an essential part of the economic system. However, this general principle has some exceptions that serve to reinforce it. Some cases of white-collar crime have legal consequences. Therefore, greedy and unlucky adventurers operating alone must

be eliminated or the effectiveness of social control agencies must be demonstrated--or both must be done simultaneously.

Accordingly, white-collar crime appears to be the privileged area where the ideological and repressive power systems on which criminal justice rests can be opened to scrutiny.

The Significance of White-Collar Crime in Austria

By Ferdinand Stigelbauer

INTRODUCTION

The complexity of the white-collar crime problem and the lack of adequate systematic research and statistical studies preclude a comprehensive description of this form of crime. This paper will discuss the significance of white-collar crime in Austria on the basis of available materials and important criminal cases, and also review recently taken or planned measures for combating such crime.

The first requirement in discussing actions directed against white-collar crime is to define the term from the Austrian standpoint. Neither the new criminal code that went into effect on January 1, 1975, nor the current supplementary criminal laws address the subject. Laws regarding trial procedure and provisions relating to court organization are also silent. Despite this, two major groups of offenses which can be classified as white-collar crime are discernible in the Austrian economy: violations of government economic regulations and violations of general criminal regulations.

Violations of Government Economic Regulations: White-Collar Crime in the Narrow Sense

The essential premise is that Austria's social economy is controlled by necessary governmental regulatory measures. It is designated a mixed economy because it is structured to combine free initiative and social obligations. The principal economic crimes therefore are violations of the numerous regulations not only contained in supplementary criminal legislation, but also

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scattered throughout the new criminal code. These regulations are designed primarily to protect the economy and its functioning, although the legitimate interests of the consumer are represented as well.

The most important statutes include the foreign trade law, the criminal law relating to finance, the cartel law, the credit law, the food product law, and criminal regulations governing fraudulent and negligent bankruptcy. Violations that carry a penalty are forms of delinquency in the economic sector for which the term white-collar crime, in the narrow sense, was coined.

Violations of General Criminal Regulations: White-Collar Crime in the Broad Sense

White-collar crimes also include violations of general criminal regulations which are committed in the economic sector, disrupt the course of business, and are potentially dangerous to the economy. They are classified as crimes because of the magnitude of criminal property damage and in consideration of the affected parties, who are identified as the Government, larger institutions (banks, savings banks, and building and loan associations), or groups of persons (depositors and, in some cases, taxpayers). This can be termed white-collar crime in the broad sense. From this standpoint, crimes against property committed in the economic sector are considered white-collar crime by the Austrian public prosecutor's office if the damage caused by the particular crime exceeds S1 million.*

White-collar crime in the broad sense encompasses forms of fraud such as extremely damaging credit swindles, letter of credit swindles, and fraud relating to subsidies, real estate, and insurance. Embezzlement and misconduct by high officials of corporations, as well as data processing crimes such as computer misuse for embezzlement of corporate funds through program or data manipulation, have not been noted in Austria to date.

Need For Tools To Combat White-Collar Crime

It is obvious that the nature of such crimes is not determined in an exact, legally binding manner. Instead, the objective is to fashion the tools needed to deal with white-collar crime in Austria, whether on a practical or a theoretical level. Although the tools are to be used for white-collar crime in particular, they apply to other forms of economic crime as well. According to recent criminological research findings and forensic experience, white-collar criminals are not members of the upper classes or particular professions exclusively.

*Editor's Note: 1 Austrian schilling (S1) currently is equivalent to US\$0.07.

WHITE-COLLAR CRIME STATISTICS

In view of the absence of a generally accepted definition of white-collar crime, it is not surprising that statistical information on economic criminal behavior and the damages caused by it is sporadic. But available figures for limited areas permit conclusions about pertinent white-collar crimes.

Bankruptcy

This applies especially to the bankruptcy statistics published by the Austrian credit protection associations. The figures for 3 years are compared:

| <u>Year</u> | <u>Total Bankruptcies</u> | <u>Major Bankruptcies (Over S5 Million)</u> | <u>Estimated Losses From Bankruptcies</u> |
|-------------|---------------------------|---|---|
| 1974 | 1,266 | 144 | S5.1 billion |
| 1975 | 1,648 | 154 | S5.8 billion |
| 1976 | 1,537 | 141 | S4.2 billion |

In a certain sense, the course of business fluctuations during the years surveyed is reflected in these statistics. Although the causes of bankruptcy are not always criminal, the figures prove instructive with respect to white-collar crime. According to the findings of criminological studies, in about 90 percent of the cases bankruptcy results from errors directly attributable to the company's operations. This clearly indicates that damages in the billions due to bankruptcy represent a very real current problem closely connected to white-collar crime.

Finances

Certain data on violations of the criminal code relating to finances are also available. Following are statistics released by the Federal Ministry of Finance on administrative and judicial proceedings in financial cases for 1973 to 1975:

| <u>Proceedings Instituted</u> | <u>1973</u> | <u>1974</u> | <u>1975</u> |
|------------------------------------|-------------|-------------|-------------|
| By criminal authorities | 20,852 | 21,011 | 19,792 |
| By courts and prosecutors' offices | 144 | 178 | 190 |

In terms of forensics, although no general rise in financial crimes is noted, an increase in serious customs offenses can be observed. The figures provided clearly show that prevention of white-collar crime in the area of financial law is a primary

function of the authorities responsible for financial crimes rather than the criminal courts. With regard to criminal policy, this is very positive. Less complicated administrative criminal procedures for finance generally enable more rapid and more effective punishment for financial offenses.

For this reason, the decriminalization provision in the 1975 amendment to the criminal law for finance is welcome. Judicial responsibility was clearly defined, and the negligence violations, aside from exceptions relating to economic procedure, were removed from jurisdiction of the courts and referred to the criminal authorities. This was in keeping with the postulate of the greatest possible concentration of criminal prosecutions in economic criminal matters.

Fraud

Comments about the extent of Austrian white-collar crime in the broad sense cannot be made unless comparative figures for fraud and its various characteristics are reviewed. However, such figures are not even available in the Police Criminal Statistics published annually by the Ministry of the Interior, although this source shows an increase in fraud cases from 5,990 in 1965 to 8,110 in 1974, a rise of almost 40 percent. Despite the absence of an empirical principle to determine how many of those cases were classified as white-collar crimes, the figures quoted seem to justify the assumption that white-collar fraud also is increasing rapidly.

WHITE-COLLAR CRIME: A CASE HISTORY

The need to address the problem of white-collar crime has been recognized in Austria. This recognition was triggered by sensational criminal cases more than by general tendencies in crime. Accordingly, the collapse of private banks has led to serious damages and resulted in considerable public discussion of criminal proceedings. This is also true of the suspected profiteering practices of many private moneylenders whose interest rates, according to a study of the Consumer Information Union, are as high as 86 percent.

The Bauring Case

Acceptance of workmen's commissions by owners of building management agencies only recently has been designated as fraud in criminal law. A building management case involved the construction firm of Bauring, Ltd., whose principal partner is the city of Vienna. The case was significant in that it had political

repercussions. In 1974, Bauring officials were suspected of causing damages in the millions through culpable behavior in planning and implementing building projects in Arab countries. But other factors within the Bauring management aroused suspicion of white-collar crime. The immediate involvement and vigorous efforts of the business police and a precise proposal of the Vienna public prosecutor's office permitted the complicated circumstances to be clarified. In October 1975, by which time the legal documents had grown to 12 volumes, suit was brought for breach of trust against two Bauring managing directors, a chief clerk, and a project director for misuse of the authority granted them in connection with the Arab building projects and extending credit without sufficient collateral.

In July 1976, the prosecutor's office again charged two of the previously indicted Bauring agents with breach of trust for extending further credit to the detriment of the company; the architect with business connections to Bauring was charged primarily with fraud. After rapid proceedings involving appeal of the indictment and presentation of a second brief, the main trial was held in the State Court for Criminal Matters in Vienna.

The indicted architect was found guilty, but the Bauring agents were acquitted because the subjective aspect of breach of trust, which requires willful abuse of authority in entering into financial arrangements and obligations, could not be proved. Despite the acquittal, the court expressed the opinion that negligence was evident and that the two indicted managing directors should be charged with negligent bankruptcy. No further action was taken, however, because the city of Vienna, as the main partner, quickly made up the total damages by increasing the stock fund to preclude Bauring's going bankrupt.

The Bauring trial proved that the legal process can deal rapidly with unusually complicated, socially damaging economic matters; it also proved that economic problems involving government corporations are more difficult to unravel than those involving the private sector. In light of the present criminal situation, however, there is no need to create special new requirements for criminal offenses by the management of publicly operated business organizations. Cases of such "management crime" can be avoided most effectively by constant and improved supervision.

GROWTH OF WHITE-COLLAR CRIME

On the basis of the limited statistical material, it probably can be stated that white-collar crime has not been flagrant in Austria, especially when compared to other Western countries.

But an increasing number of recent warning signals suggests that large-scale swindlers and other economic criminals are becoming more prevalent. An example is the so-called meat scandal in which several well-known sausage manufacturers are implicated. The case involves extensive customs fraud through false declaration of imported meat.

PREVENTION OF WHITE-COLLAR CRIME

One question remains to be answered: What has been and is being done in Austria to improve white-collar crime prevention? Proceeding from the correct assumption that prevention is the most suitable method of combating white-collar crime, the Austrian Government has taken a number of legal measures in the area of civil law and management law to eliminate the existing causes of crime. A few examples of these measures are cited below.

Consumer Protection Law

The government's proposed comprehensive consumer protection law contains provisions for preventing ethical "fine print" on order blanks and other contractual forms, as well as similar unfair business practices which swindlers often use for criminal purposes. The bill also provides for modifications of the usury law which are expected to enhance the effectiveness of usury provisions, especially the protection aspect. The recent regulation dealing with the personal credit business is intended to check credit usury.

Limited Liability Law

Another example of the preventive strategy is an amendment to the law regarding companies with limited liability. Although the sum of S25,000 presently is sufficient to found a limited company, the amendment of January 1, 1978, requires the possession of S300,000 in cash. This may create an obstacle to the formation of questionable companies "on paper" and prevent bankruptcy.

General and Supplementary Laws

There is no real need at present for a white-collar crime law in Austria, and no plans for one seem to exist at the moment. The reason may be that the definition of fraud in the new criminal law and its application by the criminal courts have not left any loopholes in the fight against white-collar criminals. Furthermore, the credit law contains a frequently used catchall provision

for cases involving illegal procurement of credit in which criminal intent cannot be proved.

Recent legal reform has accomplished a great deal in the area of supplementary laws. Specific examples include the previously mentioned amendment to the 1975 criminal law for finance, the new price law governing profiteering by management which took effect on July 1, 1976, and especially the food product law which is intended to protect the consumer.

Contradictions such as those arising from differences between the spoilage regulations contained in numerous supplementary laws and the new spoilage concept in the criminal code or between separate regulations within supplementary criminal law underline the urgency of resolving the problem. Another important legal contribution to the prevention of white-collar crime in the narrow sense could be made by creating specific, conforming regulations on the liabilities of agents and representatives.

Punishment of Offenders

Legislative measures are not enough, however. White-collar crime prevention can be achieved and further economic damages curbed only through punishment of the guilty parties as soon after the act as possible. To accomplish this, the criminal prosecution authorities must exhaust every provision of the existing criminal procedure.

Moreover, the preliminary inquiry conducted by the examining magistrate does not satisfy the need for acceleration and concentration of the procedure because of its legal requirements in major cases of white-collar crime. If detention pending investigation is not ordered, the public prosecutor's office can counteract this deficiency by attempting, as in the Bauring case, to resolve the matter rapidly with a preliminary police or court inquiry under its control. To accomplish this, however, only specialized prosecutors familiar with both white-collar crime matters and business and political economics should be involved. Toward this end a special department for white-collar crime was established on January 1, 1977, in the public prosecutor's office of Vienna, where most white-collar crimes are reported.

It is an undeniable shortcoming of the Austrian legal system that similar measures have not been undertaken in the courts because of the constitutional principle that citizens cannot be deprived of their legal rights. However, judges as well as public prosecutors have received additional training in economics, which will make it easier for them to deal with white-collar

crime and to understand the relevant economic relationships. Similar provisions also were made in the new training program for new judges established by the Federal Ministry of Justice in 1976.

CONCLUSION

The roots of white-collar crime are clearly sociological. Austrian society, with its emphasis on consumption and prosperity, has lost its sense of values. The concept of morals in particular is considered outdated, probably because of past empty moral gestures. It is not surprising, therefore, that such principles as conscientious management, honesty and good faith, and ethical business practices are seldom heeded in the modern success-oriented economic world.

Since this negative attitude necessarily generates crime in the white-collar area, the attempt must be made to intervene through efficient criminal prosecution. Such intervention is urgent because it essentially involves curbing the corruption which is undermining the economy and thus the economic structure. More important, it involves the preservation of the democratic order.

White-Collar Crime--An Adjunct of Our Political and Economic System

By S. Venugopal Rao

Introduction

White-collar crime--a concept propounded by Edwin H. Sutherland in 1939--has come to be understood as violations of law committed by persons of respectability and high social status in the course of their occupational activities.* Although others have sought to extend the definition to cover all illegal acts committed by nonphysical means to obtain money, property, or personal or corporate advantage, India has followed the Anglo-Saxon example in determining where traditional crime ends and white-collar crime begins.

As in the West, a distinct class of offenders and offenses has been created with the result that behavior condemned in individuals and punished with criminal sanctions often is dismissed as an acceptable adjunct of business when engaged in by a corporation or its representatives. Sutherland ascribes this differential application of the law to three factors: the power and influence of the offender, the trend away from punishment, and lack of organized public opinion.

The cultural homogeneity of legislators, judges, and administrators with businessmen also is seen as contributing to such selected enforcement. It could be argued, however, that some kind of differentiation is necessary due to the immense variety of white-collar crimes, ranging from petty adulteration of milk to the virtual poisoning of foodstuffs and from technical breaches of trust to gigantic frauds.

"White-Collar Crime--An Adjunct of Our Political and Economic System" (NCJ 54257) originally appeared in The Indian Journal of Social Work, v. 38, n. 4:399-409, January 1978. (Tata Institute of Social Sciences, Sion-Trombay Road, Decnar, Bombay 400088, India) Summarized by K. B. Leser.

*Edwin H. Sutherland, White-Collar Crime (New York: Holt, Rinehart and Winston, 1961).

Contemporary Trends

The universality and variety of white-collar criminality are well known, but within the Indian context, several offenses are particularly noteworthy:

- Tax evasion, although considered an important form of white-collar crime, never has been viewed as a serious offense or moral wrong. The high tax rates are viewed as justification for evasion by self-employed persons such as businessmen, lawyers, and doctors, some of whom do not hesitate to falsify their accounts in an effort to conceal income. Very few, if any, tax evaders are ever convicted and imprisoned, despite emergency measures instituted to force the disclosure of accurate income information.

- The election laws tend to transform the majority of political leaders and aspirants for political power into white-collar criminals, for it is common knowledge that election expenses often exceed the limits imposed by the law. Violations are rationalized on the grounds that the Election Commission's spending ceilings are unrealistic, and therefore no stigma attaches to individuals exceeding them.

- The use of mass media for promoting sales of consumer goods, although a comparatively new practice in India, already has established unfortunate trends. Some newspaper and popular journal advertisements represent flagrant examples of cheating--fraud that is safe from prosecution due to distance and time constraints and the advertisers' ingenuity which keeps them just within the law.

- Under some health plans sponsored by the Government, collusion among medical practitioners, patients, and druggists makes it possible to cheat the Government of huge sums of public money through dishonest claims involving fake prescriptions and false accounting of sales. In State hospitals, the beds are few, facilities inadequate, and admission pressures high--a situation which provides doctors with opportunities to manipulate admissions to their own financial advantage.

- Adulteration of drugs and drug price control are problems closely related to health care. Flooding the market with spurious drugs is a deliberate criminal act carried out by individuals who manufacture the cartons and labels of life-saving drugs and offer them for sale. Pricing irregularities involve the pharmaceutical firms themselves. These firms often discontinue vital drugs because the Government has reduced the price, or changed the content of other drugs in order to circumvent the price structure.

- The integrity and financial discipline of the banking system also show signs of erosion. The Central Bureau of Investigation has been looking into a number of grave irregularities involving

the granting of loans. The policy of providing credit to the weaker sections of society is well intended, but numerous complaints indicate that in several cases the borrowers receive only a small portion of the loan, with the rest being shared by middlemen acting as guarantors.

- The teaching profession has not been immune either. Unethical practices brought to light regarding the evaluation of test papers have forced the authorities to devise elaborate machinery to prevent corruption. The preparation and prescribing of substandard textbooks is another unethical practice which normally does not attract penal attention because of collaboration of the academic and commercial interests involved.

- The pervasiveness of white-collar crime is best illustrated by the unethical practices that exist even in the country's holy places. For example, at the holy shrine of Sri Venkateswara, which attracts millions of pilgrims each year, the collection of contributions has been entrusted to the banks after large-scale pilferage and misappropriation. One can only wonder what effect this commercialization will have, and indeed, what society should do about profit-oriented priests who amass money, avoid taxes, and maintain secret accounts in foreign banks.

Implications of the Phenomenon

The differential conceptualization of criminality in higher socioeconomic levels--with its trappings of respectability and some degree of public acceptance--must be traced to the United States. It began at the end of the last century when small American business organizations demanded protection from the price manipulations of huge cartels. World War II, which prompted phenomenal growth in industry and consumer spending, also aggravated the white-collar crime problem by causing blackmarkets to flourish. Sutherland's classic studies relate to this capitalist structure. His work highlights the fact that when political power is held or influenced by vested business interests, there is bound to be some differentiation in lawmaking, usually to the detriment of the consumer.

In a developing country such as India, the question is not protecting the interests of a particular type of business. The case for free enterprise loses its relevance in the Indian setting of abject poverty because the need for protecting the helpless victim of the socioeconomic system demands unequivocal punitive legislation and requires that all exploitive practices be prosecuted as criminal acts.

The phenomenon of white-collar crime also challenges the general theories of crime causation in that sociological explanations

based on anomie, cultural conflict, and differential association give way to an economic theory which postulates that criminals, especially white-collar offenders, are rational people who calculate their preferences and make their choices accordingly.

Legal and Administrative Aspects

Although the Indian Law Commission used the term "socioeconomic crime" instead of "white-collar crime" in one of its reports, the Commission took the position that, because such offenses are more harmful than traditional offenses, perhaps white-collar crime legislation should differ from laws dealing with traditional crimes regarding criminal intent and other substantive and procedure considerations.

In essence, the Commission recommended a shifting of the burden of proof to the accused and the use of preventive detention. However, the argument that such measures can be justified on the grounds that white-collar crime is particularly vicious is specious at best. So, too, is the suggestion that prosecutions be initiated on the basis of prima facie evidence in the hope that the possible publicity surrounding even such a doomed prosecutorial effort would serve as a deterrent.

The Political and Economic System

The concept of and approach to white-collar crime are intimately related to the Indian political and economic system. Although it is claimed that India has a mixed economy representing a transitory stage toward socialism, the economic structure is in a large measure capitalistic, with community life dominated by monopolistic trade and commerce. Further, the efforts of the Government to achieve some control over these forces through the establishment of the Monopolies and Restrictive Trade Practices Commission have been largely marginal.

Although the emergence of white-collar crime in capitalist societies has been ascribed to the monopolistic character of free enterprise and competition, such crime in socialist countries appears to be the result of competition with the economic activities of the nation itself. Soviet criminologists view such offenses as residual manifestations of parasitic behavior. In the wake of several reported fraud schemes involving blackmarket activities, a special department of the Soviet police has been established--the Division for the Struggle Against Embezzlement of State Property.

Economic crimes are reportedly common on Soviet state farms and are being dealt with most severely. Penalties include death for major deviations and prison sentences up to 15 years for others.

Conclusion

Three principal points emerge from the foregoing discussion: the close link between white-collar crime and the capitalist system, the supportive relationship between such economic crimes and corruption, and the inadequacy of the existing legal system to deal effectively with the pervasiveness and complexity of white-collar offenses. The last of these is often proposed as an excuse for regarding white-collar crime as different from traditional crime. The distinction is artificial, however.

If the law is ineffective and the procedures designed to protect the individual are cumbersome and self-defeating, they should be modified to permit swift and effective punishment of the guilty as a deterrent to others. However, only marginal success can be achieved through more stringent legal and administrative measures and more honest law enforcement. But even marginal success is doubtful unless the political system is sufficiently determined and genuinely willing to divest itself of its dark association with trade and commerce.

The Significance of White-Collar Crime in Switzerland

By Hans Schultz

Introduction

Very little information about Swiss white-collar crime is available, but it may be possible to explain why there are so few bases for estimates and why only conjecture can be offered.

The uncertainty begins with the actual meaning of white-collar crime. Those who consider themselves experts seem to be trying to provide their own definition for the object of their research. This approach is advantageous in that anyone can claim to be at the forefront of modern science and aware of the need for an exact definition. At the same time, any objections can be countered with the argument that the critic is not referring to the same subject. With these advantages in view, this paper initially will attempt to define the concept of white-collar crime.

Clarification of the concept is particularly pressing because investigations of the subject, since the fundamental studies of Edwin H. Sutherland on white-collar criminality, have come dangerously close to confusing two separate aspects: what is to be considered white-collar crime according to a particular legal system and its penal provisions, and what criminologists dislike about the legal and economic system in question and therefore what they would like to see penalized or punished more severely.

"Die Bedeutung der Wirtschaftskriminalität in der Schweiz" (NCJ 56985) originally appeared in Hans Göppinger and Hans Walder, eds., Wirtschaftskriminalität--Beurteilung der Schuldfähigkeit (White-Collar Crime--Determination of Liability), Proceedings of the 19th Conference for General Criminology, October 7-9, 1977, Bern, Switzerland, 1978, p. 53-66. (Ferdinand Enke Verlag, POB 1304, Stuttgart 1, West Germany) Translated from the German by Kathleen Dell'Orto.

Scope of the Discussion

The following discussion centers on existing Swiss law and consequently ignores debate on what should be penalized more severely. Neither the controversies on the use of inside information nor attempts to end dishonest machinations in the business sector through changes in the commercial or administrative law are to be considered. It should be noted, however, that liability law, covered by the Swiss civil code, presently permits individuals only to be unlimited partners in a limited partnership. On the other hand, the statutes require a minimum starting capital of SwF50,000 for a joint stock company.* Of this amount, only SwF20,000 must be paid in by the time the company is founded, which facilitates the establishment of fraudulent companies. But raising the amount of required starting capital for a joint stock company probably would lead to evasion in that applications would be submitted for status as limited liability companies, which require a minimum starting capital of only SwF20,000, with at least SwF10,000 to be paid in prior to establishment of the company.

Understanding white-collar crime in a particular country requires knowledge of that country's legal system. Switzerland has no commercial code and therefore no supplementary penal regulations. White-collar crime is covered by acts described in the penal code. Federal supplementary penal law has provisions for violations of laws relating to unfair competition and inspection of food products; the supplementary criminal regulations of the Federal Government and the cantons govern tax penalties, subsidies, banks, and investment funds.

Judge's perspective of white-collar crime. The view of white-collar crime presented in this paper is that of one who has had some experience as a judge in charge of preliminary criminal inquiries. White-collar crime encompasses certain kinds of crimes against property, including criminal acts in the course of debt collection and document forgery, if such criminal acts are committed in connection with legal forms and transactions providing access to goods or services with monetary value. But this is only an initial, very general description. The most characteristic feature relates to institutional proceedings: white-collar crime is the total number of criminal prosecutions for the acts cited, which are conspicuous because of the amount of damages involved, their extent, and the particular difficulties involved in clarifying the actual and legal circumstances. The definition admittedly is vague and does not facilitate sharp distinctions; nor does a description emphasizing criminal proceedings correspond to methods for dealing

*Editor's Note: 1 Swiss franc (SwF1) currently is equivalent to US\$0.58.

with crime. Furthermore, the question arises whether commission of such acts cannot be hindered or even prevented through deterrent provisions in civil and administrative law. If cases of white-collar criminality can be resolved by criminalistic means, it may be proved, as a rule, that fraud, embezzlement, dishonest business management, document forgery, and even fraudulent bankruptcy will be easier to recognize.

Definition of white-collar crime. The description of white-collar crime given in this paper closely conforms to the intent of the West German law governing judicial organization when it refers to crimes which cannot be judged without advanced knowledge of economics. It is not surprising that the individual cantons have instituted special divisions within their investigative agencies; such action was necessary because legislation in criminal proceedings is the responsibility of the cantons.

This definition disregards misuse of trust as a characteristic to avoid difficulties in differentiating this term from ordinary embezzlement and dishonest business management. In addition, it does not identify the social position of the offender as a characteristic, as Sutherland did. Instead, the intention is to distinguish between white-collar crime and criminal law pertinent to economic matters. White-collar crime involves commission of ordinary, yet large-scale, criminal acts associated with the legal aspects of transacting business, whereas criminal law dealing with economic matters concerns violations of governmental regulations which affect the state of the economy, the entire course of the economy, or control of individual economic processes. Such a distinction is essential to develop methods and policies for combating crime: Prevention of white-collar crime presupposes knowledge of specialized subjects such as bookkeeping and commercial law. Prevention of the acts defined in criminal law for economic matters requires exact knowledge of the current regulations covering management as well as of the workings of the entire economy.

Lack of Adequate Statistics

The extent of white-collar crime in Switzerland is an unknown factor. This does not mean that the number of such criminal acts cannot be ascertained, but instead that efforts to measure it accurately have been inadequate in Switzerland just as in other countries. The difficulty in describing the numerical volume of crime in Switzerland derives from the country's failure to maintain statistics on crimes reported to the police, inasmuch as the police and prosecution of crime are controlled by the cantons. Statistics merely cover convictions and sentences; the statistical unit is the individual person convicted of a particular crime. Neither the number of crimes committed by the individual offender nor their gravity is recorded.

The extent of the damage in crimes against property reported to the police is unknown because of the lack of statistics. Nor is reliable information available on damage due to crimes against property which are not considered white-collar offenses.

In addition, white-collar crimes often are offenses which result in significant damage in individual cases. The director of the Chiasso branch of the Bank of Switzerland illegally gave banking guarantees for approximately SwF2 billion. The amount of damage to the bank and individual depositors and the extent of dishonest business management are unclear. The smallest sum mentioned was SwF250 million, and estimates extend to two or three times that amount. The Swiss Federal budget for 1976 had a deficit of SwF1,573 billion, and the damage from the Chiasso case alone could correspond to half of that deficit. Although this case is unusual even for the Swiss economy, it illustrates the immense proportions which white-collar crime may assume. It would not be surprising that individual cases cause damage in the millions, for extensive damage is a characteristic included in our definition of white-collar crime.

Cases of white-collar crime often are widely publicized. This causes a problem similar to bank and post office robberies, which frequently involve a great deal of money and extensive publicity. The more common minor crimes of robbery and simple theft therefore are pushed into the background, but these numerous, if petty, crimes also contribute to the total damage. The danger exists that crimes against property, especially white-collar crimes, are magnified and thus distorted by media reports, because only the major cases are given coverage. Extrapolating from spectacular cases suggests horrendous damage from white-collar crime, but estimating the actual significance of such crime is exceptionally difficult.

Finally, it must be kept in mind that all statistics have inherent weaknesses. For example, the statistics on seemingly suspicious acts fail to record whether criminal behavior was actually involved. Offenses committed but not penalized for some reason, because of difficulties in producing irrefutable evidence or the defendant's unsound state of mind, are omitted from statistics on convictions.

Available Statistics

Despite the lack of statistical reliability, some figures for recent years are supplied as points of reference. The special division for fraud and white-collar crime of the Zurich Cantonal Police handled the following new cases, excluding bankruptcy:

| <u>Year</u> | <u>Cases</u> | <u>Total Cost for Crimes (SwF)</u> | <u>Amount Per Offense (SwF)</u> |
|-------------|--------------|--|-------------------------------------|
| 1973 | 135 | 91,000,000 | 674,074 |
| 1974 | 104 | 163,000,000 | 1,315,000 |
| 1975 | 105 | 178,000,000 | 1,695,000 |
| 1976 | <u>124</u> | <u>322,000,000</u> | <u>2,597,000</u> |
| Total | 468 | 754,000,000 | 1,611,000 |

The white-collar crime division of the prosecutor's office in the city of Basel reported the following figures for these categories:

| | | | |
|-------|-----------|-------------------|------------------|
| 1973 | 45 | 7,052,174 | 156,715 |
| 1974 | 28 | 17,418,000 | 622,071 |
| 1975 | 32 | 13,696,583 | 428,018 |
| 1976 | <u>28</u> | <u>31,174,838</u> | <u>1,113,387</u> |
| Total | 133 | 69,341,595 | 521,365 |

(Editor's Note: Although mathematical miscalculation seems evident in some of the data in the foregoing tables, the figures are exactly as reported in the German original.)

The figures for Basel clearly show that statistics of this nature are selected at random. If the year 1972 were also considered, 62 more cases with a total of SwF292,080,172, at SwF4,710,968 per case, would appear on the list. The total for all 5 years then would amount to SwF361,421,773, at SwF2,914,685 per case, because in 1972 a single case produced damages of SwF192,500 million.

Assuming that the same number of white-collar crimes is committed in Switzerland as a whole as in Basel and Zurich, further conclusions can be drawn. The average annual damages caused by ascertainable white-collar crimes in Basel and Zurich from 1973 to 1976 amounted to SwF211,670,797. Approximately 21 percent of the total Swiss population in 1976 resided in the two cantons. It can be deduced therefore that the white-collar crime prosecuted in Switzerland from 1973 to 1976 caused annual damages of more than SwF1 billion.

This estimate is probably too high since it is unlikely that white-collar crime could be distributed that evenly over all of Switzerland. Such crime is concentrated in the cantons with particularly vigorous banking and business activities, and the ac-

tual figure is uncertain. Moreover, it is not known to what extent Switzerland, being a financial center, transfer point, and transit country, also accounts for white-collar crimes perpetrated abroad.

The number of white-collar crimes prosecuted annually which are calculated in this manner can be compared with various figures. Such comparisons are useful only if the extent of annual damages caused by the total number of crimes against property and the percentage of such offenses classified as white-collar crimes are known.

Comparison with the gross national product (GNP). Although they may be questionable, several such comparisons are attempted. Comparison with the gross national product (GNP) of Switzerland follows:

| <u>Year</u> | <u>GNP Amount (SwF)</u> |
|-------------|-------------------------|
| 1973 | 134.5 billion |
| 1974 | 146.6 billion |
| 1975 | 144.6 billion |
| 1976 | <u>146.6 billion</u> |
| Total | 572.3 billion |

The average for those 4 years was SwF143 billion. The estimated average of slightly over SWF1 billion in annual damages caused by white-collar crime is equal to 0.176 percent of the average annual GNP.

Comparison with automobile accidents. A typical occurrence of the modern age, the automobile accident, provides another opportunity for comparison. The total costs of automobile accidents on Swiss roads in 1972, estimated at about SwF2.3 billion, include the expenses for treatment of injuries and payment for property damages, court proceedings, and production losses. These figures amount to twice the annual damages from prosecuted white-collar crime.

Comparison with bankruptcies. The number of bankruptcies or claims lost in bankruptcies are frequently mentioned in connection with white-collar crime; but not every bankruptcy is an indicator of such crime. In a free economy and a social market economy, the principles of performance and competition force less capable competitors out of business. Careful examination of individual cases is necessary to determine whether financial collapse was caused by simple inability and inaccurate assessment of both the

individual's potential and the general economic situation and its development, or whether the incompetence is punishable as careless destruction of assets or even fraudulent bankruptcy. The special division for fraud and white-collar crime of the Zurich Cantonal Police performed the following inquiries into bankruptcy cases, which--once again--may be questionable:

| <u>Year</u> | <u>Cases</u> | <u>Amount of Claims (SwF)</u> |
|-------------|--------------|-------------------------------|
| 1974 | 25 | around 30,000,000 |
| 1975 | 26 | around 45,300,000 |
| 1976 | 28 | around 76,500,000 |

Although the type of crime within the purview of criminal law for economic matters was differentiated from white-collar crime, tax evasion and unlawful procurement of subsidies are considered here briefly.

Comparison with tax evasion. The difficulties encountered in determining the extent of tax evasion are similar to problems involved in dealing with white-collar crime. Tax evasion is not committed by individuals who use advantages allowed them in tax law, but rather by persons who consciously and willfully submit false information to the authorities regarding their tax calculations. It is an open secret that this kind of tax evasion is quite common in Switzerland.

Although the estimates are supported by limited factual material and by rather outdated figures, these indications found in a Federal Council report of May 25, 1962, are cited. The assets not declared for tax purposes and the profits from them can be estimated on the basis of the amount of withholding taxes collected on Swiss securities which was not attributable to the taxes of individual securities holders. This amount, which was SwF187.8 million in 1960, cannot serve as an absolute indicator for the extent of tax evasion because it includes the Swiss securities owned by persons not obligated to pay taxes in Switzerland. The report assumes that SwF120 million of the SwF187.8 million are proceeds from securities in Swiss hands. Untaxed profits on these securities amount to SwF440 million, and calculation of the net capital using a 3.25 percent rate of return yields unreported Swiss securities amounting to approximately SwF13 billion. The results of the last tax amnesty, which brought to light untaxed assets of SwF11.5 billion, indicate that the figures estimated for undeclared assets are not only feasible, but also realistic.

According to the cited report, the difference between the net national income and the income reported from tax payments is SwF2 billion per year after necessary corrections are made. On the basis of this and other information, the losses from tax evasion are estimated to be at least SwF35 million to SwF50 million for the Federal Government and SwF233 million to SwF296 million for the cantons and municipalities.

The net proceeds from withholding taxes on securities were almost SwF1,683 million in 1976. If 40 percent of the total volume of securities belong to persons not obliged to pay taxes in Switzerland, the proceeds from securities in Swiss hands for which withholding taxes were collected amount to SwF1 billion. Since only 35 percent of income taxes are allotted to national defense costs, the total profits on which taxes were not paid amount to SwF2,885 million. Based on calculating this income at a rate of return of 5 percent, it can be concluded that untaxed assets in Swiss securities held by Swiss citizens and subject to withholding taxes amount to SwF57.7 billion. In comparing these figures to those of 1960, it should be noted that the tax rate was approximately 25 percent lower in that year. Calculated at the 1960 rate, the untaxed profits from securities in Swiss hands would have been SwF750 million, 4 times more than in 1960. Of course, adjustments would have to be made for the economic boom and the pronounced currency devaluation during the period. If it is assumed that the figures estimated for 1960 rose accordingly, the Swiss Government would have suffered tax losses of at least SwF140 to SwF200 million from tax evasion in 1976. This amount would not have been sufficient to cover the approximately SwF1.5 billion deficit in Switzerland's 1976 Federal budget. The cantons and municipalities would have lost at least SwF932 million to SwF1,100 million in 1976 taxes, based on the same estimates. The 1976 budget deficits were SwF1,021 million for the cantons and SwF800 million for the municipalities. The figures provide little reason to believe that the tax rate could be reduced if taxes were paid honestly, because the portion of net profits from the withholding tax on securities no longer would be retained by the Government, but instead would be refunded to the honest taxpayers.

Comparison with Federal subsidies. Federal subsidies amounted to around SwF5.6 billion in 1976. They were distributed almost without exception for education, road construction, land improvement, and other services. If the price of exports is reduced, according to the Federal Bureau of Finance, abuses can be avoided by strict supervision. Because subsidies such as those established by Common Market law are not paid in Switzerland, major subsidy swindles are as yet unknown. According to the same source, only minor improprieties such as incorrectly estimated specifications for individual subsidized buildings have been uncovered to date. They are insignificant compared to the total amount

for subsidies, however. Whether and to what extent consciously unlawful subsidies are obtained cannot be determined accurately.

A Working Paper on White-Collar Crime in Australia

By Andrew Hopkins

INTRODUCTION

Discussions of white-collar crime invariably begin with the issue of definition. There are almost as many definitions of white-collar crime as there are writers on the subject--and as yet no sign of an emerging consensus. Although some writers argue that the term is inherently ambiguous and recommend abandoning it in favor of such concepts as economic crime, occupational crime, and even "gilded" crime, similar disagreements exist on the definitions of these terms.

What Constitutes White-Collar Crime?

The real source of this definitional problem lies in the genuine disagreement as to the specific offenses which constitute white-collar crime. Although some criminologists wish to restrict the types of crime to be considered, others seek to expand the scope as widely as possible, a situation which serves to compound existing methodological extremes.

For example, Gibbons limits the term white-collar crime to violations of business regulations or occupational roles perpetrated under the guise of contributing to the business or occupational enterprise. Accordingly, violations of industrial pollution laws and price fixing are white-collar crimes because they use the excuse of contributing to the enterprise as a whole, whereas embezzlement and fraud by company directors against shareholders are not white-

A Working Paper on White-Collar Crime in Australia (NCJ 50936), 1977, 67 p. (Australian Institute of Criminology, 10-18 Colbee Court, Phillip, C.T. Australia 2606) Summarized by K.B. Leser.

collar crimes because they yield an illicit advantage to an individual.*

In contrast to Gibbons, Edelhertz defines white-collar crime more generally:

An illegal act or series of illegal acts committed by non-physical means and by concealment or guile, to obtain money or property, to avoid payment or loss of money or property, or to obtain business or personal advantage.†

This definition covers most of the behavior Gibbons is concerned with, as well as fraud against shareholders, embezzlement by bank employees, income tax evasion, and a variety of other offenses.

Is White-Collar Crime Really Crime?

Apart from debate over what offenses should be included in white-collar crime, there is a second controversial issue which arises in any discussion of the topic--is white-collar crime really crime? Not all behavior generally regarded as white-collar crime is punishable under the law. For example, although Australia's Fair Trade Practices Act of 1971 made it an offense for manufacturers to engage in the practice of resale price maintenance, the act specified no penalties in the event of a violation. Instead it provided machinery for an aggrieved party or the Commissioner for Trade Practices to seek an injunction against any further violations by the offender.

Some white-collar offenses considered herein, such as fraud, are crimes according to the strictest interpretations, whereas others, such as tax evasion, are criminal only in terms of the broadest interpretations of the word. All of them, however, involve illegal acts or violations of declared law.

*Don C. Gibbons, Society, Crime, and Criminal Careers: An Introduction to Criminology, 2d ed., NCJ 10341 (Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1973), 325-341.

†U.S. Department of Justice, Law Enforcement Assistance Administration, National Institute of Law Enforcement and Criminal Justice, The Nature, Impact and Prosecution of White-Collar Crime, NCJ 04415. By Herbert Edelhertz (Washington: U.S. Government Printing Office, 1970).

CRIME AGAINST INVESTORS AND CREDITORS

The ways in which shareholders, debenture holders, and creditors of a company can be defrauded are almost limitless. Perhaps because it is difficult to pass legislation encompassing these numerous possibilities, there is no single prohibition against such crime in Australia. Aspects of fraudulent, dishonest, or negligent behavior by company officers are prohibited in a number of codes and in common law, but it is left to a special agency in each Australian State to enforce the relevant legal provisions.

The Corporate Affairs Commission

The antifraud practices of the Corporate Affairs Commission (CAC) of New South Wales are the best documented. The principal function of the CAC is to prevent directors or other company officers from abusing their positions of trust and enriching themselves at the expense of their investors or the suppliers who extend them credit in the course of normal business dealings.

Representative CAC cases. The CAC's best known cases involve the misuse of capital raised from investors for the formation or expansion of oil and mineral companies. In one case, the directors of a firm used the funds to make a loan at less than commercial interest rates to another firm in which they held substantial interest. In another case, millions of dollars raised to buy oil leases were funneled through a chain of intermediary companies and eventually diverted to a Swiss bank account.

Although these cases involved public companies with thousands of shareholders, 103 of the 118 cases held for review by the CAC in July 1976 centered on small, so-called proprietary companies with no more than 50 and frequently fewer than 5 shareholders. When a firm with a limited number of shareholders comes to the attention of the CAC, the case usually involves fraud against creditors. This is particularly true when directors of a firm, aware that their company is insolvent, continue to incur debts knowing that corporate bankruptcy laws afford them limited liability.

Another substantive offense for which the CAC is responsible involves directors and other company officials realizing large profits on the stock exchange by buying or selling company shares on their own behalf and at the expense of other sharetraders who are unaware of the company's true state of affairs. Sometimes the directors deliberately mislead the stock exchange by announcing, for example, that the company has made a substantial profit when in fact it has incurred a loss or is insolvent.

CAC prosecutions. Although available data clearly indicate that New South Wales is considerably more active than other States in prosecuting such fraud, the number of prosecutions in New South Wales is pitifully small when compared to the amount of white-collar crime actually being committed. Furthermore, CAC data indicate that fewer than half of the cases brought to trial result in convictions. Of those that do, most result in fines of several hundred dollars.

A major limiting factor is the significant difficulty the CAC experiences in obtaining and presenting evidence necessary for conviction. Although it may be obvious that shareholders and creditors have lost money, it is often difficult to establish that this was the result of a criminal act rather than bad business judgment on the part of the directors.

In addition to the fact that the trials themselves are long, complex, and expensive, a further obstacle to successful prosecution of such fraud cases is that, in contrast to most conventional criminal cases, the motivation of the accused is often the crucial issue.

In a recent case of an oil company director accused of insider trading, the prosecution alleged and the magistrate agreed that the director had acquired inside information that the price of company shares was likely to fall. The director's family enterprise owned shares in the oil company, and, shortly before the shares actually fell, he sold most of the family's interest. The prosecution claimed that the sale took place as a result of the director's inside information, but the director argued that his family business was in debt and that he would have been forced to sell the shares anyway. Accordingly, the magistrate acquitted the director, holding that the prosecution had not proved that the sale resulted solely from the director's knowledge of the impending share devaluation.

Although changes in court procedure and rules of evidence are desirable and would certainly expedite the trial process, they will not solve all the problems the CAC encounters in proving its cases. Several sources have suggested that it may be more expeditious to emphasize the prevention of such crime than its prosecution.

Crime prevention measures. The Commissioner for Corporate Affairs in New South Wales has suggested establishing a shareholder's tribunal to which the owners of a particular company's stock could take their complaints or suspicions. If the tribunal found that the firm was about to embark on a course of action detrimental to the shareholders' interests, it could apply to the courts for a temporary injunction.

Other suggested preventive measures involve licensing directors, requiring that companies make more frequent public reports, and increasing the accountability of those company employees--auditors, for example--whose attitude of nonresponsibility often facilitates the commission of crime.

A measure already adopted by the CAC centers on the routine scrutiny of companies considered especially likely sources of crime against investors and creditors. Thus, the CAC continuously monitors companies regularly seeking public funds and also pays special attention to the activities of directors involved in the management of two or more companies which have failed within the past 7 years.

CRIME AGAINST CONSUMERS

Numerous State laws and one Federal statute have been enacted to protect consumers against predatory business behavior. The Federal statute, the Trade Practices Act, is administered by the Trade Practices Commission (TPC), and the State laws are enforced by a Consumer Affairs Bureau or its equivalent in each State.

The Trade Practices Commission

The TPC is concerned with three different types of business behavior: restrictive trade practices, mergers, and consumer protection. Under the 1974 act, both restrictive trade agreements among competitors and mergers which significantly diminish competition in a selected market are punishable by fines up to \$A250,000.* However, since the act went into effect, there have been no merger prosecutions and only one of the two restrictive trade cases ended in a conviction--a corporation, found to have engaged in resale price maintenance, was fined \$A5,000.

In the area of consumer protection, the act specifies a number of misleading or deceptive practices punishable by imprisonment for up to 6 months in the case of an individual, and by fines up to \$A50,000 in the case of a corporate entity. During the period covered by the commission's first two annual reports, only six companies were successfully prosecuted, primarily for misleading advertising.

The TPC has initiated so few prosecutions because of several procedural, philosophical, and political factors that have

*Editor's Note: 1 Australian dollar (\$A1) currently is equivalent to US\$1.10.

consistently hindered successful suits. As in shareholder fraud, the evidence necessary to prove restrictive trade is complex and difficult to obtain, and in antimerger investigation there is often genuine doubt as to whether a merger is anticompetitive. In at least two merger cases, most of the commissioners argued that the companies had not violated the law.

Such evidentiary problems are not so acute in the case of consumer protection provisions, although the TPC has encountered political obstacles. In five cases the TPC recommended prosecution, but the minister exercised authorized discretion and refused to consent to trials.

Questions also have been raised regarding the effectiveness of the sanctions available to the commission under the act. Unlike the prosecutions undertaken by the CAC, most of the proceedings initiated by the TPC are against the corporations and not the directors. Fines of a few thousand dollars make little impact on the profits of large corporations. It could be argued, moreover, that such fines are a disservice to the consumer, for it is likely that they are treated as another cost of doing business, which is merely passed on in the form of higher prices.

State Consumer Protection Agencies

In contrast to the approach of the Federal commission, State consumer protection agencies launch prosecutions only when confronted with flagrant violations or when a trader defies a previous order by the agency. The major aim of State efforts is to resolve disputes between consumers and traders to the satisfaction of both parties.

Although a survey of State consumer protection initiatives reveals South Australia to be the most active--52 prosecutions in 1974-1975, the majority under the Second Hand Motor Vehicle Act--the small number of prosecutions nationwide indicates that traders can violate State consumer protection laws with impunity, escaping by making restitution to the consumer or with negligible penalty if prosecuted.

OTHER WHITE-COLLAR CRIMES

Crime Against Employees

Although violations of industrial health and safety laws designed to protect employees are widely regarded as white-collar crime in Great Britain, they are seldom discussed in this context in Australia, and few would think of such violations as criminal. And though a variety of State acts--the Labor and Industry Act, the

Boilers and Pressure Vessels Act, and the Lifts and Cranes Act--impose obligations on employers relating to employee health and safety, violations seldom result in a decision to prosecute. For example, in South Australia in 1974, 316 violations of the Inflammable Liquids Act were detected, but no prosecutions were initiated.

Crime Against the Environment--Pollution

In recent years in Australia, widespread legislative activity has been aimed at curbing environmental pollution, particularly that caused by industry. Western Australia, Tasmania, and Victoria have passed Environmental Protection Acts and have set up central agencies to administer them. In other states, there is no single catchall antipollution statute. In New South Wales, for example, there is a Clean Air Act, a Clean Waters Act, a Noise Control Act, a Prevention of Oil Pollution of Navigable Waters Act, Port Authority Smoke Control Regulations, and a Public Health Act, all of which designate environmental offenses.

The two primary agencies for enforcement in New South Wales are the State Pollution Control Commission and the Maritime Services Board. In 1975-76, the commission successfully prosecuted 17 companies, including Shell Oil Company and Australian Iron and Steel, under the Clean Air Act, with penalties ranging from \$A150 to \$A1,000. The Maritime Services Board launched 32 successful cases during the same period, 4 for violations of smoke control regulations and 28 for discharging oil into navigable waterways.

South Australia apparently has no antipollution legislation, although two offices--the Department of the Environment and Conservation and the Department of Engineering and Water supply--are to some extent concerned with the problems of pollution.

Crime Against the Government--Tax Evasion

The annual reports of the Commissioner for Taxation provide data on action taken against certain types of income tax evasion. In the case of failure to file an income tax return, for example, the commissioner can proceed in one of two ways or both: the offender can be prosecuted formally, in which case a maximum fine of \$A200 can be levied, or administrative action can be initiated, with an impossible fine of up to twice the amount of the tax evaded. The latter is the preferred method of dealing with a tax evader--in 1975-76, some \$A5 million in administrative penalties were imposed in 162,335 cases.

A second type of evasion occurs when taxpayers understate their taxable income. Again, the commissioner may proceed administratively, prosecute formally or both; in 1974-75, 24,892

cases of understated income accounted for \$A18 million in back taxes and penalties totaling approximately \$A6 million.

The annual reports also list the names, addresses, and occupations of several hundred of the most flagrant cases of understated income. As one might expect, the majority of the evaders are self-employed, such as building contractors, shop proprietors, farmers, and professionals in private practice. Very few clerks and laborers are listed--these people tend to live on fixed incomes and their opportunity for evasion is extremely limited. It is surprising that relatively few company directors are on the list, perhaps because they devote their energies to manipulating and legally circumventing existing tax laws.

Editor's Note: This work includes appendixes containing a bibliographic list of reports consulted and a detailed catalog of corporate affairs prosecutions.

The Impact of Prosecutions Under the Trade Practices Act

By Andrew Hopkins

INTRODUCTION

Because very little is known about the deterrent effect of penalties against corporations convicted of such offenses as false advertising, misrepresentation, and consumer fraud, this paper focuses on the impact of prosecutions of corporations under Australia's Trade Practices Act of 1974. The act contains prohibitions against anticompetitive business practices and practices which mislead or deceive consumers.

Anticompetitive Business Practices

The first set of prohibitions covers noncriminal practices punishable only by civil fines: price fixing among competitors, resale price maintenance, exclusive dealing, price discrimination, monopolization of a market, and anticompetitive mergers. Some of these practices, however, may be permitted by the Trade Practices Commission, the Government agency responsible for policing the corporate sector, if they are found to be in the public interest.

In one of the prosecutions resulting from the Commission's investigations of suspected violations of these provisions, a company found guilty of engaging in resale price maintenance was fined \$A5,000.*

The Impact of Prosecutions Under the Trade Practices Act (NCJ 50904), 1978, 97 p. (Australian Institute of Criminology, 10-16 Colbee Court, Phillip, A.C.T. Australia 2606) Summarized by K.B. Leser.

*Editor's Note: One Australian dollar (\$A1) is currently equivalent to US\$1.10.

Misleading or Deceiving Consumers

In contrast to prohibitions against such anticompetitive conduct, corporations or individuals misleading or deceiving the public are liable to criminal prosecution and may face 6 months imprisonment or up to \$A50,000 in fines. However, the criminal prosecution of corporations poses two related problems.

The first problem involves the question of whether a corporation can be held responsible for violations arising out of misbehavior by an employee. This dilemma was resolved by legislative fiat: the Trade Practices Act simply declares that any activity on behalf of the corporate body performed by a director, official, or agent of that body is the responsibility of the corporation as a whole.

The other problem is the question of intent. Criminal law traditionally holds a person guilty of an offense only if he or she intended to commit it. Obviously, it is often difficult to impute intent to a corporation. The Trade Practices Act overcomes this problem by imposing strict liability on a corporate entity for its behavior, considering it guilty regardless of whether it or its management intended the violation.

THE CASE HISTORIES

This paper will examine the cases of 19 companies which were successfully prosecuted under the consumer protection provisions of the Trade Practices Act: Sharp Corporation of Australia; Sperry Rand; John R. Lewis Company; Sparco; Optional Extras; Prudential Insurance; Mazda Limited; Power Machinery; Medical Benefits Fund; C. V. Holland Company; Metro Ford; John Martin Company; Magnamail; CLM Holdings; Maclus; Doyle Dan Bernbach; Channel O TV, Brisbane; and two unnamed used car dealers.

Because nearly all the prosecuted cases involved a violation attributable to some organizational defect--such as failure of the company to designate someone in authority to be responsible for the accuracy of advertisements--interviews were conducted with senior management personnel to determine why the violation occurred and what measures have been taken to correct the situation and prevent its recurrence.

Failure to Verify the Accuracy of Advertising Claims

Of the several types of defects identified, the most common was the failure of management to verify the accuracy of promotional material disseminated to the public. Of the 19 companies, 10 fell into this category--Sharp Corporation, Sperry Rand, Sparco, Optional

Extras, Mazda Limited, Power Machinery, Medical Benefits Fund, Metro Ford, John Martin, and Maclus. Sharp and Metro Ford are fairly representative of this group.

Sharp. Sharp advertised that its microwave ovens had been approved by the Standards Association of Australia (SAA), when in fact only the Electrical Authority of New South Wales had determined that the ovens conformed to certain general and minimum standards laid down by the SAA.

Though unintentional, Sharp's offense centered on its failure to require the appropriate technically qualified people to check its ad copy. The company's sales manager, who authorized the advertisements, claimed in court that he was misled by the practice in the electrical trade of referring to any approval involving SAA standards as SAA approval. Members of his technical staff, who would have been aware of the crucial nature of such distinctions, unfortunately were not involved in drawing up the advertisement, or even in checking it.

Metro Ford. Metro Ford's offense involved a similar oversight. In conjunction with its advertising agency, the automobile dealer prepared a television promotion highlighting a temporary sales tax reduction the Government was allowing. In the course of preparing the ad, however, the agency found it necessary to shorten the presentation, and in the process made certain substantive deletions which caused the ad to be misleading. Although the agency offered the tape to the dealer for preview, time factors and the lack of a proper projector or monitor prevented Metro Ford from reviewing the ad before it was aired. Again the deception was unintended.

Penalties and preventive measures. Nevertheless, in keeping with the "intent" provisions of the Trade Practices Act, both companies were found guilty in civil court and fined--Sharp \$A100,000 and Metro Ford \$A3,000. Both companies subsequently established measures to prevent future violations. In fact, of the original 10 companies convicted because they failed to check their promotional material adequately, only two--Medical Benefits Fund and John Martin--have not instituted procedural changes since their prosecutions.

Failure To Satisfy False Advertising Complaints

A second type of organizational defect identified in the case histories was the failure to deal effectively with public complaints about the misleading nature of advertisements. Mazda Limited, in particular, was affected by such a procedural breakdown.

Mazda. The Mazda Limited office in Victoria commissioned its advertising agency to develop a series of promotions for its entire line of cars. Based on information supplied by Mazda Limited, an ad was prepared claiming that all Mazdas had vacuum-assisted brakes when, in fact, two models did not. The ad was checked by both the Mazda Limited general manager and the sales manager, neither of whom was familiar with the technical details of the cars in question. As a result, the ad was published with the inaccuracy.

Similar to the situation in the Sharp case, Mazda's offense was compounded in the following manner. Shortly after the ad first appeared, a consumer called Mazda Limited to complain of the inaccuracy. The company, in turn, contacted the ad agency and asked that the ad copy be corrected before it appeared a second time. However, Mazda neither rechecked the ad to insure that the change had been made, nor determined whether the same error appeared in other, similar ads.

It was discovered later that the ad agency failed to correct the error and that similar inaccuracies existed in other ads. Mazda was convicted of false advertising and fined \$A20,000, along with court costs of nearly \$A15,000. Dismayed by the carelessness of its procedures, Mazda's management instituted a stringent procedure for checking the accuracy of advertisements and circulated a document outlining the procedure to its top executives.

Failure To Inform Salesmen About Products

A third type of organizational defect uncovered was the failure of top management to inform salesmen of all the relevant facts about a product, thus leaving the way open for misrepresentation. Two such cases involved used car dealers.

Used car dealers. The dealers failed to inform their sales personnel which autos had been salvaged from rental fleets and which had been used solely for executive transport.

The cars in question were acquired from GMH Manufacturing. Some had been used exclusively by GMH officials and were reasonably described as ex-executive cars. The others, however, had been leased by GMH to a car rental firm for 15 months before being returned to GMH for disposal. Buyers for the used car firms were accustomed to purchasing both types of autos from GMH and were able to distinguish between them at the time of purchase. But this information was not passed on to the sales personnel, and as a result they invariably described all the cars to prospective customers as ex-executive or ex-GMH cars.

Fined from \$A12,000 to \$A20,000 for misrepresentation, the companies have reduced substantially the number of ex-rental cars they purchase. To prevent further offenses, more reliance has been placed on a form containing particulars of the auto which must be attached to all used cars being offered for sale. Another prevention strategy calls for sales personnel to sign a monthly declaration that they will familiarize themselves with the history of the cars they are selling and truthfully convey this information to the customer.

Prudential. Prudential Insurance was found guilty of a similar practice. The case concerned life insurance policies which the company was selling in Tasmania on the basis that they were free of certain taxes. The company was informed by the Commissioner for Taxation that the tax exclusion did not apply to the policies. However, although the company sought legal advice, it allowed its representatives to continue selling policies on the basis of this benefit.

Although Prudential eventually agreed with the Commissioner, it was convicted of negligence and fined \$A10,000. Perhaps the only significant effect of the prosecution was that the company's assistant manager and legal advisor now insure that, whenever a doubt arises as to the claims being made about a policy, representatives are instructed to cease making the claims until the doubt has been resolved.

Questions of Responsibility and Intent

Although most of the prosecuted offenses occurred because of the foregoing or similar organizational problems, five cases involved violations which cannot be attributed to procedural shortcomings. Two of the cases concerned the advertising agency responsible for the Mazda ad and the television station which broadcast it, and the third--MagnaMail--dealt with information supplied to the company from overseas. In each case, it was unreasonable to expect the firms to take responsibility for the accuracy of the materials because no realistic review procedure could have prevented the errors and the resulting misrepresentations.

CLM Holdings. In the fourth case, CLM Holdings, some question existed regarding intent, although no procedural problem was involved. CLM is a small company whose principle director was a Mrs. Greenslade. The company was technically the owner of Greenslade's collection of antiques. Having decided to auction off the antiques, Greenslade, working with an auctioneer, drew up a catalog which inaccurately described many of the items in such a way as to enhance their value. Greenslade and her company were

convicted and fined, but since the company was not normally in the business of selling antiques, the offense was not likely to be repeated.

John R. Lewis. Unlike most of the preceding cases, the prosecution of the John R. Lewis Company involved a case of clear intent. The company was in the business of preparing business directories, and to this end it regularly invited firms to have their names listed in the directories. These invitations resembled invoices, that is, they appeared to bill the client company for a service which had already been or was about to be rendered. Lewis relied on lower level employees of the client company to treat the invitation as a routine bill and to pay it without giving company executives the opportunity to make a decision on the matter.

Although the practice was declared illegal, Lewis found what it thought to be a loophole and proceeded to exploit it. As it turned out, the loophole was illusory and the company was convicted and fined \$A5,000. One of its directors was fined a similar amount.

SUMMARY AND CONCLUSION

In summary, of the 19 companies convicted, organizational defects were a factor in 15 cases. Nine of the 15 companies made significant changes in their standard operating procedures following the prosecution. Two made minor changes which precluded an exact repetition of the offense in question, but failed to rectify the general weakness which that offense uncovered. Two companies made no change at all in their procedures. Two others refused interviews.

Where defective operating procedures were involved, therefore, the prosecution can be said to have led to significant organizational improvement in at least 60 percent of the cases. And although the prosecutions appear to have had a substantial preventive effect on the companies concerned, there are two qualifications which need to be emphasized.

First, the improved procedures, even if adhered to scrupulously, cannot guarantee that further violations will not occur. Moreover, it would be foolish to assume that the companies will adhere to these procedures at all times.

Second, the changes made can only have the preventive effect imputed to them if they were made in good faith, that is, if management

sincerely intends to avoid further violations. Clearly, no matter what these standard procedures are, they will not be able to prevent offenses which are intentional.

Editor's Note: This work includes appendixes containing documents pertinent to the case histories discussed.

White-Collar Crime and Business Law in the United States and West Germany

By Klaus Tiedemann

Introduction

Systems of values oriented toward visible success, profit, and growth, similar to those in the United States, have been questioned in recent years. Even when viewed superficially, political events like the Watergate scandal tend to undermine our trust in even the highest Government officials and business executives. Industry's threat to the environment also has provoked the active involvement and concern of citizens in America and Europe, and this concern has spread from pollution and problems of energy policy to the social conduct of the business community in general.

A closer look at business practices reveals the frequent interconnection of political interests and white-collar crime. There is no need to dwell on the major scandals that have shaken the national and international reputations of entire business entities such as the bribery cases involving the Exxon Corporation or the Lockheed Aircraft Corporation. Sufficient evidence of political involvement already exists in the normal procedures and minor irregularities of taxing and subsidizing practices, trust and pricing regulations, foreign exchange and embargo rules, the organization of the national traffic system, and agricultural policy.

Recognition of such interconnections is as significant as the steps taken by Government agencies to investigate, prosecute, punish, and control white-collar crime, since the efforts of these agencies ultimately determine the relation and attitude of the business community to the nation. As a concrete example, within the last decade the U. S. Securities and Exchange Commission,

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under the direction of its vice president, Stanley Sporkin, not only cleaned up the entire domestic securities and exchange market, but also extended maximum effort to protect the rights of investors. Although this branch of commerce is more significant in America, the lack of appropriate corresponding legislation in West Germany, where the Government has been content mainly to appeal to the moral sense of the business community, is a matter of concern.

Uncertainties of Definition

In contrast to the American term "white-collar crime," the German expression "business delinquency" is not limited to criminal offenses, but also includes irregularities and practices on the borderline of criminal behavior. As a result, the German term is less incriminating and less ostracizing, and there are fewer disputes about its application to particular cases than its American counterpart.

Two basic kinds of activity are distinguishable within the German concept of business delinquency. The first group includes those activities which are obviously criminal in nature, such as embezzlement, fraud involving checks and letters of credit, forgery of securities, insurance fraud, and similar offenses. The second group comprises activities of a more abstract nature, in which obvious deception or tangible victims and damages are difficult to identify, for example, use of inside information to make a profit on the stock market, falsification of business reports by omitting particular activities and connections, certain types of tax evasion, and trust agreements designed to eliminate unwanted competition.

With respect to the latter group, the determination of what constitutes delinquent behavior varies from country to country, for example, the differing notions of the legality of trust agreements in Germany and Switzerland. Similarly, attitudes toward white-collar offenders differ considerably in Germany and the United States. In America, because of the belief that criminal law and morality are closely linked and that morality applies to relatively clear and simple concepts of right and wrong, the opinion prevails even in the courts that this kind of activity simply is not cause to send a businessman to jail. In Germany, a change in public opinion and legal thinking has taken place recently, and efforts to apprehend the business criminal--that notorious "offender against the people"--are made on occasion. In France and Italy, the sentences in cases of work accidents involving physical injury have been so drastic that large factories now have difficulty finding managers. Finally, a respected German attorney recently stated that certain German supervisory committees consist not only of specialists, but also of specialists who have become fanatics.

Since so many national differences exist, it is preferable to defer the question of an exact definition. In addition, rather than presenting a long and complicated discourse on the varying manifestations of business crime, this paper will be limited to fundamental questions, beginning with the financial aspects of the issue. In the area of finances, a comparison between the German and American conditions is extremely enlightening.

Extent of Business Crime

Every country is uncertain about the actual financial extent of business crime. The highly respected Max Planck Institute in Freiburg estimates annual damages of several billion Deutsche marks in West Germany and other official estimates have placed the figure as high as DM10 billion to DM15 billion.* In the United States, reliable estimates cite \$40 billion to \$50 billion in damages per year.†

The two countries draw highly divergent conclusions from these uncertain and imprecise figures. German business circles and Government agencies tend to treat the damages as unavoidable, viewing them as mere marginal losses to a gross national product which is 100 times greater; this means that in most cases no action is taken at all. In the United States, numerous regulatory commissions and supervisory boards recently have shown vigorous interest in trying to curb the more obvious and subtle manifestations of business crime. This increased concern also is reflected in the creation of a special new commission, the White-Collar Crime Committee, and in the hearings of congressional subcommittees on various cases of white-collar crime.

Consequently, in contrast to Germany, American economic studies have energetically addressed the theme of white-collar crime. These academic efforts unfortunately have led primarily to a great deal of improbable theorizing rather than useful empirical studies of the problems. Accordingly, researchers in both countries still must rely on what information they can gather from individual court cases, official statistics, reports from economic surveillance agencies, and local or national press releases.

These sources provide sufficient evidence of the contagious nature of white-collar crime, however. Time and again, the detection of what appeared to be an isolated case has led to the discovery that an entire area of business activity was permeated with crime--although, in America as in Europe, individual companies (often

*Editor's Note: 1 Deutsche Mark (DM1) currently is equivalent to US\$0.52.

†U.S. Department of Commerce, The Cost of Crimes Against Business, 2d ed. (Washington: 1976), 1.

new and unestablished on the market) usually take the lead. Numerous cases of widespread corruption could be cited, such as the frauds involving milk, butter, sugar, and grain subsidies in the Common Market countries, or the recent grain fraud scandals in the United States which involved nearly all the grain exporting companies on the East Coast.

Except for momentary public indignation, which is common in every nation, reactions to disclosure of such abuses vary from country to country. In America it recently has become common for influential political elements to reject the extension or even continuation of certain health and social welfare programs until the criminal abuse has been curbed or eliminated. However, Europeans should not be content with the fact that white-collar crime has not yet reached the same proportions as in the United States. There is enough evidence that numerous gainfully employed citizens in Europe do not hesitate to put profit before legality if the risk of discovery is small.

Government and Private Controls of Business Crime

Constitutional safeguards in Western nations do not permit total Government control of economic activities. Even if such extensive control were allowed, the expense required to maintain it would far outweigh any possible material advantages. Government control does play a legitimate and necessary role, however, in those areas where the market's own regulatory mechanisms for the fair exchange of goods and services no longer are legally or pragmatically effective, as in the case of subvention practices or the exploitation of a monopolistic position.

Economic supervision of one private agency by another is less incisive than direct Government control, and this method has been adopted frequently. Accordingly, the annual report of stock corporations, which have been required since the 1930's, are inspected by supposedly private and independent auditors. The anonymity of members of large corporations, as well as their limited legal liability, undoubtedly creates a situation favorable to the development of "corporate crime." This is especially true in Germany where the lawmakers, unlike their American counterparts, traditionally refuse to make persons and groups in the business community personally liable--a situation certainly deserving of criticism. Recent criticism of the procedures of these legally required audits has become so pronounced that, at least in America, improvements are expected in the near future. In the United States, as in Germany, the auditors traditionally considered their main function to be maintaining a relationship of confidence with the company being audited, and often covered up serious irregularities, with the result that several highly respected private auditing firms have had to face civil suits brought by irate shareholders.

Application of Criminal Law to Business Crime

The task of establishing constraints or introducing new economic legislation to regulate the activities of big business is troublesome, and such efforts result in irresolute compromises, except in those rare cases where major scandals have mobilized public opinion, politicians, and legislators. Because of this, the application of criminal law to business delinquency becomes increasingly important. In fact, most recent studies show that this procedure is an exceptionally effective preventive measure. Its effectiveness is strikingly documented by the fact that large German companies advise their representatives about to transact business in the United States to avoid any kind of price-fixing schemes, collective boycotts, and arrangements for dividing up the market--such activities have been the target of recent antitrust actions by the U.S. Department of Justice. The reluctance of German lawmakers to introduce similar antitrust legislation is due not only to the vehement opposition of potential offenders, but also to the Government's cooperative approach in dealing with economic and industrial policy.

The frequent claim that a further extension of criminal law to the economic sector would be no more effective than the present supervision practices and would contradict the current trend toward decriminalization hides a variety of motives: lack of full awareness of the modern possibilities of applying criminal law to improper business practices, fear for one's own position of power, or failure to realize that in a changing world the objects that require legal protection may change as well.

The basic dilemma of modern criminal law is that penalties for conventional crimes such as theft and murder have little practical value as deterrents for those crimes, whereas they are employed with reluctance in areas in which they could be extremely effective, including white-collar crime.

Inapplicability of American procedures to West Germany. Arguments against applying criminal law to business offenses which cite the American trend to decriminalize economic misdemeanors are fundamentally erroneous. In this as well as other areas of the U.S. legal system, almost everything is punishable under one law or another, and decriminalization is merely a general and necessary step toward simplifying and condensing the provisions of criminal law. Above all, the countless individual regulations, the unfortunate and confusing amalgamation of Common, Statute, Federal and State law in the United States must be custom-tailored to the phenomenon of business crime. This would avoid such remarkable situations as the use of mail fraud statutes to combat "questionable overseas payments" (bribes) by multinational American companies,

or the unearthing of half-forgotten regulations to punish political corruption. In particular, the endeavors of investigating and prosecuting agencies to establish a Federal offense (e.g. the actions of the Postal Inspection Service in cases of mail fraud) have introduced devices which appear extremely tenuous to the legal expert. The use of such terms as "conspiracy to defraud the U.S. government" is questionable because of their vagueness. The proposed Federal Crime Code, which is an attempt to remedy this situation, is clearly influenced by European models.

In most other respects as well, present American white-collar legislation is hardly suitable to serve as a model for German reform--the two legal systems correspond only in a random and coincidental manner. Furthermore, the decision to investigate cases of white-collar crime in America, the thoroughness with which the investigation is carried out, and the final success depend almost entirely on the initiative of district attorneys who are usually elected and of special ad hoc commissions. The political dependence of prosecuting attorneys tends to influence their handling of individual cases and often encourages them to strive for spectacular trials as a means of enhancing their political careers.

Other typical legal devices such as the grand jury, plea bargaining, and the guilty plea are too alien to the German legal system, although they may be effective in the United States. Approximately 90 percent of all American criminal cases are settled without a main trial after the accused pleads guilty. However, plea bargaining and the guilty plea recently have come under attack in the United States. As it is handled now, plea bargaining frequently precludes the recognition of professional or habitual offenders, and the guilty plea obscures the gravity of an offender's actions. Consequently, only fines and probationary sentences are imposed for white-collar crimes although economic control agencies claim that short-term jail sentences are the only really effective preventive measures.

More relevant to West Germany than individual legal practices is a recent U.S. trend in dealing with business delinquency, especially actions by agencies without the power of criminal prosecution. Although these agencies attempt to settle minor cases through negotiation just as their German counterparts do, they have begun to refer serious offenders to the criminal courts. In West Germany, the requirement to report such offenders to criminal prosecutors has been established only recently--after extended resistance and for only one type of business crime.

Conclusion

The situation in America presents a gloomy forecast of the future that awaits Western Europe--a future threatened by increased professional and organized business crime that has already become a reality in part of the German business community. Although most American legal procedures are inapplicable for Germany, what can be learned from the United States is that criminal law should not be limited to murderers and common thieves. Rather, it should be directed especially against the professional white-collar criminal.

Counseling by the Criminal Police To Prevent Fraud

By Gerlinde Kessler

General Comments

Police practices in the Federal Republic of Germany constantly reaffirm that fraud is a crime which always requires new victims and new "angles." Counseling the potential victim thus has become established practice to prevent fraud.

Such counseling is prompted by potential victims who have turned to the police for assistance. This differentiates these people from other segments of the population that are provided general informational lectures or specific advice. The counseling takes place between individual counselors and persons seeking assistance. Information is usually exchanged in discussions rather than through demonstrations, although demonstrations frequently are used for other areas of crime. Information is provided to the police by the person seeking advice, but counseling also extends to support in solving the problem.

Fraud differs from other crimes in ways which limit the effectiveness of police counseling:

- Perpetrators of fraud approach their victims directly and therefore are known to them.
- Victims often do not notice that they are victims, since they do not realize that a crime is being committed.
- On recognizing the fraud, victims frequently blame themselves for having been taken in.

"Kriminalpolizeiliche Beratung gegen Betrug und Schwindel" (NCJ 56607) originally appeared in Kriminalpolizeiliche Beratung (Police Counseling), 1978, p. 69-75. (Bundeskriminalamt, Kl 13, Postfach 1820, 6200 Wiesbaden, West Germany) Translated from the German by Kathleen Dell'Orto.

- For that reason, victims tend to ignore the criminal nature of the behavior and of their own victimization.
- When individuals are familiar with a type of fraudulent scheme, they should no longer be able to be victimized. When the activity is revealed, persons close to the victim frequently lack sympathy and withdraw their support because they do not believe they would have fallen for the scheme.
- Because of the possible reactions of the people close to them, victims prefer not to have it known that they have been victimized, even though they know it themselves.

There are different forms of fraud which affect recognition of the crime and behavior of potential victims:

- In the case of swindles (fraud using easily recognizable deceptions), offenders often assume false identities and disappear quickly after the crime has been committed.
- In large-scale fraud cases, offenders live for a time among the intended victims using their own identities and thus are able to prepare for the crime.
- In minor fraud cases where the amount of money involved is not particularly large, perpetrators of the fraud can be expected to reappear in a short time.
- The profits are often substantial for large-scale fraud requiring preparation over a long period.
- The time span between preparation for and actual commission of the crime is short for minor fraud cases.
- Preparations for major fraud can be extensive and of long duration.

Considering these social conditions from the onset is the prerequisite for effective prevention, especially in individual police counseling discussions with potential victims. Since every case is different in this type of crime, it is often difficult to compare individual cases.

Furthermore, external conditions--the organization of fraud counseling, the size of the office, the number of experts involved in counseling, assessments of the importance of this kind of offense, and the number of people seeking advice at the particular office--vary widely.

For this reason, little information on experience has been gathered and systematized or communicated except in individual

discussions. This means that, although fraud-counseling experts may be able to rely on previous experience in determining fraudulent behavior, they must develop completely new experiential knowledge in the process of counseling.

Fraud Counseling in Police Practice

To provide more information than the mere individual details of police counseling and, by so doing, to permit a more purposeful approach to the problems of fraud prevention, the West German Federal Bureau of Criminal Investigation is conducting a study on fraud counseling. The purpose of the study is to enumerate the current preventive activities of the criminal police with a view toward improvement. The study considers all peripheral conditions related to police fraud counseling so that the actual nature and extent of counseling can be assessed.

The data were gathered in a written survey of all police divisions which participate in fraud counseling and the information is being computerized for more extensive evaluation. Certain questions, particularly those pertinent to the current situation in fraud counseling, already have been answered on the basis of simple calculations, however, and the results are summarized below.

Organization of fraud counseling. A separate organizational unit for counseling, including fraud counseling, is maintained by 10 local offices. Counseling for fraud and white-collar crime is frequently handled by the director of the local office.

Data on the experts in the fraud and white-collar crime units indicate that approximately 45 percent of them have been active in their present units for over 5 years and about 34 percent for over 10 years. Although it cannot be assumed that fraud counseling has been conducted in the units for that length of time, the figures do suggest that the counselors have a good deal of experience with fraud and white-collar crime.

Assignment of counseling tasks. About 34 percent of the cases reported exhibit a certain degree of specialization (i.e., counseling is assigned exclusively to a particular expert), whereas approximately 37 percent are referred alternately to various experts.

Time expended for fraud counseling. The survey responses to the question of whether more time should be spent on fraud counseling are revealing. About 40 percent of the responses favor increased

fraud counseling without qualification. About 13 percent of the responses contend that fraud counseling to date has been inadequate. The reasons cited are that the circle of persons addressed is too narrow, that legal issues have precedence, that the number of fraud cases is increasing, and that fraud practices have not been given enough public exposure.

About 20 percent of the responses contain ideas about how fraud counseling should assist parties seeking advice, e.g., consciousness of fraud methods, reduction of damages, and elimination of naivete.

Twelve percent of the responses express the opinion that more information about the nature of fraud is necessary to achieve prevention objectives and to facilitate handling of more complex fraud cases.

Approximately 9 percent of the questionnaires state that fraud counseling to date has been adequate or that no improvement is needed, and only 1.6 percent maintain that fraud counseling serves no useful purpose. However, some of the respondents who do not believe that additional investment of time would improve the situation support more extensive prevention.

Legal and other obstacles to fraud counseling. Responses regarding factors which inhibit fraud counseling result in the following percentages:

- Legal protection of professional secrets--24.
- Restrictive regulations on criminal procedure--2.
- Impossibility of legal counseling (because of restrictions contained in the law regarding misuse of legal counseling, the impossibility of providing counsel on civil rights, or lack of qualifications for giving legal advice)--15.2.
- Protection of banking, postal, or tax confidentiality--4.6.
- Too little or inadequate training (limited specialized knowledge of counselors due to lack of basic or continuing education offerings)--9.8.
- Personnel shortages, excessive work loads--12.1.
- Lack of facilities--1.5.

- Behavior of potential victims (inexact description of the circumstances, foolish and greedy persons suffering damages, unwillingness of persons suffering damages to disclose details, excessive trust so that counseling occurs too late)--5.6.
- Shortcomings in concrete organization of fraud counseling--1.
- Citizen lack of knowledge about counseling provisions--0.9.
- Danger of court action for damages--13.9.
- Lack of clarity in legal matters--7.8.
- Other (inertia of legislative authorities, complexity of material, shortage of publications on white-collar crime)--3.2.

Approximately 68 percent of the responses cite reasons that are of a legal nature. Although this large proportion may be due in part to the way questions were phrased, the responses indicate considerable uncertainty about the subject matter and the legal consequences of counseling activities. Establishing boundaries between professional secrets and preventive interest in disclosure of information should not be left exclusively to counseling experts, and counseling by the criminal police easily can be differentiated from legal counseling. But the frequency with which these factors are mentioned makes it appear that the police experts extend their fraud counseling services knowing that they will have to judge these questions and, if necessary, to assume responsibility for their judgments. It therefore can be concluded that the uncertainties faced by experts working on these matters rather than the actual legal issues cited hinder fraud counseling.

The separate offices themselves could correct 25 percent of the obstacles mentioned above--insufficient training, personnel shortages, excessive work loads, lack of facilities, and shortcomings in organization.

Proposals for the improvement of fraud counseling. Only 14 percent of the changes proposed on the questionnaires are in the legal area, whereas approximately 52 percent relate to the local offices themselves. About 35 percent of the changes are directed at improving training and increasing the number of personnel. Modifications in the organization of fraud counseling are suggested in 20 percent of the cases, whereas 12 percent recommend institution of an independent bureau for fraud counseling. Eight-

teen percent of the responses favor greater involvement of the public.

Concluding Comments

Evaluation of further responses will provide additional information on fraud counseling by the criminal police. The evaluation to this point has shown that those experts actively engaged in fraud counseling at present view this opportunity for prevention in a positive light and feel that eliminating the shortcomings in training and increasing available personnel not only would reduce the time expended in this area, but also would improve the quality of the advice given. Clarification of legal ambiguities regarding admissible or possible counseling limitations also would be advisable.

Part II

Crime and Criminal Justice Around the World

Criminals Know No Borders—Do Borders Interfere With Crime Prevention?

Editor's note: This is a summary of two articles in an anthology comprising various aspects of law enforcement.

PART I

IS CRIME PREVENTION ON A NATIONAL AND INTERNATIONAL LEVEL AN ILLUSION? (NCJ 56462)

By Karl-Heinz Gemmer

Rumors about international crime networks successfully engaging in criminal activities such as the sale in other countries of automobiles stolen in the Federal Republic of Germany cast doubt on the feasibility of international crime prevention, even the efforts of organizations such as the International Criminal Police Organization (Interpol). It is clear that the most dangerous groups of offenders are crossing national borders to facilitate their activities and evade apprehension. More liberal policies regarding border traffic have led, in fact, to the development of special strategies by criminal elements.

International Crime

International crime--not only in the Federal Republic, but also in the rest of Western Europe and in the United States--is characterized by illegal drug trafficking and weapons smuggling, traffic in stolen automobiles, theft by persons hired to break into establishments or hijack trucks, theft of art works, certain types of white-collar crime, and terrorism. Commercialization and diversification of criminal activities often make it

"Verbrecher kennen keine Grenzen--Behindern Grenzen die Bekämpfung?" (NCJ 56462, 56463), originally appeared in Presse und Polizei (Press and Police, NCJ 56461), Eighth Symposium of the Police Union Held Aboard the Liner Britannia, March 30-31, 1978, p. 7-12 for Part I, p. 13-17 for Part II. (Deutsche Polizei GmbH, Zweigniederlassung Berlin, Genthiner Strasse 38, 1000 Berlin 30, West Germany.) Translated from the German by Kathleen Dell'Orto.

impossible to classify criminal groups according to their modus operandi.

Little is known of the criminals' tactics, largely because of their financial strength, adaptability, and unscrupulousness. What information is available suggests that the location and object of the crime are determined by market value in particular countries: the most favorable country for commission of the crime or for refuge after it is calculated on the basis of mild legal sanctions and disorganized criminal law, extradition practices, political climate, public sympathy or antipathy, and kinds of preventive laws.

Problems in Combating International Crime

Police countermeasures for the future must be based on international concepts and require standardized police training. International police cooperation in day-to-day activities is influenced by such factors as compatibility of data processing systems for information exchange, applicability of international search efforts to capture criminals, legal requirements of other nations for searches and telephone taps, potential for using undercover agents, and degree of cooperation by foreign authorities in interrogation, alibi investigation, and identification of suspects.

Extensive operational measures unfortunately are seldom possible and interfere with the perceived sovereignty of individual nations. Even neighboring European countries with similar cultures and close economic ties have differing forms of government and legal systems.

Although the Federal Republic has signed both an international and a European extradition agreement, a European agreement guaranteeing legal assistance, and a number of bilateral extradition treaties, and also has developed extensive guidelines for international criminal law, individual nations have countless reservations regarding extradition and restrictions for legal assistance, e.g., aid only with guarantee of reciprocity. Such complex legalities inevitably lead to delays, bureaucratic paperwork, and misunderstandings among the many national authorities involved.

For these reasons, the police repeatedly have demanded more freedom in international matters, including, in particular, the same authority to handle incoming and outgoing requests they exercise within the Federal Republic. The guidelines established by a joint commission in 1976 for modification of the State's attorney-police relationship could form the basis for an improved police position, since the police are capable of interpreting the law to avoid delay in investigating and preventing crime.

Inadequate communications are a troublesome problem. Weeks often pass before translation of a request, and Interpol sometimes must wait months for the answer to an inquiry because of insufficient cooperation among nations.

Because resistance is encountered in the crucial area of legal assistance, recent efforts of the European Economic Community members to foster greater cooperation in the area of internal security have been limited to police coordination of traffic control, data processing, crime technology, and police training and organization.

Potential Corrective Measures

The recent Council of Europe treaty on terrorism and United Nations covenants on crime prevention offer some hope of improvement, but bilateral agreements giving the police a voice in negotiations and the exchange of police advisors for special training are more promising. Such exchanges may provide information about a particular country which later can prove useful in crime solving. Because of the growth of international crime, foreign language training in domestic police academies and abroad can eliminate communication misunderstandings. Direct contact between police specialists facilitates such practical measures as hotlines across borders, participation in dragnets, and availability of stolen goods for identification, regardless of customs regulations.

Although police are presently at a disadvantage in combating organized crime, there are signs of increased international cooperation. A special police force will not materialize in the near future, but appropriate amendment of formal legal provisions--including legal assistance--as well as distribution of police authority within the Federal Republic, can pave the way. A promising approach to counteraction is to be found in the Standing Committee on Drug Control, which is composed of representatives from State Criminal Bureaus, Customs Criminal Institutes, the border police, the Federal Crime Bureau, and the Interpol General Secretariat, and includes foreign experts as well. This Committee fosters communication through internationalization and information system compatibility.

PART II

POLICE COOPERATION ACROSS BORDERS: WHAT IT IS AND SHOULD BE (NCJ 56463)

By J. A. Blaauw

The history of international crime prevention can be characterized as a series of unsuccessful attempts to apprehend criminals who ignore national boundaries. Criminal police were introduced in England, Germany, Austria, and France in the second half of the 19th century. Innovations such as the railroad, the automobile, and improved communication enabled criminals to cross borders in the course of their activities, but the police remained stationary. Early examples of international anticrime cooperation included the International Criminalistic Union formed by Austria, Belgium, and The Netherlands in 1888 and a 1914 conference of 300 delegates from 24 countries. They initiated some information exchange, but did not solve such basic problems of international crime prevention as complicated diplomatic extradition procedures and the need for reorganization of national criminal police agencies. Still, as a result of a 1923 conference in Vienna involving 21 countries, Interpol was founded. Interpol's central office initially was located in Vienna, but was moved to Paris after World War II.

International Crime

Although international crime has intensified during the past 90 years, the police and justice departments have not kept pace. Two aspects of international crime are especially apparent--its efficient organization and the great mobility of the international criminal. The success of international criminals has accelerated rapidly in Western Europe, especially The Netherlands, in recent years. Their most notable successes include drug trafficking, theft of automobiles and trucks, hijacking of valuable cargo, counterfeit currency, illegal weapons trafficking, white-collar crime, and, perhaps most significantly, terrorism, which presents a serious threat to free democratic society.

Law enforcement's response to criminal activities that transcend national borders has been an understaffed, poorly coordinated international police force fragmented into national agencies, bound by contradictory requirements and excessive formalities, and slowed to an unpracticable pace by official channels. In fact, international crime operates largely because of the impotence of police and judicial systems.

International Crime Prevention Initiatives

International crime prevention is the objective of Interpol, the legal assistance system, treaties, work groups, and commissions other than Interpol. The most effective anticrime measures have been unstructured forms of cooperation and information exchange among countries, e.g., the Cross Channel Intelligence Conference, the German-Netherlands Work Group for Combating Drug Crime, and informal personal contacts.

Several short-term initiatives have been recommended for dealing with international crime. They include establishment, by the Common Market countries, of both a criminal intelligence system to gather and pool information about known criminals and an information network extending to the Near and Far East for drug control; joint planning by European police agencies and development of an international police radio system; use of special commissions for information procedures, institution of international seminars convening regularly to assess the crime situation and new police techniques; introduction of direct liaison among police of different countries; and use of modern technology, e.g., computers, for more rapid communication.

Long-term measures also have been suggested. They involve efforts to make certain parts of the various national legal codes conform regarding police and justice department authority and procedures, as well as regarding control of firearms; to introduce the concept of "European crime"--analagous to American "Federal crimes"--for certain offenses; and to found a European police force and a European police academy to train police officials in effective administrative, technical, and operational procedures. By these means, perhaps, the goals first established in 1888 finally can be attained.

Partial Reforms in the Repression and Prevention of Delinquency in the Soviet Union

By F. Gorle

INTRODUCTION

The 25th Congress of the Communist Party of the Soviet Union, held in Moscow February 24 to March 5, 1976, approved a number of resolutions in the legal field. Although these resolutions do not contain any concrete references to penal law, they advocate the improvement of the legal regulations governing economic activities and imply, without stating so explicitly, an intensified repression of economic delinquency.

The Congress also appealed for "perfecting the activities of the authorities charged with protecting the socialist judicial system," and this statement, although quite general in its terms, has provided a foundation for reforms of the penal system. It is to this appeal, in any case, that the Presidium of the Supreme Soviet referred on February 8 and 15, 1977, when it enacted legislation which can be considered an incomplete but important reform of the statutory provisions for the repression and prevention of delinquency.

According to the Presidium of the Supreme Soviet, the aims of these legal reforms are:

- To create a more differentiated system of penalties.
- To extend the practice of punishing minor offenses by means other than isolating the offender from society (without, however, diminishing the penalty for serious offenses).

"Reformes partielles dans le domaine de la répression et de la prévention de la délinquance en Union Soviétique" (NCJ 51547) originally appeared in Revue de Droit Penal et de Criminologie, n. 1:29-51, January 1978. (Ministère de la Justice, Palais de Justice, 1000 Brussels, Belgium) Translated from the French by Sybille Jobin.

- To strengthen the role of the Comrades' Courts.
- To provide better protection for young people.

SPECIFIC PROVISIONS OF THE LEGISLATION OF FEBRUARY 8 AND 15, 1977

Corrective Labor Colonies

Prior to the new legislation, there were nine types of confinement: corrective labor camps with normal, intensified, strict, and special regimes; corrective labor colonies; prisons with strict and normal regimes; educational labor camps with normal and intensified regimes. The new legislation adds a 10th type: corrective labor colonies for persons convicted of involuntary infractions, i.e., infractions committed unwittingly and without malicious intent. These colonies are reserved for offenders of both sexes who have been sentenced to a prison term of less than 5 years.

Although it seems surprising that involuntary offenses may result in such severe prison terms, it is noteworthy that an offense such as loss of documents containing government secrets may be punished by sentences up to 8 years if the consequences are serious. Prisoners in these colonies are supervised but not guarded. They are free to move throughout the area during the day and, under certain conditions, seek employment outside the colony. They are neither required to wear uniforms nor obliged to forfeit their incomes. With special permission, they can even live with their families in the colony.

Conditional Release and Commutation of the Original Sentence

Minor criminals who served at least half of their terms heretofore were the only persons eligible for a conditional release or lighter sentence. However, the new legislation provided that those guilty of serious offenses (e.g., attempted murder of a police officer or offenses against the narcotics law) and recidivists become eligible if they have served at least three-quarters of their original prison terms.

Obligatory Labor in Lieu of Confinement

A new article specifies that a conditional prison sentence may be replaced by a period of obligatory labor. In this case, offenders do not go to prison, but are provided employment and must live in special communal living quarters. Provided their

conduct is acceptable, they may reside with their families in individual accommodations. They are not allowed to leave their county of residence without special permission and must report to the local police authorities one to four times a month. Adult first-time offenders who are capable of work and not serving a term of more than 3 years (5 years for involuntary infractions) are eligible for conditional sentencing if they are considered capable of being reformed without isolation from society.

Another new article provides for conditional release from confinement, with a work obligation included. It applies to offenders already serving extended prison terms who have completed a major portion of their sentences.

In both of the above cases, foreigners and stateless persons, dangerous or particularly obstinate convicts, and addicts sentenced to undergo drug or alcohol treatment are excluded from the conditional release program.

Minor Offenses

Several provisions decriminalize certain offenses which do not threaten the well-being of society and are punishable by less than a one year confinement. If it appears the offender can be reformed without penal sanctions, a fine is imposed and the case is referred to a Comrades' Court, to the Juvenile Delinquency Commission, or to the supervision of a social organization or workers' community.

Comrades' Courts

Since they represent the people directly, Comrades' Courts are under the authority of the individual Soviet States. Nevertheless, the Presidium of the Supreme Soviet commented on their function. The Presidium recognized the good work the courts were doing to educate Soviet citizens in a spirit of strictness and obedience to the law, to contribute to the workers' discipline and protect community property, and to combat rowdiness, alcoholism, and other antisocial behavior. The Presidium also criticized the Comrades' Courts and offered the following suggestions for improvement:

- Creating a special commission on the local level to supervise the activities of the courts.
- Strengthening the role trade unions play in the courts.
- Extending the jurisdiction of the courts, particularly in matters of domestic misconduct.

- Improving the electoral procedures of the courts.
- Encouraging citizens to take part in the work of the courts.
- Amplifying the support given to the Comrades' Courts by the ordinary courts and the public prosecutors.
- Increasing protection under the law by defining the specific rights of persons on trial and by permitting appeals to either the local Soviet authorities or to the appropriate trade union since the regular court system has no provisions for appeal.

Protection of the Young

The new provisions regulating the treatment of juveniles require the Councils of Ministers at the Federal and State level to establish concrete guidelines concerning the organization of reformatories and special education institutions. The articles, which are extremely detailed, include the following provisions:

- Juvenile delinquents are to be separated from other children and adolescents in "reception and adjustment centers."
- Retention in such establishments is limited to 30 days (45 days in special cases).
- Duration of residence in a special school emphasizing vocational and technical training is 3 years. The adolescents live at the school and cannot leave without a special permit.
- Administrators of these institutions must maintain contact with parents and guardians by letter, personal interview, or group meeting.

COMMENTS ON THE REFORMS

Since the reforms are still relatively recent, their full significance cannot be appreciated. However, a quick survey of the views expressed by Soviet legal experts regarding the reforms leads to a few tentative conclusions.

The Penal System

The effects of the reforms in the areas of penal law, penal procedure, and prison regulations are as follows:

- They provide for the establishment of special institutions--corrective labor colonies--where persons guilty of involuntary infractions can enjoy some liberties while they serve their terms. This is undoubtedly a beneficial innovation since it establishes within the penal process a clear distinction between voluntary and involuntary offenders, with the provision of more liberal living conditions for the latter. This is especially remarkable since Soviet legal specialists have drawn continual attention in recent years to the relative increase of involuntary delinquency in relation to voluntary delinquency and to the corresponding damage to the national economy caused by involuntary delinquency.

- They extend somewhat the provisions for conditional release and commuting an earlier sentence to a lighter penalty. This constitutes a degree of relaxation of a penal system characterized by its extreme harshness.

- They introduce into the Soviet penal code permanent provisions for conditional sentencing in connection with the obligation to work. This measure represents a compromise between confinement on one side and the ordinary conditional or permanent release on the other. It proves that, after convicts are released from penal institutions, there is a continuing emphasis on reforming them through labor obligations, with concurrent political indoctrination. It is interesting to speculate, however, whether this particular provision is intended to serve as a convenient device for supplying laborers to certain less attractive industrial sectors.

- They approve the decriminalization of various minor offenses. If "administrative penalties" are imposed, however the relief is imaginary because these penalties are relatively severe--fines up to 50 rubles (i.e., about one-third of a skilled worker's average monthly salary), "administrative imprisonment" for a maximum of 15 days, or corrective labor for 1 to 2 months during which 20 percent of the salary is withheld. On the other hand, such penalties continue to be imposed by the regular court system and are subject to judicial appeal. Therefore, if the term decriminalization is at all appropriate in this context, it is a rather mild form which only partially meets the expectations of those Soviet legal experts who recently proposed the categorization of all criminal acts into serious, ordinary, and minor offenses, with the last category completely decriminalized.

The Comrades' Courts

The criticism of the Comrades' Courts and the recommendations for improvement made by the Presidium of the Supreme Soviet lead to the conclusion that the Comrades' Courts have not fulfilled the expectations of those who reintroduced them at the end of the

Stalin era. For example, the fact that it was considered necessary to further encourage citizens actively involved in the work of the courts seems to indicate that most Soviet citizens are somewhat reluctant to judge their peers. This reluctance is due in part to the fact that the jurisdiction of the Comrades' Courts is not clearly defined and in many cases extends into areas where the intervention of society might be considered an invasion of privacy. Jurisdiction includes, for example, professional irregular conduct, marriage relations, and childrearing practices.

Although the Comrades' Courts are supposed to represent the people (in contrast to the regular courts which are instruments of the state) and in fact receive their authority from the community itself, the decision of February 8, 1977, proves that the initiative to reform the courts is clearly that of the Federal Government. This becomes more apparent when one considers that the recommendations of the Presidium have been followed by the individual states through the enactment of a new "Statute of the Comrades' Courts."

The Comrades' Courts are expected to play an important part in the decriminalization of certain minor offenses. On the other hand, the facts seem to indicate that their new status is moving them closer to the ordinary courts. This inevitably will raise their procedural standards which, of course, is beneficial. However, the proximity of the courts to regular judicial institutions--which administer the laws in accordance with a fixed procedure--allows certain problems to become more prominent, particularly those that deal with the rights of the defense, government and trade union interference, and the concept that the court is an institution distinct from the machinery of the government.

Although the new Comrades' Court statute contains a number of legal guarantees (e.g., equal rights for all involved parties, availability of records to all concerned, the right to call witnesses), it does not include provisions for a defense counsel. Accordingly, the potential for trade union and government interference in matters of limited concern to the private lives of citizens increases considerably without being sufficiently counterbalanced by the defendant's legitimate rights. There is a legitimate danger that the reforms, under the cover of decriminalization and through the use of a supposedly independent institution, have conferred enormous powers on the the local governments and unions. This, of course, is a direct reflection of the Soviet Government's moralizing and paternalistic attitude toward its citizens, but it is a matter of conjecture whether the Comrades' Courts will use their power with the same discretion as the regular courts. Although the regular courts have fundamental authority under the law, there seems to be little doubt that the Soviet Government exerts considerable influence over them.

Protection of the Young

The reforms dealing with protection of youth focus on several interesting principles: the isolation of juvenile delinquents from other children, the emphasis on general and professional training in specialized institutions, and--perhaps most important--the limited period of residence in reformatories. The legal provisions do not clearly establish the procedure for adolescents committed to these institutions at a relatively early age since the main emphasis is on juvenile delinquents aged 11 and older.

In general, it is impossible to determine whether the reforms apply to conditions which already exist widely, or whether they pertain to programs still in the planning stage. Certain indications, like the search for guidelines for reformatories, seem to confirm the latter.

The People's Participation in the Administration of Justice in Poland as a Form of Extrajudicial Control

By Wojciech Michalski

This article is intended to acquaint the Italian reader with some policies existing in Poland's judicial system. The application of these policies is based on the presumption that they are the expression of democratic principles and that citizens, by participating in the process of the administration of justice, become collaborators in this process. Representatives of the people have a legitimate influence on both the content of sentences pronounced, in accordance with penal law, and their execution.

Participation of the People's Representatives in the Pronouncement of Sentences

Lay judges. The Polish Constitution states that lay judges must participate in the examination of cases in a court of law. The court is composed of a professional judge and two lay judges, or two professional and three lay judges. This rule has the following exceptions:

- Certain minor crimes, which the president of the court can allow to be tried by professional judges alone.
- Extremely complicated cases, which can be tried by a board of professional judges alone.
- Cases before appellate courts, which function without the participation of lay judges.

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To carry out the functions of the lay court, the people's councils, which represent the citizenry, select the lay judges once every 4 years. In advance of the elections, candidates' names are presented at meetings held at places of work and private residences, as well as at meetings sponsored by social organizations. Each people's council selects judges for a particular court, relying on certain criteria including (1) the candidates' reputation among their peers, (2) their involvement in civic affairs, (3) the integrity of their character, (4) their sense of justice, and (5) their social background.

Lay judges carry out their duties in the courts to which they were elected, which involve participating in the court hearings. They enjoy the same independence accorded to professional judges and bring their own professional experience to the penal trial. They express their opinions on each issue to be resolved and vote on the guilt of the defendant as well as on the punishment to be inflicted. An analysis of this system has shown that, during the process of reaching a verdict, lay judges help formulate a judgment that conforms to public opinion. During deliberations on the penalty, they help present the defendant's side to the court.

Lay judges bring to the judicial process not only their personal opinions, but also those of the society in which they live and work. Consequently, they convey the collective opinion on crime and the best means to combat it. In voting for a given penalty, they express the people's concept of justice. Their participation in the administration of justice keeps the courts from isolating themselves from society, prevents the rise of harmful "us-them" concepts, and strengthens the ties between the people and the law.

Lay judges who work in judicial institutions retain the right to full salary from their employers during the time they spend carrying out their legal duties; other lay judges are reimbursed for expenses by the court. Employers must allow lay judges to perform their duties in court, and the law guarantees the protection of their work record. The dismissal of a lay judge by an employer is allowed only with the consent of the factory council, an organization of the workers' governing body which is independent of industrial management.

It already has been mentioned that lay judges exercise the same powers as professional judges, with the exception of presiding over a hearing and carrying out judicial functions outside the hearing. This latter limitation, however, is subject to exception in the case of trials based on private lawsuits (minor crimes, particularly defamation, libel, or other attacks on personal honor, brought to trial by the offended party). In these cases the lay judge can hold a conciliatory hearing which, by law,

must precede the court hearing. This mediation role again demonstrates the importance of the representative of the people in the administration of justice.

This is also evident in a second function performed by the lay judges. The law requires that they present a report of their activities in court to the people's council that elected them, as well as to the industrial management, town meeting, or social organization that submitted their candidacy.

Although the law does not establish the frequency of these reports, they take place rather frequently and constitute a real bond between lay judges and their peers. During these meetings the lay judges present their observations on the work of the courts, motives for crime, punishments received by those convicted, and appropriate measures taken. They constructively discuss problems in the administration of justice, analyze the delinquency found in a given area, and bring to light social problems related to it. They also explain the politics of the legal system. In so doing they help reinforce the sense of law and justice in their own environments, creating an atmosphere for acceptance of sentences handed down by the courts.

Special boards for misdemeanors. In the Polish judicial system, penal courts have the authority to judge cases involving crimes which violate the penal code. Misdemeanors, on the other hand, fall under the jurisdiction of special boards.

These boards operate under governmental control and are composed of a president, vice presidents, and other committee members elected by the local people's council every 4 years from the population of a given district. The candidates must be citizens of integrity, must promise to honor their mandate, and must enjoy a good reputation among their peers. As a rule, presidential and vice-presidential candidates are also required to have some higher education in jurisprudence or administrative law. In exceptional cases a secondary level of education is sufficient if accompanied by practical knowledge of legal administration. Since their function is considered a social service, members of the board are compensated only for their participation in the hearings and for the work they normally would have performed. Under this system, judicial authority for misdemeanors is entirely in the hands of the representatives of the people.

As the number of members on the board is quite high--almost 70,000--this constitutes a large group of citizens who not only take an active part in the administration of justice, but who also contribute to respect for the law among their peers. Public opinion influences the legal system through these citizens who take part in the pronouncement of sentences. Thus there is a clear connection with the process by which laws are made.

Participation of the People's Representatives in the Penal Process

In addition to taking part in the pronouncement of sentences in penal cases through participation of lay judges, the people have other means of influencing the penal process.

Involvement of social organizations in court. The law provides that representatives of many social organizations (e.g., labor unions, Union of Women, youth organizations, reference groups) have the right to be present in a lower court during a hearing to protect the interests of their organization, as provided for in the statute of organizations. The social representative also may be a delegate of the military, labor, or academic collective of which the defendant is a member. The decision to admit a social representative to the trial is made by the court hearing the trial, taking into particular account the interests of justice.

Social representatives admitted to trials do not act as prosecuting defense attorneys, since these are functions of others. Their role is different; during the hearing they can speak to any issue on which they wish to take a stand, in the interest of society. They can introduce motions and present opinions to the court regarding the behavior and character of the defendant.

This constitutes a vast range of powers, allowing the social representative to make an important contribution to the trial in process by revealing the facts objectively and by representing public opinion. It also allows the court to become more knowledgeable about the defendant and the case.

Moreover, this process heightens the interest of social organizations not only in the fight against crime, but also in helping reintegrate offenders into society. In this penal process the social representative becomes a disinterested participant who can describe to the court the social circumstances of the crime and join in the effort to eliminate the conditions leading to crime.

Responsibility of social organizations for offenders. Social representatives can assume another important role by assuming responsibility for offenders given continued suspended sentences. This responsibility becomes binding when the social organization declares that it will guarantee the future conduct of the offender. In accepting this kind of guarantee, the court makes the social organization responsible for the offenders' conduct. Offenders must, in this case, conform to the rules of society, respect the organization that guaranteed them, and give an account of their actions. The social guarantee in this case becomes an instrument of modern criminal policy contributing to a

gradual substitution of social education alternatives for detention.

The social organization is required to develop a program of both protection and education, thus aiding in the prevention of delinquency. This commitment for one person ultimately concerns the entire group. Additionally, the social guarantee may replace preventive custody during an investigation.

Participation of the People's Representatives in the Social Rehabilitation of Convicts

Polish penal law provides a system of probationary measures whereby a convicted offender can be placed under supervision for a probationary period lasting from 2 to 5 years. This supervision may be undertaken by either the social organization that has declared itself responsible, or, more frequently, by judicial trustees.

Although some trustees perform this function as a profession, most of them are social activists presented to the court by the different organizations, who consider their activities with the courts to be social work. They are responsible for the supervision of persons under suspended sentences, and they try to insure that these persons carry out the probationary duties imposed on them by the courts, especially maintaining good conduct and avoiding crime. The judicial trustees help them to find appropriate work, go to school, or receive medical care. The principal duty of the trustee, however, is to maintain contact with the offender and report to the court on the progress of the rehabilitation program. A negative report will bring offenders back to the court, where they will be admonished for their bad conduct. A negative evaluation of the offender's conduct by the trustee which states that the offender evades supervision, breaks the law, and fails to follow the court's instructions might cause the court to order the original sentence to be carried out.

Special judicial trustees oversee the social rehabilitation of convicts who have been given conditional freedom after having served part of their sentence. The reports they present to the courts deal with the progress of the ex-prisoner's rehabilitation -- a negative report can lead to revocation of the conditional pardon and return of the offender to the penitentiary.

Judicial trustees working with juvenile delinquents assume special functions, primarily by maintaining contact with the juveniles' parents (who, for various reasons, have not performed

their parental responsibilities), working with the schools, and organizing extracurricular cultural and recreational activities in special Youth Work Centers.

More than 25,000 social trustees work with the courts in various ways. As representatives of the people, they are an extremely important link in the system of crime prevention and in the rehabilitation of offenders.

Social Courts

In order to form a complete picture of the connection between society and the administration of justice, it is necessary to consider Poland's social courts. The social courts function in the workplace.

Members of the social courts are elected by their peers, whose esteem and respect they enjoy. The role of these courts is primarily a conciliatory one, and the methods they use are chiefly educational in nature. They may include advising the offender to ask forgiveness of the injured party, demanding payment of damages, admonishing the offender, or requesting a small contribution to social needs. The social court may forego any of these measures if it feels the educational goal already has been attained by its mere participation in the proceedings.

In addition, the regular Government court can waive a trial and send the case to a social court, if it considers such actions justified. Sometimes the court refers libel cases to a social court in order to seek a reconciliation of the parties. If the reconciliation is effected, it is no longer necessary to try the case in court, and a penalty is avoided.

Final Observations

The fundamental value of citizens' participation in the complex system of the administration of justice lies in their active involvement in preventive measures.

To foster an environment in which crime is prevented rather than merely discovered and punished, citizens must assume responsibility for maintaining law and order. Social action based on the principle of social justice--a principle that is in full force in Poland's political, economic, and social sphere--has an obvious influence on the fight against crime. Crime in Poland is not increasing, but appears to be gradually decreasing. Violent crimes are committed in rare instances.

Greater participation by citizens in the administration of justice and continuing development and improvement of methods for effecting their participation will mitigate the negative factors that lead to crime. In addition, such efforts will create more favorable conditions for instilling respect for the law and attaining the goals a highly developed society is continually striving to reach.

The New Penal System of South Vietnam

By Pierre Mirel

INTRODUCTION

From April 30, 1975, to January 21, 1976, South Vietnam was ruled by the Military Administration Commission. After that, the Revolutionary Board of the People was the governing body. As time passed, a hierarchical system evolved with a Revolutionary Board of the People in each administrative unit. Its members, who were appointed initially and elected in 1977, exert considerable power in areas such as supply, order and safety, economy, and culture.

On April 30, 1975, the day of the takeover of South Vietnam, the new revolutionary government faced the task of preserving order. This undertaking was particularly difficult because of the combination of three significant factors: (1) the legacy of the old regime--30 years of war and constant violence, armed robberies, corruption, and violation of civil rights; (2) chaos in the cities resulting from the disintegration of the former government and daily extortion which went unpunished; (3) the rejection of "the new order" of May 1, 1975, by the members of the former army.

Prompt action was required of a government which, surprised by the rapid developments of spring 1975, was unprepared to handle the legal situation. Numerous thieves were executed in the streets to "serve as examples." The executions were performed by the Self-defense Groups, quasi-militia organizations composed mainly of young men aged 15 to 25 and established in May 1975 under military control to preserve order and prevent potential

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problems resulting from contact between the army and the South Vietnamese population.

In July, however, the Military Administration Commission established a military court in each district to try common criminals. The military court's composition anticipated the future people's courts. The Ho Chi Minh City (formerly Saigon) Popular Court, for example, was presided over by a lieutenant colonel aided by two assistant judges (members of the Association of Women and the Liberation Union), a public prosecutor, and a clerk. In addition, a special military court was set up to try offenders (as a rule, ex-servicemen) who had committed crimes despite having undergone a period of political reindoctrination.

This unusual judicial system was characterized by its harshness; frequent death sentences were pronounced. As a warning to the population, the government required maximum attendance at the trials, and members of the groups that had taken over the country served as assistant judges. It is of some credit to the new rulers that political reeducation was always the preferred sentencing alternative. In May and June 1975, for example, members of the former South Vietnamese army underwent several weeks of reindoctrination, and in June 300,000 former government officials were placed in reeducation camps.

On March 15, 1976, just 2 months after the changeover to a civilian government, the promulgation of three executive orders containing the new penal code provided a legal system. Despite the reunification of the country in June 1976, this penal code continues to be enforced throughout South Vietnam.

THE PENAL SYSTEM OF MARCH 15, 1976

The three executive orders issued by the Provisional Revolutionary Government deal with, respectively, "The Organization of the People's Courts and the Chambers of Popular Control"; "Arrest, Confinement, Searching, and Interrogation"; and "Designation of Offenses and Determination of the Punishment." They are noteworthy for the rigorous political justice and originality of the popular principles they advocate.

Rigorous Political Justice

The foundations and principles of the new judicial system seem to combine penal and political goals.

The foundations. In addition to the three problem areas mentioned in the introduction, the legislators appear to have been influenced by two significant factors: the economic difficulties and the desire for social change. The new rulers indeed faced a difficult task in trying to reconstruct and develop an urban society which was resistant to change.

Accordingly, an important foundation of the system--and of punishment in particular--is the three goals expressed in the general principles of the executive orders and the preamble: the severe punishment of enemies of the state, the protection of socialist institutions, the reindoctrination and education of the citizens to enable them to take an active part in the new society and become "the new Vietnamese citizen" that the Lao Dong (Worker's) Party, the Communist party of South Vietnam, seeks to create.

In terms of its intent, this is a truly political penal system which is directly influenced by Marxism, Leninism, and Soviet principles, and which tries to instruct and to penalize at the same time. Moreover, the judiciary does not operate independently, but is accountable to the central government.

As a result, penalties may be extremely harsh in cases of "aggravating circumstances," i.e., if a crime is directed at the government, if it is damaging to the revolution, or if it is contrary to the "revolutionary consciousness" on which the court relies. The fact that these criteria enter into the judicial process at all may be considered a second foundation.

These two foundations, which are reflected in the levying of penalties, allow the judges a certain amount of liberty, and the concept of "clemency" is even mentioned for particularly meritorious cases.

The principles. Three principles govern the penal code:

(1) The most important and most severely penalized offenses are those against the government. In fact, four out of the seven articles are devoted to combating "reactionary" offenses against "public property and the economy" and offenses against the "public order, security, and welfare." In these cases, the penalties are extremely severe, ranging from jail terms to capital punishment, which can be ordered in all cases of "aggravating circumstances." Crimes directed at persons and private property, on the other hand, receive milder sentences (with the exception of rape), and the two articles dealing with these offenses are the only ones which acknowledge the concept of "extenuating circumstances."

(2) Crimes of government employees (abuse of power, extortion) are discussed in a separate article, but the penalties

range from as little as 6 months to 15 years. These sentences seem mild in comparison to the severe penalties for other crimes.

(3) The definition of crimes against the government, such as "offenses against the state" or "sabotage against the National Union," is vague. Moreover, an "offense against the revolution" may call for additional measures (confiscation of the offender's property, placement in a guarded institution) under surveillance, after the original sentence has been completed.

The court procedure itself is based on such truly democratic principles as equality before the law, public court sessions, the appeal system, and consideration of ethnic peculiarities. (i.e., members of ethnic minorities have the right to use their own spoken and written language in court.) The court procedure includes rules which may prove dangerous in practice, however. This is especially true in three cases:

(1) The citizen's arrest concept applies in the case of a person caught in the act of committing a crime. In a number of "urgent cases," in particular "plotting to commit a criminal act" and in cases of "doubtful identity," security personnel have total authority.

(2) The right to appeal is not applicable in "cases of particular importance," which can be tried only once in the higher courts. In addition, the higher judicial authorities can order a sentence to be reconsidered if an error is discovered or it is considered "necessary." (The "necessary" clause is reserved for the Chambers of Popular Control.)

(3) Provisional confinement of 2 or 4 months may be ordered depending on the nature of the offense. It can be extended twice and "in complicated cases" even can be sustained "over a longer period of time."

Justice of the People

The traits of popular justice are embodied in the organization and function of the new penal code.

Organization of the courts. A people's court is established in each administrative unit--a district, town, or city on the lower level, and province and capital courts on the secondary level. Lower court cases may be appealed to the secondary courts, and those of the secondary courts only to the High Court of Appeal. Each lower court judge has two assistant judges. The assistants have the same authority as the judge and are appointed by the people's representatives. The appeal courts, on the other hand, consist of only three judges.

The people's courts, on each of the three levels, try civil as well as criminal cases. Each court has its own Chamber of Popular Control which acts as public prosecutor, determines penalties, and advises the government. The Chamber of Popular Control represents a guarantee that the lawful socialist order and the rights of the citizens will be respected. Its duties consist of overseeing the judicial process and government policies, taking offenders to court, demanding revision of a sentence, controlling the distribution of penalties, and proposing suitable measures for eliminating the causes of crime. Although the president and members of the Chamber of Popular Control--like the judges themselves--are appointed by the Provisional Revolutionary Government or the Department of Justice (depending on the court level), they are ordinary citizens nominated by the District Board of the People.

The defense system provides that accused persons may defend themselves, ask the help of a citizen appointed by the popular representatives, or have the court appoint an attorney for them.

Operation of the courts. The court operates under the guideline that investigation and prosecution cannot take place without written order of the Chamber of Popular Control for regular criminal cases, the Board of the People in cases involving political reeducation and the court itself. Moreover, the Board reports the cases requiring legal action. The Board as well as the Security Agency also reports "urgent cases" and, with a written authorization of the Chamber of Popular Control or the police, may even intervene directly.

Interrogations may be conducted by the security personnel or the Chamber of Popular Control. Provisionary confinement is either decided by the Chamber or the Security Agency, but in the latter case the Chamber or Board must give its consent.

The appeal system reveals the popular orientation of justice. Every court decision may be subject to appeal by either the court itself or the Chamber of the next higher court. The presidents of the highest court even have the right to protest a given sentence.

On the whole, the rationale of the three executive orders seems to be political as well as popular. The legislators justify the strict procedures and penalties by insisting that they are only temporary and necessary to establish the socialist society. In this respect there is a distinct resemblance to the Soviet penal system of the 1917-37 period and, of course, that of North Vietnam. In view of these earlier examples, it is debatable whether the immediate participation of the people in the legal process and the sanctions against procedural offenses are a sufficient protection against the excessive zeal that characterizes a revolutionary period. The fact that the penal code became

more strict in 1976 makes the matter or sufficient protection even more debatable.

THE DEVELOPMENT OF THE PENAL SYSTEM SINCE MARCH 15, 1976

Special Popular Tribunals

To combat counterrevolutionary activities, speculation, and serious economic difficulties, the Provisional Revolutionary Government established by decree Special Popular Tribunals on May 27, 1976, to deal with "crimes and offenses against the national economy by fraudulent means and attempts to upset the market by hoarding or stocking goods with the intention of making illegal profits." The decree also contained provisions against giving "aid or assistance to counterrevolutionary forces by concealing weapons or documents or by organizing escapes by sea to foreign countries."

Popular representation in these tribunals survives only in the person of the second assistant judge, who is nominated by the National Liberation Front. There is no Chamber of Popular Control; the first assistant judge, president of the tribunal, and public prosecutor are nominated by the government. Provision of a defense counsel is mentioned only in passing. Although they are still public, the trials cannot be appealed.

Cases are referred to the tribunals by a joint committee of the Department of Justice and the Department of the Interior, or by the Provincial and Municipal Boards of the People.

The penalties range from 5 years to life imprisonment for ordinary citizens, but only from 1 to 5 years in the case of government employees--and the death penalty may be pronounced in both cases.

The official reason given for the establishment of these special tribunals, which were not included in the executive orders of March 15, 1976, was that treatment of criminals had been too lenient. The desire to avoid the clumsiness of the ordinary court system and to deter potential criminals--especially by eliminating the right to appeal--undoubtedly played an important part as well.

Application

In the months following the statutes of March 15, 1976, various declared intentions were apparent in the practical application of the penal code.

The popular orientation. In a case involving drug speculation tried on June 15, 1976, by the Special Court of Ho Chi Minh City, one of the assistant judges was a regular member of the Executive Committee of the Women's Union and the other a member of the Confederation of City Workers. Moreover, the public prosecutor was a representative of the Chamber of Popular Control of the Ho Chi Minh City Court (Tin Sang newspaper, June 17, 1976). Since this type of popular participation was desired, it was decided in August 1976 not only to organize courses to train 150 members of the Chamber of Popular Control and assistant judges, but also to provide advanced training for 310 citizens the Chambers had appointed to serve as public prosecutors throughout South Vietnam.

Less strict provisions for government employees. In an important case of misappropriation involving the sale of government property on the private market, six businessmen and six government officials were convicted by the same court. Although the former received sentences of life imprisonment, 20, 18, 17, 12, and 8 years, respectively, the latter were sentenced to prison terms of only 15, 12, 12, 10, 3 years, and 6 months, respectively (Tin Sang, June 23, 1976). Those sentences were pronounced despite the fact that the government officials had reaped tremendous profits and that their signatures alone had made moderate gains of the businessmen possible. Such inequality before the law is amazing, especially since the authorities frequently emphasize the need to fight corruption among those in power.

The framework of the defense. Nguyen Thanh Vinh, President of the Popular Tribunal of Saigon, was quoted in Tin Sang on March 30, 1976, as stating that the defense attorneys not only should possess the proper political attitude, but also should be "nominated by the people." In fact, in the second of the foregoing cases, the two defense attorneys were members of the Association of Intellectual Patriots and of the Group of Young City Workers.

The pardon system. Since punishment is intended to deter and reform concurrently, pardons frequently are granted to reformed criminals. Pardons are granted on the occasion of national celebrations as well. On those occasions, death penalties also are commuted to prison terms accompanied by programs of political instruction. For example, on the national holiday of September 1, 1976, a number of reformed common law criminals received pardons (Tin Sang, September 1, 1976).

CONCLUSION

The punitive measures established may seem harsh, but during the period in question significant crime prevention efforts also were undertaken. A comprehensive and vigorous campaign was conducted against the causes of crime, unemployment, and illiteracy.

Crime Trends in Finland, 1950-1977

By Patrik Törnudd

Crime and Society, 1950-77: An Overview

A statistical review of crime in Finland between 1950 and 1977 reveals an increase in offenses, particularly in the 1960's and 1970's. Police crime reports in 1950 listed 29 separate offense categories, compared to 62 in the 1977 reports. Seven robbery offenses per 100,000 inhabitants aged 15 and over were reported in the period 1950-54, and 53 per 100,000 in the period 1975-77. Crimes of violence against public officials, forgery, assault and larceny, fraud, drug offenses, and drunken driving show an equally dramatic increase between the 1950's and the 1970's.

The Crime Control System

Understanding the crime trend requires some knowledge of how the system of crime control in Finland operates. The law enforcement system generally has been able to handle the increasing number of crimes and imprisoned offenders. Perhaps this can be interpreted as a kind of self-regulation within the system. That is, when the crime rate continues to rise and prison conditions threaten to become intolerable, criminal justice standards must be compromised in some areas, e.g., the average severity of the sentences, the parole eligibility rules, or the legal definition of crime. Self-regulation processes involving some or all three of these mechanisms can be identified in Finland during the period 1950-77.

Median length of prison sentences, for example, has decreased from 7.6 months in 1950 to 4.5 months in 1975. And, although the number of crimes increased significantly between the 1950's

and the 1970's, the number of prisoners actually has declined, despite the fact that crime solution rates have not dropped dramatically.

It would be a mistake, however, to consider all changes products of self-regulation--there have been independent changes in the climate of crime control policy. A more lenient crime control attitude has evolved as a result of a growing humanist concern over the situation of incarcerated individuals, intensified criminological research with its associated demands for an instrumental and goal-conscious crime control policy, and growing doubts concerning the effectiveness of long prison sentences.

The Quality of the Crime Statistics

From 1927 to 1959, the basic unit of crime statistics was crime reported to the police (including, of course, crimes reported by police officers). Since 1960, the basic unit has been crime registered by the police. This means that those incidents reported to the police as crimes but determined to be noncrimes upon investigation are excluded from the annual crime reports and recorded separately.

Another source of inconsistency throughout this period in crime statistics is the registration of so-called continued offenses. If a person commits a series of interrelated criminal acts (e.g., a shoplifting spree involving perhaps several hundred separate items, burglarizing the same house several times during one night, or selling drugs to a large number of persons within a few days), the court usually will sentence that person on the basis of one offense. Police authorities cannot predict the outcome of court decisions on these matters, however, and consequently determine the number of crimes to be listed in the crime reports according to 1971 reporting rules: one act should be counted as one crime. In certain offense categories, however, local variations are still known to exist.

The rating of offense severity is another area of variability. Police officers usually overestimate the severity of a crime in reporting it (for example, calling an incident aggravated assault instead of assault) to be "on the safe side." A court subsequently may classify the offense in a lesser category. Furthermore, systematic and uniform definitions of crimes do not exist, and police officers in various jurisdictions may apply different terms to describe a similar event.

In spite of these limitations, Finnish crime statistics, when evaluated according to findings from victimization surveys, appear satisfactory and can provide a general idea of the level and trend of criminality in the country.

Crime and Changes in the Structure of the Finnish Society

The 1950's in Finland were characterized by slow but steady economic growth and sluggish reform measures. The 1960's saw the large postwar baby population come of age, the acceptance of the idea of continuously growing real wages and welfare, the spread of affluence to large segments of the population, and a rapidly accelerating rate of change in all areas of society. The last years of the 1960's and the first 2 years of the 1970's were indeed a time when almost anything seemed possible.

It is hard to pinpoint the causes of the more austere mood of the later 1970's, although it may be a reflection of the energy crisis or a counterreaction to the excesses of the 1960's. At any rate, a more relevant issue is the effect social changes have on various kinds of criminality.

The urbanization and industrialization process, in a very general sense, increased the opportunities for crime and at the same time dissolved much of the established social control system. A wealthy society offers a large number of targets for criminals, and both the concentration of wealth in urban areas and the emergence of complex organizations and enterprises increase criminal opportunities.

The changing role of the police has special relevance to the subject of crime trends and crime reporting. Although the strength of the police has remained steady over the years, modern, urbanized police officers certainly do not operate as their counterparts in rural Finland used to operate--as masters of arbitration who are expected to solve local disputes and act effectively against outsiders and known troublemakers. The bureaucratic police officer and organizations of urban communities today have less control over the reporting process (complaints must be received, recorded, and included in statistical reports), and the public's attitude toward crime reporting fluctuates (people report crime when they think it will benefit them directly.) Crime trends always must be interpreted in this light.

A brief analysis of the interrelationship between events in society and trends in larceny and assault can be made to illustrate the basis of the changeability of crime statistics.

Larceny Offenses

Larceny is frequently the subject of public debate on crime because of its volume as well as the controversial issues associated with its control. The larceny rate would be expected to be particularly susceptible to such structural changes in the Finnish society as industrialization and urbanization. Crime statistics

show that the larceny rate remained fairly stable through the 1950's and climbed steadily during most of the 1960's and 1970's. The growth was most rapid in 1956-57, 1963-64, 1967-68, 1975, and particularly 1971.

Demographic Changes

Larceny has been a predominantly urban crime. In 1950, one-third of the offenses were registered in rural communities, but the proportion was only one-fifth in 1975. A review of larceny statistics in urban and rural areas during the 1950-77 period illustrates two important structural changes: (1) a significant portion of the increase in crime can be explained by the migration of people into high-crime areas, and (2) the difference between the urban and rural crime rate is steadily diminishing, which may be due in part to the increase in car ownership and general mobility.

The babies born immediately after World War II reached the age of majority in the first years of the 1960's, and although several problems interfere with testing the hypotheses about the impact of this large group on crime, some direct influence can be deduced.

Economic Factors

Economic cycles also can be expected to have an impact on the crime rate within a given community. If the number of cars parked on the streets increases, the number of easy-to-steal cars and the chances of avoiding detection would increase correspondingly. Such a relationship can be demonstrated on the basis of Finnish statistics, but no satisfactory economic indicator exists to measure the total amount of "potential objects of larceny." (This includes not only goods manufactured, transported, and stored, but also goods offered for sale in shops and department stores and the objects of value kept in homes and summer cottages.) Channels of distributing merchandise are changing: small shops are disappearing and being replaced with supermarkets and shopping centers. This change was rapid at the end of the 1960's and the beginning of the 1970's.

Economic cycles also will affect the internal mobility and spending power of the population and the proportion of persons unemployed. Unemployment is traditionally thought to cause crime, and a statistical relationship between larceny and unemployment exists. Available unemployment statistics seem to indicate that the unemployment situation was most serious in those years which had the highest number of larcencies. Yet comparison of data on larceny unemployment does not suggest a definite cause-effect relationship. In 1968, the local crime rate was particularly

high in Northern Finland, whereas the increase in larcenies was greater in the South.

Police authorities have associated the increase in larceny with enhanced professionalism in offenders. Although this professionalism certainly could be due to such factors as the growth of the urban population, higher population density, better communication facilities, and higher levels of education, the mechanisms to measure degrees of professionalism do not exist.

Assault Offenses

An analysis of the assault trend is complicated by the 1969 penal code revision which bases the definition of the crime on both the injury caused and a general evaluation of the act's gravity. The change in the definition of what constitutes petty assault is most significant, since this category prior to 1970 comprised more than half of all assault cases which caused minor injury or no injury at all. The new law is more strict toward violence, considering even the slightest bodily injury grounds for assault. There is reason to believe the authorities have continued to use previous crime definitions they are accustomed to. Still, there may well be an actual trend toward graver offenses, but the magnitude and timing of the shift from petty assault to assault between 1970 and 1977 suggest that Finland is undergoing a kind of learning process.

The Assault Trend

A visual display of assault trends indicates that the rate of assaults decreased from 1950 to 1958 but steadily increased during most of the 1960's, particularly in 1967-69.

Finnish interpretations of the statistics on crimes of violence must take into account the alcohol factor. The majority of all assault offenders are intoxicated at the time of the offense--in fact, the more serious the crime the higher the percentage of intoxicated offenders. Even the victims are under the influence of alcohol in most instances. Statistics reveal that the number of prosecuted offenders who were under the influence of alcohol at the time of the assault either has remained constant or has increased somewhat during the period in question. The fact that alcohol legislation was strictly enforced during the 1950's, liberalized in the 1960's, and made particularly lenient in 1969 is meaningful, but it would be simplistic to assume that the level of alcohol consumption directly determines the volume of crimes of violence. Abolishing drunkenness fines in 1969 resulted in a shift of many offenses (e.g., damaging property, impeding an officer, and petty offenses) to other crime reports categories. The 5-day

work week, a number of legal reforms, and economic and social changes that occurred during the 1960's are also important variables.

Other Offenses and Offender Trends

Brief comments can be made on some of the other offense categories and trends related to offender characteristics.

Violence against public officials. This offense, usually related to the process of taking drunken persons into custody, has increased during the 1970's and reflects the growing consumption of alcohol and the demands made upon the police and other persons entrusted with maintaining public order. The individual police officer's discretion significantly influences reporting rates.

Perjury. The rate of perjury has not kept pace with the increased number of criminal trials. It may be surmised, therefore, that the number of trials in which lying under oath would seem a tempting alternative has not increased at the same rate as the total number of trials.

Forgery. The steep rise in the forgery rate in the 1970's can be attributed partially to the introduction of checks as a means of payment.

Homicide. Finland always has had a high rate of homicide in comparison to other countries. Finnish criminologist Veli Verkko maintains that the constitutional inability of Finns to use alcohol moderately explains this high rate. Most homicides in Finland are perpetrated against victims who were acquainted with the offender.

Robbery. Robbery leads the list of offense categories that correspond to the degree of urbanization. The rapid urbanization of Finland between 1960 and 1975 has been accompanied by an explosive increase in crimes of robbery.

Offender characteristics. The babies born after the war reached the age of intensive criminality in the 1960's, and their impact can be seen in the trends of crimes usually committed by young people. The general increase in juvenile crime at the end of the 1960's may be attributable to the fact that the young are susceptible to those societal changes--urbanization, increased mobility, increased incomes--that enlarge the opportunities for crime and give earlier modes of social control less opportunity to operate.

Juvenile crime has returned to its normal rate in the 1970's, i.e., it is following a trend similar to adult crime.

Although criminality was most pronounced in young males in the 1960's, assault offenses and drunken driving show a steeper increase among young women. This phenomenon is probably due to the changing attitudes toward females' use of alcohol.

A Short Note on "Explaining Away Crime Problems"

This paper was developed from various reports, surveys, manuscripts and other sources from the files of the Finnish Research Institute of Legal Policy. If the results tell something about the crime trends in Finland, they also tell something about the nature of the Institute's work.

The Institute is policy oriented; it maintains close contacts with the shapers of the crime control policy and is deeply concerned about the climate of public opinion. The annual crime statistics reports published by the Central Statistical Office represent one particular source of concern. Will the public and the politicians interpret them correctly? Of course not. The Institute is in a state of constant readiness: it must be prepared to "explain" any unexpected turn of the crime trend.

Most of the trends examined in this paper reflect increases in crime. If the Institute has a systematic bias, it is visible in a tendency to deemphasize or "explain away" upward fluctuations of the crime trend. There are cogent reasons for emphasizing aspects likely to calm the public rather than those which tend to increase anxiety. The average citizen will automatically "believe the worst" about crimes he or she knows little about.

The Research Institute has expressed anxiety over what it considers the public's failure to realize the need for long-term policy planning to combat crime or when the crime statistics do not indicate the indirect damage caused by some modern crimes. Nevertheless, the attempts to neutralize the bias inherent in the public's crime attitudes may call for later, more sophisticated reanalysis.

Summary

Much of the rapid growth of crime in the 1960's can be attributed to the vast demographic changes that have taken place. The increase in larceny which has continued into the 1970's is apparently a consequence of the increase in the number of opportunities for crimes and other factors related to economic conditions. Finnish crimes of violence are closely related to alcohol use; the liberal-

ization of alcohol legislation in 1968 probably accounts for most of the recent increase in assault.

Crime and Delinquency in Georgetown, Guyana

By David J. Dodd and Michael Parris

Introduction

Although Guyana is situated geographically on the northeast Atlantic coast of South America, its historical, social, and economic composition is West Indian. And like a majority of developing countries, it has been experiencing increasing crime and arrest rates--particularly among urban, Afro-Guyanese teenage and young adult males--since gaining independence from Great Britain in 1966.

This paper is an initial attempt to blend two areas of contemporary sociological thought--the so-called delinquent literature in the United States and the social anthropology of "plantation America"--into one theme. As such, it suggests that much of the behavior society is disposed to call delinquent may furnish no more than a contemporary account of a historical relationship between the African lower class in Guyana and the social, economic, and political environment its members traditionally have occupied.

Essentially, it is argued, the changes that have taken place in the structure of this relationship are responsible for the growth of crime as both an industry and an occupation of many boys and young men in the Guyanese capital of Georgetown.

An Urban Plantation

Historical overview. Stabroek, as Guyana's capital was first called by the Dutch, consisted of two rows of houses extending

Crime and Delinquency in Georgetown, Guyana (NCJ 57425), 1976, 57 p. (Institute of Social and Economic Research, University of the West Indies, Mona, Kingston 7, Jamaica) Summarized by K.B. Leser.

for about a mile along what is now known as Brickdam--so named because it was the only brick path in a land of mud. In 1781, during a period of British occupation, the idea of building a settlement in the lower region of the Demerara River was conceived. The French captured the colony in 1782, only to lose it to the Dutch in 1784.

By 1803, when the British finally recaptured it, the capital city had been extended to include a former sugar estate (Werk-en-Rust) and what was to become its main business district, a former coffee plantation (Newtown). Renamed Georgetown by the British in 1812, the city had begun to take on much of its final shape, with Cummingsburg a well-laid out residential area and Robbstown a collection of dilapidated and improvised dwellings joining the trading center at Newtown.

On its establishment in 1837, the Georgetown Town Council took over the supervision of the town from the Board of Police. In 1838, after the 4-year period of apprenticeship following emancipation, some adjoining estates were sold as villages to freed blacks. Much of the development took place north of Brickdam, and the remaining portions--those south of what was the nucleus of the city--became the major operating areas for lumber merchants. South Georgetown was not incorporated until 1913.

Prior to 1969, the city was made up of 11 wards, covering approximately 1,300 acres. Since then, however, the Greater Georgetown Area has been established and another 3,000 acres and 9 administrative regions added. The population has grown along with the size of the city, from 48,828 at the turn of the century to 63,184 in 1970.

Social structure. The substantial increases in the overall population of the city and its environs reflect the urban drift experienced by most developing countries. As noted earlier, the development of contemporary Georgetown began with Stabroek and spread northward. Stabroek has retained its status as an upper class residential area and together with Cummingsburg, Queens-town, and Kingston, constitutes the four administrative wards officially designated as residential. Although Stabroek, Queens-town, and Kingston remain relatively middle class and residential in nature, however, Cummingsburg recently has found it difficult to justify its ward status. Considering its location, which includes part of the waterfront, pressure for business space has led to the establishment of increasing numbers of offices and warehouses within its boundaries and to the relocation of growing numbers of middle class residents to suburban neighborhoods.

The central areas, including Cummingsburg, Lacytown, and most of Bourda--continue as business districts and residential areas

for the lower class. In fact, one of Georgetown's most socially disadvantaged areas, Federation Yard, was located in Lacytown. Its residents occupied rundown tenement houses adjoining stores, cheap restaurants, and brothels, but most of the residents have been relocated to the southern part of Greater Georgetown.

Criminal activity. The section of Georgetown traditionally linked with criminal activity is the portion of western Cummingsburg adjoining the Demerara River. Known as Tiger Bay, the area forms part of the Georgetown seaport and caters largely to sailors. Brawls frequently occur in its rum shops and brothels, and the many wholesale businesses are targets for local thieves. Needless to say, the local businessmen have abandoned the area's dilapidated housing to reside elsewhere.

Another high crime neighborhood lies in the vicinity of Leopold Street, south of Stabroek in the northwest end of Werk-en-Rust, which was part of the pre-1913 depressed area of South Georgetown. This neighborhood and portions of Lombard and Regent Streets have been described as a "moral cesspool."

These areas are downtown, where criminal activity traditionally was most prevalent. It still is, of course, because of the opportunity--and anonymity--it presents to the petty thief or street robber. However, a breakdown of offenses committed in the Greater Georgetown area between 1970 and 1972 reveals that crime also has become a local neighborhood phenomenon, particularly in the South Georgetown area to which lower class Afro-Guyanese moved in large numbers from Federation Yard and Tiger Bay.

As Tables 1 and 2 indicate, the South Georgetown neighborhoods, with their preponderance of clerical and manual lower class workers, account for most of the crime in Greater Georgetown.

An examination of both sets of figures in Table 2 reveals that the highest ranking areas in both categories are those which formed the depressed areas of Georgetown. A relationship clearly exists between the level of offender residence and physical conditions in these areas. It also should be noted that the Werk-en-Rust and Ruimveldt area, which has 39.3 percent of the male population, provided 53.7 percent of the offenders. The section of this area in which the majority of the manual workers reside--Albouystown to Ruimveldt--had 35.1 percent of the offenders among its 23.7 percent of the male adult population, a rate of 12.5 per 1,000. Crime rates of 30.9 per 1,000 among its 16-19-year-olds and 18 per 1,000 among its 20-29-year-olds suggest that this area is highly conducive to delinquency.

TABLE 1.

Socioeconomic Breakdown of South Georgetown Area

| Subdivision | Type of Area | Residents |
|--------------|---|--|
| Werk-en-Rust | Timber, large and small wholesale and retail business; lower and lower middle income residences. | Junior clerical workers; mainly |
| Wortmanville | Residential | Artisans; junior clerical and manual workers. |
| Charlestown | Business (large and small); residential | Mixed population of artisans; sizeable proportion of manual workers and junior clerical employees. |
| Albouystown | Small retail business and residential | Manual workers. |
| La Penitence | Large wholesale businesses, small and large retail; residential | Mainly manual workers; few artisans and junior clerical workers. |
| Ruimveldt | Large manufacturing businesses; middle income residences recently established; mainly working class | Minority of junior and senior clerical workers; mainly manual workers. |

TABLE 2

Greater Georgetown Districts According to (a) Percentage of Male Offenders (1971) (b) Crime Per 1,000 in Descending Order of Magnitude

| Ranking | Districts | Percentage | Districts | Rate |
|---------|----------------------|------------|----------------------|------------|
| 1 | Ruimveldt* | 16.4 | Albouystown* | 15.6 |
| 2 | Albouystown* | 9.7 | Charlestown* | 13.9 |
| 3 | La Penitence* | 9.0 | Cummingsburg | 12.2 |
| 4 | Lodge | 8.7 | Ruimveldt* | 12.2 |
| 5 | Kitty-Subryanville | 8.5 | Werk-en-Rust* | 11.5 |
| 6 | Werk-en-Rust* | 7.8 | Le Penitence* | 10.8 |
| 7 | Charlestown* | 7.6 | Lodge | 10.5 |
| 8 | Cummingsburg | 6.9 | Kingston | 10.1 |
| 9 | Campbellville | 6.6 | Lacytown | 10.0 |
| 10 | Meadow Bank-Agricola | 5.1 | Meadow Bank-Agricola | 8.8 |
| 11 | Wortmanville* | 3.2 | Meadow Brook | 7.5 |
| 12 | Kingston | 2.7 | Kitty-Subryanville | 6.6 |
| 13 | Lacytown | 2.7 | Wortmanville* | 5.3 |
| 14 | Bourda | 2.1 | Bourda | 4.9 |
| 15 | Alberttown | 1.6 | Campbellville | 4.8 |
| 16 | Meadow Brook | 0.5 | Stabroek | 3.7 |
| 17 | Stabroek | 0.5 | Alberttown | 3.5 |
| 18 | Newtown | 0.2 | Queenstown | 0.7 |
| 19 | Queenstown | 0.2 | Newtown | 0.5 |
| 20 | Bel Air Park | 0.0 | Bel Air Park | <u>0.0</u> |
| | | | Overall | 8.5 |

*Areas in South Georgetown

The World of the Streets

The streets in South Georgetown, as in other low-income communities, are divided or marked by specific locations, typically corners where boys and young adult males congregate at certain times of the day and evening. There is either a rum shop or pub at most of these locations, and they provide a background setting for the activities taking place outside.

Unlike the house or yard, where he is subject to the habitual constraints of home, family, and neighbors, the streets represent a man's freedom. But it is freedom in the sense that street life provides the genesis of autonomy--the feeling of being in control of one's situation, of being one's own man--that is so crucial to the type of identity aspired to by many boys in lower class communities.

Street activities. On the corner, boys fight to prove their courage, to defend their honor, or to protect their reputations. Some adult males acquire status as men of violence and are feared and respected on that basis. These men have succeeded in reaching the top of a social hierarchy which is based partially on the ability to defend by force the environment they have chosen to occupy and partially on assumptions about the nature of the world--namely, that "strength" is an important facet of character and spirit and that without it a man is likely to be crushed.

Contests of another kind--those involving words--also are an everyday occurrence on the streets and, like physical contests, they usually draw an audience. Indeed, the presence of an audience often determines the line of argument taken by the participants, that is, their strategy may depend largely on what they believe to be the audience's opinion of their moral character. Accordingly, the ability to "talk"--including storytelling, arguing, trading insults, and "sweet" talking--is a highly cultivated art which not only sets the "talk" man apart as an entertainer or "operator," but also brings him the rewards offered by the environment--money, women, and power.

Since being "smart" is a virtue closely related to the ability to "talk," it also is closely related to the emerging self-concept of the lower class corner boy. It centers on the capacity to manipulate or deceive another person and to avoid being manipulated or deceived oneself. Conning someone is a constant measure of achievement for the street hustler as well as a legitimate source of his reputation. Indeed, some men pride themselves on their moral superiority to those who "choke n' rob" since they can get what they want without resorting to violence.

In the neighborhoods of South Georgetown, the street corner is the natural focus of these displays of character, and boys growing up in the area continually are made aware of the challenge posed to their own self-concepts by the older boys and men who make up its population. Consequently, after they have left school, many drift quite naturally to the corner and begin to experiment with the roles and identities encountered there. They learn not only about leisure in general, but also about its value and the many uses to which it can be put. They also learn the importance of being an individual, a "somebody" accepted and admired by their peers, yet sufficiently outstanding in terms of some personal attribute recognizable as unique.

Street crimes. Despite this drive to be different or unique, however, the corner population firmly shares several common interests--easy money, clothes, sex, and gambling. The interest in money is largely the key to the others, and the most prevalent ways to obtain it easily are petty larceny, theft, and robbery, known locally as choke n' rob.

Boys go out in the morning to "shark," either downtown or in the neighborhoods, and hope to have a "small piece" in their pockets by noon. They either loiter in areas where there are crowds or ride bicycles or motorcycles through the streets looking for easy victims. Some also work at night, cruising the city looking for people walking or riding to and from homes or work.

Other than cash, the most popular items--in the sense that they are the easiest to notice, remove, and sell--are the gold bangles still worn by East Indian women, wristwatches, and other body accessories. Minimum violence typically is employed unless resistance is offered, although instances in which it is used are by no means rare. If they have been successful--have made a "catch"--the boys usually sell the items as soon as possible, either to friends, relatives, or any one of a number of reliable buyers.

The same pattern applies to petty larceny, pocketpicking, and fraud. Nothing of great value is stolen, and nothing particularly rewarding is obtained. A successful burglary occasionally may yield a bigger haul, but the items most likely to be stolen are the most easily disposable--stereo sets, radios, cameras, and jewelry. The boys seldom have enough money to "retire" from the streets for any period longer than a few days. Their takes are small and are spent as quickly and conspicuously as possible on clothes, beer, cigarettes, gambling, and sex--items that serve two extra functions: supporting the boys' claims to a particular identity and confirming the norms of both the delinquent "in" group and the cultural "out" group.

Nevertheless, the money goes fast and most boys soon find themselves back in the same negative economic situation they started from. Their careers are more related to their expressive or performance skills than to the acquisition of sufficient capital to become "businessmen," in either sense of the term, although they retain considerable admiration for those who do manage to negotiate both legitimate and illegitimate financial positions.

For example, several of the men who operate small businesses--rum shops, pubs, and the like--which cater in part to the street fraternity, were hustlers, thieves, and con men in their youth. Some still retain an active interest in the criminal world and continue their involvement in street crime by receiving stolen goods or showing younger men the ropes. Their careers serve to define the expectations of many still on the street, for they are the "big ones" and the living proof that crime can be made to pay.

Few of the corner boys are looking toward the future, however. In a world where a man is considered old at 25, there is little time or scope for that. The emphasis is on the present, and a man estimates his needs in terms of this moment and the next, not, as the middle class does, in terms of the rest of his life. The corner criminal does not have time enough to plan or create a crime; since little skill or forethought is involved, he can do no more than satisfy the needs he experiences at the moment. This gives delinquent enterprise a randomness and a spontaneity that is the complete antithesis of the more organized criminal subcultures reported to exist in other developing countries.

Class and Culture

West Indian society is a very broad term of reference, of course, and there is considerable variation between individual societies within the Caribbean. Yet some persisting and shared aspects of socioeconomic and sociopsychological life in "plantation America"--including Brazil--constitute a set of crosscultural norms which underlie socialization practices, behavior patterns, and the conduct of everyday life.

It is within this context that the question of subculture--which has been defined as a "set of conduct norms which cluster together in such a way that they can be differentiated from the broader culture of which they are a part"--must be viewed from a criminological perspective.*

*Donald R. Cressey and David A. Ward, eds., Delinquency, Crime and Social Process (New York: Harper and Row, 1969), 634.

The Afro-Guyanese. This raises two important questions regarding Afro-Guyanese neighborhoods in Georgetown. Do they produce a class subculture in which males between 15 and 25 become involved in, and committed to, activities that may or may not include some petty criminal activity? Or do they produce a delinquent or criminal subculture in which the rules verbalized by the members of street corner groups as appropriate for their conduct clearly run counter to the prevailing norms and values of the class culture of their parents?

It is a recurrent feature of lower class neighborhoods, where space resources are extremely limited in domestic settings, that a separate society tends to form outside them. This society or subculture typically is structured around the activities available to men who spend their time away from home, either on the street or in other public places. It is a process which both adheres to and reinforces the distinctive patterns of family life in the area and at the same time provides an appropriate social context within which males are free to engage in character contests, both to acquire a reputation and to secure an identity.

In this respect, it has much in common with other "cultures of poverty," with the important exception that in Afro-American societies the population's social and economic roots lie not only in the institution of slavery, but also in a set of fragmented psychic and expressive links to an African past. These links also must be considered in terms of their possible relevance to a general theory of deviance in West Indian societies. However, their importance lies principally in the fact of their survival.

To illustrate, the acquisition of status and the relationship of that process to a viable identity system always has been particularly problematic in dependent or colonial territories, for it traditionally has meant acknowledging the demand of two distinctly separate value systems. Although the idea of two value systems hardly affects the middle class, it is certainly a problem for the working and lower class. The result has been a permanent tension between the classes and the tendency to try to accommodate the norms of the dominant culture in a series of adaptations having their origins in slavery and in the subsequent economic relations of a system of plantation agriculture that has persisted to the present day.

Consequently, the contemporary urban working and lower class Afro-Guyanese have inherited both the role structure of this system and the personality characteristics of those whose lives were shaped by it. Their social legacy is the culture of the slave quarters and the small coastal settlements removed to the urban villages (or "plantations") of the city. This is a culture in conflict with itself, and the efforts of the people--especially males--to resolve this conflict to their own satisfaction is

responsible for the prevalence of crime and delinquency which forms an integral aspect of the social behavior patterns found in South Georgetown today.

Empirical Geography of Crime--An Inventory and Further Developments, Using the City of Bochum as an Example ("A Crime Atlas of Bochum")

By Hans-Dieter Schwind, Wilfried Ahlborn, and Rüdiger Weiss

INTRODUCTION

Criminological research becomes especially significant when the objective is finding new means to combat crime. Expensive studies that do not serve this purpose may be of scientific interest, but during times of increasing crime rates it is difficult to justify such investigations to the taxpayers, who ultimately finance them.

The first prerequisite for designing rational measures against crime is thorough knowledge of criminal statistics. Since most police statistics reflect only those crimes which have come to light, research into the number of unreported crimes--the "dark figure"--has been encouraged in Germany during the past few years. In this study of criminal activities in Bochum, an industrial city with a population of 435,000, an attempt has been made to determine the extent of the dark figure so that it can be added to the number of reported crimes to provide a realistic picture of the situation.

The second and third prerequisites are, respectively, exact information concerning the causes of criminal behavior, and the locations of both the scenes of the crimes and the residences of the criminals. The science of the geography of crime, as it is applied in this study, encompasses the analysis of such information for both reported and unreported crimes. The principal goal of this science is to prevent crime with the aid of knowledge gained through examination of criminal behavior in its temporal and spatial distribution--when and where crimes are committed--and the

Empirische Kriminalgeographie--Bestandsaufnahme und Weiterführung am Beispiel von Bochum ("Kriminalitätsatlas Bochum") (NCJ 54261), 1978, 437 p. (Verlagsanstalt Deutsche Polizei GmbH, Forststrasse 3 A, 4010 Hilden, West Germany) Translated from the German by Robert J. Jobin.

influences on this distribution by demographic, economic, social, psychological, and cultural factors.

Scope of the Geography of Crime

This definition of the science of the geography of crime has been extended beyond the traditional view that it is merely the science of the distribution of crime. Until recently there has been an astounding lack of criminological studies that took both geographic and sociological/psychological factors into full consideration. Although the American science of human ecology briefly began to touch on matters concerning the geography of crime, the subject was not developed any further. The phenomenon of crime proved to be of little interest to social geographers in the United States, France, and Germany. Preliminary work in the field of social geography that includes the concept of "the geography of deviating behavior" has been of recent duration. This development reflects a general trend of freeing social geography from its traditional geographic context and leading it toward convergence with the other social sciences. The trend is apparent in sociogeographic studies of minorities and groups on the fringes of society in the United States (e.g., blacks or ghetto inhabitants) and of foreign workers in Germany. The neglected questions in the field of human ecology are slowly being reexamined.

Organization of the Study Findings

The findings of the study of the geography of crime in Bochum have been organized to reflect the objectives of the interdisciplinary study team. The study begins with a survey of the aims and results of earlier studies in the geography of crime and an introduction to the history, economy, social structure, geography, and traffic patterns of Bochum. This is followed by the empirical portion of the study, which is divided into three thematically defined sections: (1) criminological aspects, (2) sociological considerations, and (3) the sociopsychological point of view. The study concludes with a discussion of possible anti-crime measures and programs presently being conducted in Germany and other countries.

METHODOLOGY OF THE BOCHUM STUDY

Methods

Data on reported and unreported crimes for the year 1975 came from two major sources. Information on reported crimes was obtained through the cooperation of Bochum's police department in filling out two questionnaires. The first involved the locations of crimes committed and the second requested personal data

on the suspects. For the dark figure, interviews with victims of crimes served as the main source. Limited funding precluded collecting information from other sources such as police informants.

To determine the relationship between reported/unreported crimes and their spatial and temporal distribution, it was necessary to obtain information on Bochum's social groupings and neighborhoods as the background for viewing the crimes. Bochum's Statistics and City Planning Offices were able to provide most of the information necessary, and the rest was obtained through replies to questionnaires administered to those who supplied the information on the city's dark figure.

The investigation was limited to those offenses best suited to research in the reported and unreported crime categories. Property damage and leaving the scene of an accident are not suitable because it is not usually clear, in the case of the former, whether negligence was involved, and in the latter case, whether the offender was aware of the damage the accident caused. The crimes selected for study--simple larceny (larceny without aggravating circumstances), grand larceny (aggravated larceny), shoplifting, robbery, and bodily injury--constituted about 70 percent of all offenses listed in the official crime statistics of the city.

For the purposes of this study, so-called Statistical Areas of Residence were utilized for area references. Such an area consists of an indefinite number of blocks sectioned off from a topographical point of view (i.e., according to physical features). This method was chosen over the traditional grid squares used by the police since such squares tend to be arbitrary--their boundaries cut across streets and houses, thereby increasing the difficulty of coordinating the locations of crimes with the residences of the suspects. As it turned out, even the use of Statistical Areas of Residence proved inconvenient because they were too large to afford a meaningful overview of the crime situation.

Suggested Improvements in Methodology

The use of Statistical Residential Blocks (geographical units with boundaries determined by the locations of streets, parks, and blocks), as is the practice in the American city of Chicago, should provide a better system of reference for future studies.

Tabulating the distribution of crimes and suspects' places of residence (the latter category considered for the first time in this study) by utilizing Statistical Residential Blocks is an early phase of development and should be extended. H. Herold, the Director of the West German Federal Bureau of Criminal Inves-

tigation, has indicated that the authorities are willing to utilize this method.* The pinboard technique, in any event, appears to be antiquated.

Instead of relying on tabular printouts of crimes, as was necessary in the Bochum study, individual police officers would continually and immediately provide the necessary information while reporting crimes. An officer would report not only the specific offense involved, but also the number of the Statistical Residential Block in which it was committed and a code containing a detailed description of the scene of the crime (on the street, in a bar or house, etc.). On the basis of this data and with the help of electronic data processing, it would be possible to print out thematically differentiated maps corresponding to those developed in the Bochum study. These maps would show the density of crime (ratio of the number of offenses to the size of the area), the frequency of crime (number of offenses per 100,000 inhabitants), the offender load figure (number of actual suspects per 100,000 inhabitants), or simply the distribution of the absolute numbers of all offenses covered.

FINDINGS OF THE BOCHUM STUDY

Crime Mobility

Crime mobility, sometimes called offender mobility, was one area of interest. It was found that the suspects in 1,384 cases (approximately 10 percent of all offenses reviewed in the investigation) lived in only 5 of 173 Statistical Areas of Residence, a finding of potential interest for manhunts. The study also demonstrated that suspects living in the inner city commit their offenses in that area predominantly, although the inner city attracts suspects living in other areas with almost equal intensity.

The Bochum study did not confirm Director Herold's hypothesis--which also is important for the tactical deployment of the police--that suspects from outside the area who are accused of grand larceny commit their crimes primarily on the main exit routes from large cities.† Such break-ins are distributed rather uniformly over the entire municipal area. Herold's theory does not appear to be substantiated for simple larceny or bodily harm cases either. The main exit route hypothesis is supported by the fact

*H. Herold, "The Meaning of the Geography of Crime" [in German], Criminalistics, 31:289-296 (1977).

†H. Herold, "New Approaches to Combating Crime by the Criminal Police" [in German], in H. Göppinger and H. Witter, eds., Current Questions in Criminology, vol. 9 (Hamburg: 1968), 208-234.

that only 32.7 percent of the offenses involving simple larceny committed on those roads were solved in 1975, compared to 75.7 percent for the rest of the Bochum municipal area.

Another hypothesis advanced by Herold, proposes that a connection exists between the amount of crime in an area and the number of department stores, shops, banks, insurance firms, etc., in that area.* This theory was confirmed by the Bochum study.

The distances traveled by suspects between the scenes of crimes and their residences often were very short. It was found that 70 percent of persons arrested for burglary committed their crimes within a 2,000-meter radius of their homes, and that 50 percent of the auto thefts were committed within a radius of only 1,000 meters. (It is possible, of course, that crimes committed by offenders who live farther away from the scene are solved with less frequency than other crimes.) These findings largely agree with the corresponding results of studies conducted in Berlin and Dortmund.† They are significant in terms of the functions performed by a new type of police official. These officials, known as "district officers" in North Rhine-Westphalia and neighborhood relations officers in West Berlin, both perform some of the duties of the former "local patrol officers." In Chicago, neighborhood relations officers essentially perform the same duties. These officers should be used primarily in investigative work because they know the residents of their neighborhood better than officers from outside the area. However, the duties performed by these officers should not be confused with those of social workers. In this connection, an experiment being conducted in three Chicago suburbs--Police Social Service Project--should serve as a model for future projects in Germany. The Chicago experiment places social workers in police stations, where they act as intermediaries between the local population and the police when the situation dictates.

The Dark Figure

Crime statistics are useful for measuring crime only if they are supplemented by unreported offenses. Research on the dark figure also is necessary to determine whether the public's level of confidence in the police has changed. In addition, the dark figure, crime-reporting behavior, confidence in the effectiveness

*H. Herold, "The Geography of Crime: A study of the Relationships Between Space and Crime" [in German], in H. Schaefer, ed., Fundamentals of Criminalistics, vol. 4 (Hamburg: 1968), 201-244.

†For Berlin, see H. Kalesh, "The Traveling Offender" [in German], The Criminalist, 2:11-12 (1970); for Dortmund, see W. Gerhold, "Analysis of Robbery and Burglary Offenses in a Metropolitan Area" [in German], Criminalistics, 25:344-348 (1971).

of police investigative work, and a potential offender's expectation of being apprehended and sentenced are closely connected.

Since the research on the dark figure in Bochum and in another German city, Göttingen, was conducted using the same methodology, a comparison of the findings is rather interesting.* For every reported case of larceny in the university city of Göttingen, seven additional cases were not reported; in the industrial city of Bochum, on the other hand, the corresponding ratio was 1:3. With respect to bodily injury cases, the ratios were almost identical. The differing social structures of the two cities may be responsible for the differences in the dark figures in the less serious criminal cases, and it can be assumed that the dark figure ratios in other large West German cities lie somewhere between those noted for Bochum and Göttingen.

Future efforts to combat crime should involve not only increased legal threats of punishment, but also more intensified police investigative work. This involves improving police training as well as strengthening the police, in terms of both equipment and personnel. Since the prospective offender's presumed chance of success or failure is closely related to unreported crime and the effectiveness of investigative efforts, the police cannot ignore these connections. If they are not monitored adequately, crime can become difficult to suppress, as it has in a number of large urban areas in the United States. Compared to Göttingen, the smaller dark figure established for Bochum may stem from the successful investigative work conducted by the police and the correspondingly higher level of confidence on the part of the city's population. Approximately 41 percent of the people interviewed indicated that negligible material damage was an important reason for not reporting a crime to the police. The respondents also indicated that the assumed ineffectiveness of criminal justice authorities played a role--14.3 percent in Bochum failed to report larcenies for that reason, compared to 19.0 percent in Göttingen.

The ratio of reported to unreported crimes was found to vary in different parts of Bochum. Although financial restrictions precluded a large sampling of several areas, the available figures do indicate that confidence in the effectiveness of the police may vary according to location. Police effectiveness could be improved by establishing an optimal organizational structure at the local level where the highest concentration of suspects is. This in turn would have some affect on the boundaries between economic areas.

*The findings of the Göttingen study are contained in Hans-Dieter Schwind et al., Unreported Crimes in Göttingen, 1973-74 [in German], Federal Bureau of Criminal Investigation Research Series (Wiesbaden: 1975).

Contributions of Sociology and Psychology

Sociology. The interdisciplinary study team discovered that the social structure of an area is the major determining factor in the number of suspects living there. Neighborhoods in which the socially disadvantaged live proved to have the highest percentage of suspects, whereas solid, middle class residential areas had the lowest percentage. In addition, population density was found to correspond to the suspect rates: areas with socially disadvantaged inhabitants have the highest density, and middle class sections the lowest. The areas with socially disadvantaged residents included by the researchers were those with above average proportions of the lower class people, foreign workers, welfare recipients, and persons with a ninth grade education or less.

Unemployment proved to be a disturbing problem. Jobless persons in the 15 to 64 age group constituted 33.4 percent of the total number of suspects apprehended. Almost 26 percent of the 14- to 17-year-old suspects and approximately 43 percent of the 18- to 20-year-olds were unemployed.

Psychology. Since geography of crime research based on aggregate data cannot provide information on the individual citizen, supplementary psychological studies are necessary to probe the particularities of human individuality. In this sense, criminological and sociological research on the geography of crime facilitates a meaningful evaluation of the situation in preparation for the second step, ecology oriented psychological research. In other words, future criminological research, especially research on the psychology of crime (second step), should be carried out in those areas which previously were determined to be of special interest on the basis of criminological and sociological research (first step).

Within the scope of the present study, the second step was limited to several representative considerations: the attitude of the public toward the police and toward crime, their motives for crime reporting, and to their feeling of being in danger.

For the most part, the people of Bochum view the police in a favorable light. The findings of a study conducted in the United States--that increased fear of crime does not make citizens especially inclined to support the police and permit them to expand their authority--were also observed in Bochum.* In contrast to the findings of another American study,† the Bochum study showed

*R. L. Block, "Fear of Crime and Fear of the Police," Social Problems, 19:91-101 (1971-72).

†J. J. Preiss and H. J. Ehrlich, An Examination of Role Theory: The Case of the State Police (Lincoln: 1966).

that positive experiences with the police do not significantly change citizen attitudes toward the police, but that negative experiences with the police do not significantly change citizen attitudes toward the police, but that negative experiences clearly make the attitude worse and correspondingly affect future crime-reporting behavior. Under these circumstances, hiring additional police psychologists might help to improve the relationship between the police and the public. It was also found that members of the lower class, more than other classes, appeal to the police rather than to other authorities when help is needed, a finding that speaks well for Chicago's social worker/police project.

The investigation of the perception of being in danger was intended to supplement the study of the Bochum citizens' attitudes toward the police. It was found that the sense of security outside the home at night is stronger among younger than older individuals, that single persons feel safer than married persons, and that the sense of security is lower among women than among men. Adequate street-lighting and police presence in residential areas are important to the individual's sense of security.

An interesting finding regarding the perception of being in danger was that respondents from areas with a high incidence of crime and high population density feel they are considerably less threatened than those from areas with a low population density. Residents of such areas apparently consider their neighbors to be a source of potential aid in warding off criminal activities, although this is surprising to those who have examined the anonymity of neighborhood relations in large cities.

A FINAL OBSERVATION

The various individual recommendations made on the basis of the Bochum findings are intended solely to point out that many actions still need to be taken to insure a further intensification of the war against crime. These actions should be included in comprehensive programs to be developed at both the Federal and State levels in the future.

The basic idea of such a program would require the coordination and expansion of all activities connected with the fight against crime. They include, in particular, the areas of social policy and criminological policy, social work, activities of the criminal justice agencies, and--perhaps most important--rehabilitative efforts by the penal authorities and greater assistance for discharged prisoners.

Netherlands Municipal Councils and Criminality

Editor's note: This pamphlet was published by The Netherlands Ministry of Justice in March 1976. The survey was taken in 1974.

During the parliamentary debate on the budget of 1974, particular attention was paid to the development of criminality in The Netherlands. As a result of these discussions, a special committee was appointed in the Justice Department to study the problem of criminality.

In addition to questioning the general population about possible feelings of insecurity and surveying crime victims, the committee held an inquiry involving mayors of different municipalities. The mayors were asked (1) what was the extent of concern about criminality expressed in the municipal councils, (2) what actuated these concerns, and (3) what kinds of crimes were discussed. The advantage of this study was that the data could be obtained relatively quickly. The results were analyzed in conjunction with public opinion polls conducted of the general population.

Methods

At the start of the project, it was assumed that the amount of attention paid to criminality in municipal councils was related to the degree of concern of the general population. A limited inquiry was conducted in 180 municipalities regarding fiscal year 1973-74. The mayors were asked to report if criminality was discussed in their council meetings and to submit summaries of these meetings or newspaper articles related to specific criminal events in their municipalities.

The geographical location and the number of inhabitants

De Nederlandse gemeenteraad en de kriminaliteit (NCJ 54527), 1976, 27 p. (Wetenschappelijk Onderzoek en Documentatiecentrum, Ministerie van Justitie, 's-Gravenhage, The Netherlands) Translated from the Dutch by Welmoet van Kammen.

were taken into consideration in choosing municipalities to be surveyed. It was known that crime occurs less frequently in smaller towns than in cities. Moreover, since police force funding is included in the budgets of small towns, police affairs are not likely to be discussed in council meetings. Because most communities in The Netherlands are small, a random sample of municipalities probably would provide greater representation of small towns and therefore distorted results. For this reason, the municipalities were divided into five categories, and equal samples were taken from each category (see Table 1).

TABLE 1

Total number of municipalities belonging to each category and number of municipalities used in sample.

| Division Categories | Total Number of Municipalities | Number of Municipalities in Sample |
|------------------------|-----------------------------------|--|
| I less than 5,000 | 318 | 35 |
| II 5,000-10,000 | 228 | 35 |
| III 10,000-20,000 | 168 | 35 |
| IV 20,000-50,000 | 95 | 35 |
| V 50,000 or more | 41 | 40 |
| Total | 850 | 180 |

Review of the responses revealed that the municipalities with 20,000 inhabitants or less had a very low frequency of discussion about crime in their municipal councils, and consequently they were grouped into one category. For the opposite reason, municipalities with 50,000 inhabitants or more were divided into two categories (see Table 2).

TABLE 2

Number of Municipalities and Percentages of the Population
in Each Category in The Netherlands on Jan. 1, 1973

| Division Categories | Total Number of Municipalities | % of Total Population | Number of Municipalities in Sample |
|------------------------|--------------------------------------|--------------------------|--|
| I less than 20,000 | 714 | 36.8 | 105 |
| II 20,000 - 100,000 | 95 | 20.8 | 35 |
| III 50,000 - 50,000 | 26 | 14.0 | 26 |
| IV 100,000 or more | 15 | 28.4 | 14 |
| Total | 850 | 100.0 | 180 |

Results

All 180 mayors involved in the inquiry responded to the questions, and 25 percent replied that special attention was paid to criminality in their council meetings. However, on the basis of council reports and other information supplied by the mayors, the committee had to conclude that this attention could not be classified as special attention in all instances. It would be more correct to say that the subject of crime was discussed in some fashion in 25 percent of the municipalities. Further, because of the somewhat random way in which the municipalities were selected, it cannot be assumed that attention was paid to criminality in 25 percent of all Dutch townships. With the help of the percentages in the sample categories, an adjustment of 13.6 percent in the number of municipalities in which crime was discussed could be made for the total number of townships belonging to each category.

In 42 of the 45 municipalities that mentioned criminality, one or more members of the council expressed actual concern about crime. In 16 of these 42 municipalities, the concerns were of a general nature. Discussions focused on either crime percentages

for the entire country published by the Dutch Bureau of Vital Statistics or the development of criminality in the big cities. In the remaining 26 townships, the council members discussed the development of local crime (a corrected estimate of 7.5 percent of all Dutch municipalities). In cities with 100,000 inhabitants or more, these discussions occurred with relative frequency (64.3 percent).

In 20 of the 42 municipalities, the reason for concern about crime was related to specific events. Acts of destruction were mentioned most frequently in the councils of the first three categories, whereas the fourth category council members were more concerned about acts of violence and feelings of insecurity within the population. Specific events were discussed most frequently in cities with 100,000 inhabitants or more (57 percent compared to 19 percent in townships with 50,000 to 100,000 inhabitants).

In general, the larger towns appeared to provide greater opportunity for criminality to be discussed in the council, and greater likelihood that these discussions would be about specific instances of crime.

Discussion

The results of this inquiry were compared to another survey, conducted by the same committee, of 1,219 men and women from every part of The Netherlands. In this survey people were asked, "Do you feel unsafe in the streets?" "Do you avoid certain neighborhoods?" "How often do you think about the possibility of becoming a crime victim?" "How fearful are you when you are alone at home?" Responses were measured on a scale of 7 (very strong feelings of uneasiness) to 0 (no feelings of uneasiness at all). Only 1 percent of those interviewed scored 6 or higher, and only 4.5 percent of all participants scored 5 or more. Half of the respondents said crime was of little or no concern to them. (see Table 3). The great majority did not feel afraid in the streets.

TABLE 3

Uneasiness Scores of Participants

| Uneasiness Scores | Number | % | Cumulative % |
|---------------------------------------|--------|--------|-----------------|
| 7= strong feelings of uneasiness | 2 | .2 | .2 |
| 6 | 10 | .8 | 1.0 |
| 5 | 43 | 3.5 | 4.5 |
| 4 | 106 | 8.7 | 13.2 |
| 3 | 196 | 16.1 | 29.3 |
| 2 | 268 | 22.0 | 51.3 |
| 1 | 321 | 26.0 | 77.6 |
| 0= no manifest feelings of uneasiness | 273 | 22.4 | 100.0 |
| Total | 1,219 | 100.0% | |

Those who are very concerned about crime were more likely to live in the metropolitan areas, and most were women (87 percent in the category with ratings of 4 or higher).

Strong feelings of insecurity were also found in another inquiry conducted among 1,200 housewives by the Dutch Bureau of Statistics.

It was generally concluded that since only 7.5 percent of the Dutch municipal councils expressed concern about crime, and since feelings of insecurity were not prominent in the general population, criminality did not require special attention by the government, and no special measures were needed.

Insurance and the Spread of Violent Crime

By S. Fredericq

Introduction

We are currently witnessing a worldwide increase in crime and the damages it causes to people and their possessions. Violent crime in particular is spreading, aided by the structure of modern society, by a decrease in price of the instruments of violence, and by the popularization of their use. This raises the question of insurance coverage for such risks.

Examination of legal studies on this subject reveals that their major focus is determining the insurability of the risk of violence and that they indicate the criteria each country's legal system uses to cover such a risk. The law and the insurance policies are studied to determine the cases in which insurers pay, and an attempt then is made to deduce applicable general principles. The following distinctions thus can be made:

- Exclusions based on violence differ for each type of insurance--theft, fire, life, credit, transport, etc.
- The acts of an isolated individual generally are covered by insurance; acts committed by a group--minor (terrorism or sabotage) or major (riots or popular movements)--are often excluded from insurance, as are acts of war which involve everyone.
- The insurable or noninsurable nature of the act also can be determined by the perpetrator's intent: enrichment (banditry

"L'Extension de la criminalité violente et l'assurance" (NCJ 51511) originally appeared in Revue de Droit Pénal et de Criminologie, 115-136, February 1978. (Ministère de la Justice, Palais de Justice, 1000 Brussels, Belgium) Translated from the French by Deborah Sauvé.

always has been insurable), social motives (property destruction arising from strikes or riots whose insurability is questionable), and political motives (insurrection and civil war--the latter is excluded from private insurance except in the case of a "risk of war" policy).

Object of the Study

Although the preceding categories deal only with insurability of a risk--a question of interest to both insurer and insured--this study examines a different problem: the available techniques for coverage of the risk of violence. In particular, the study considers the degree to which the technique of mutuality, in its strict sense as opposed to fixed-premium insurance, seems to be indicated.

Preliminary Remarks

There are two reasons why it is difficult to discern general rules about how violent crime is covered in legislation and in recent insurance practice:

(1) The nature or the growth of such acts is very recent. What is new about today's violent crime is that it is taking place in a society in which the state of technology enables a small group of people to cause major disruptions extending beyond national boundaries. What also is new is that insurance has become so widespread that it is considered an injustice when a victim is not indemnified; insurance is expected to cover the effects of even criminal acts.

(2) The situation is different in each country. The experience of collective violence can differ greatly from country to country, and opposite attitudes can exist toward the insurability of this risk. Thus in Belgium, where there have been practically no disorders or popular movements that caused major damage to property or persons since the beginning of the century, the opinion traditionally is held that riots are not insurable because they are not subject to statistical measurement. In fact, insurance against riots is not available. However, in other countries where many racial or social riots have taken place recently--prompting a need for insurance--these damages are covered in a very general manner, notably by one form or another of mutual insurance.

Notion of the Criminal Act and Insurability

Criminal acts are considered acts which are subject to the Penal Code, i.e., embezzlement and willful destruction under the

heading material damages, and attacks on the person, therefore acts causing death or injury under bodily damage.

This study does not express any moral judgment, but simply poses the question: How does one or can one indemnify the owners of destroyed or stolen goods and the victims of physical attacks following a criminal act?

As to insurability, it is important to distinguish between different kinds of crime. There is no difficulty in insuring against nonviolent crime--this is classic property crime, including theft, breach of trust, swindling, diverse frauds, and embezzlement. Although the incidence of some of these crimes, such as passing bad checks and theft of art works, has increased significantly in recent years, this poses no new problems for insurers other than those resulting from the frequency and size of the casualties. The pertinent area remains classic insurance coverage, accomplished principally by premium insurance.

There are areas, however, in which mutual insurance seems to be a better form of risk coverage than fixed-premium insurance, e.g., in Belgium forest fires (resulting from the growth of tourism coupled with increased activity by arsonists, which means that many forest fires are criminal in nature) are insured by a mutual society of forest landowners, under the organization of the forestry society of Belgium. This involves much lower premiums than those of premium insurance companies. Similarly, it would appear that owners of historic castles and collectors could organize to obtain better theft prevention and insurance for their valuable possessions.

Violent crime, covering various kinds of acts, poses major problems. It has been the subject of considerable discussion, and legislative measures have been taken in several countries to indemnify its victims. Many people have been affected by the spectacular acts of recent years, principally airplane hijacking and hostage taking. The problem of insuring such risks and indemnifying victims must be resolved.

The distinction between individual violence, which is insurable, and collective violence, which many believe should not be covered by premium insurance, is well founded; however, it is not always easy to determine when an act is actually individual in nature. Acts of terrorism and sabotage generally are led by a single person or a very small group operating for political motives, but such acts may be linked to collective violence. The most spectacular acts are carried out by well-organized groups which consider themselves combatants--one wonders whether such acts do not really fall under the concept of "warfare." The most important suit resulting from the destruction of an airplane involved Pan American World Airways and its insurers. The suit, pertaining to a Boeing 747 hijacked on September 6, 1970, by two members of the Popular Front for the Liberation of Palestine and finally

destroyed in Cairo by an explosion, focused on whether the casualty should be covered by the insurer of "normal" risks or by the insurer of "risk of war."

Coverage of Acts of Collective Violence

Countries with little need to insure risks of collective violence have no specific coverage. In Belgium, for example, bystanders wounded in a holdup or hostages wounded in a terrorist attack enjoy no protection other than that afforded to the entire population through social security.

With the spread of violent crime, the public has demanded that measures be taken to protect the victims of such acts. The United States is a particular case in point: insurance coverage has increased and serious mass disorders have caused widespread destruction. Victim indemnification measures have been taken in the United States, and a similar movement is in process in Europe, at least in relation to bodily injuries.

Injuries to Persons

One way to deal with personal injuries is government aid to the victims of certain acts of violence.

North America. In the United States, legislative intervention was motivated by the increase in common crimes: armed attacks, muggings, rapes, etc. Twelve States have introduced "Crime Compensation Plans" which can differ considerably from State to State--some States require victims to prove financial need, for instance. However, these plans have some common characteristics: the State is held responsible for protecting its citizens; the spread of crime shows the bankruptcy of authority; the State must insure the well-being of the entire population and come to the aid of persons impoverished by a crime; the victims alone cannot support the consequences of criminal acts; and finally, helping victims become reemployed costs society less than aid to the same persons if they were unable to work again. Common law does not hold the State responsible for the full damages by reason of negligence, however; indemnification is based on the idea of solidarity among members of a community.

The plans themselves concern only bodily injuries and not property damage. The victims are reimbursed for their medical expenses and receive an indemnity for incapacity to work. Amounts allocated are limited; depending on the State, the maximum is between \$5,000 and \$25,000. Victims basically receive a lump-sum payment and not an annuity. The indemnities are paid by the State and financed through taxes.

Europe. Laws granting indemnification to victims of violent crimes have been passed in several countries of Western Europe in recent years. The Federal Republic of Germany's law, inspired by political acts such as hostage taking and airplane hijacking, covers bodily injuries and generally allows the victim an annuity. It is financed by the State in which the injury was incurred, but the Federal Government assists. Similar legislation has been passed in The Netherlands, the United Kingdom, Austria, and Sweden.

There are various implementing systems, including indemnification (West Germany) or charitable assistance (United Kingdom). Certain criminal acts may be enumerated (limited list) or contained in a general formula (acts of "violence": United Kingdom, The Netherlands; intentional wounds: France, West Germany). In addition, indemnification can be insured through assistance established in equity for each case, through application of military pension laws, through application of work accident laws (which provide much higher indemnities), or through extension of social security.

It could be argued that reparation should be total in one special case. If the damages are caused by an escaped prisoner, the government may be directly responsible, and so should indemnify the victims according to common law, paying them the full amount of their damages.

A proposed law in Belgium is inspired by the system for work accidents: assistance is granted only if the victim (or the victim's heir) no longer is capable of earning a certain income. "Minor damages" are not indemnified.

Property Damage

Indemnification by the government is not foreseen in any nation--coverage of destruction is easily obtained through standard insurance coverage (fire, explosion, theft). However, the government sometimes obliges insurers to indemnify certain acts of violence which would have been excluded from coverage. These special damages may be entrusted to a fund, supplied by shares of all insurers, and eventually reimbursed by the government. A French law compelled "fire" and "explosion" insurance companies to provide coverage against "acts of sabotage and terrorism." The companies had recourse for this coverage to a "common fund," maintained by a surcharge paid jointly by the various insured parties.

Government-facilitated participation of insurers in a "fund" or "reinsurance program" need not be obligatory, a circumstance which occurred in the United States during the 1960's when a large number of fires and thefts took place in the areas marked by racial disorders. In order to prevent insurers from withdrawing coverage of such risks, a 1968 Federal law allowed local authorities to

participate in Federal reinsurance plans, the so-called fair plans (i.e., providing certain owners of urban buildings with "a fair access to insurance requirements"). The basic idea was that insurers would participate in syndicates covering property located in the urban zones where coverage on the normal insurance market was impossible to obtain. The Federal authority fixed basic coverage rates and insured the financial balance of the system.

The next step in the gradation--"government coverage," "fund or mutuality imposed by the government," "optional fund or reinsurance facilitated by the government"--would be coverage by the insurers themselves, without obligation to do so or recourse to a fund.

There is an example of this in the United States, where "riot and civil commotion insurance" sometimes was provided through an extension of the guarantees contained in insurance policies. This extension notably covers riots, damages resulting from occupation of a building by unauthorized persons (e.g., strikers), and looting.

However, extension of coverage by agreement is not a complete solution: if the risk becomes too great, which was the case in certain urban areas, the insurer could be tempted to stop furnishing the guarantee. The government then must intervene, as it did in the United States with the "fair" plans. Although the public authority and the insurers in the United States collaborate extensively on riot coverage, the government did not intervene directly to force private insurers to cover the risk of violence--this would have been an intrusion into the domain of the contract. The insurers should remain free to limit the coverage they offer.

Extension of coverage was not limited to riots. When bombings directed against public buildings, banks, or multinational corporations increased in the United States, insurers covered them through an extension of existing "fire" and "explosion" policies.

Ransom and Airplane Hijacking Insurance

Special and limited coverage also can be provided independent of existing policies. This is the case for ransom and airplane hijacking insurance.

Ransom insurance. Since potential kidnap victims know that they are in danger, they attempt to contract ransom insurance. Policies covering such risks are written regularly, principally on the London market, and to a lesser extent in the United States.

Ransom insurance poses major problems. The technical difficulties of such coverage are immediately apparent--the danger of nonselection is evident, and prevention is difficult, if not impossible. Finally, there is the problem of the legality of such insurance, since it is the type of contract which gives rise to crime. With the help of the ransom they receive, the kidnapers can finance new criminal operations. On the other hand, if no one paid ransom, abductions for the purpose of obtaining it would cease. Some people even contend that the lawmakers should intervene to forbid the payment of ransom after a kidnaping.

If it is assumed that ransom insurance is valid and types of coverage are then examined, fixed-premium insurance alone would seem able to provide coverage. Society will never assume responsibility for ransoming rich industrialists, and creation of a mutual insurance society against such risks is not feasible in light of the danger which would accompany publicizing this type of coverage.

Airplane hijacking insurance. This type of risk has become well known since the Cairo disaster of 1970 and the 1973 bombing of a Boeing 747 in Benghazi, Libya, by skyjackers. Once again, the international insurance market covers the losses. The problem which arises is that of prevention, through strict airport security measures and international cooperation in combating terrorism.

Prevention

Although the purpose of insurance is not crime prevention--and it is precisely the increase in crime that has created a need for more insurance--mutual insurance societies seem to be in a special position to give their members advice on how to reduce such risks as thefts of art objects and fire. However, the responsibility for crime prevention still remains with the government.

Conclusions

This study has examined the various techniques of indemnification for victims of violent acts: assumption of damages by the government and therefore by society as a whole, by funds or mutual societies created on the order or urging of the government, by mutual societies created independently by insurers or potential victims, and finally by premium insurance, either through extension of a guarantee or through separate coverage. What conclusions can be drawn from this examination?

First, a risk is insurable from the moment a demand for insurance exists. If, as crime spreads, large numbers of potential victims demand to be indemnified in cases of attacks and disorder, indemnification will be provided. Such a demand currently exists, and therefore future implementation of general coverage for violent risk seems probable, either through insurance or some other means.

A second observation is the diversity of coverage in different countries. Worldwide unity in methods of coverage does not exist, despite the similarity of situations and the international nature of the spread of violent crime. Perhaps methods of coverage will be unified once the risks are better known. In any case, it seems that the technique of mutual insurance is specially suited to coverage of relatively poor risks.

A third point is the difference between indemnification for material and bodily risks. Property damage always can be covered by private insurance, with the premiums being paid either by the property owner or jointly by those insured. If private insurers cannot offer coverage for violent risk (for example, because lack of statistics does not allow calculation of premiums), it is the government's responsibility to create the necessary mechanisms for coverage, such as a system of reinsurance or a special fund which could be privately managed. Private insurance companies might be able to provide complete coverage once the risks are better known. On the other hand, it is impossible to make potential victims of bodily injuries pay a premium. The government therefore must assume this risk.

It is considered that legislation ultimately will be passed to protect the insured in cases of property as well as bodily damage. The former will be covered by premium or mutual insurance, and the latter by the government.

Part III

Concepts of Sentencing and Corrections

Individualized Sentencing Based on the Offender's Status

By Monique Gisél-Bugnion

Introduction

An inconspicuous middle-aged woman made headlines in 1976. Indicted for shoplifting, she was sentenced by an English judge to play the piano for 100 hours in homes for the aged. The offender was delighted with the punishment. This was one of the rare cases of individualized sentencing in a penal system that still relies almost exclusively on the conventional prison term or the imposition of fines.

In exploring the feasibility of a system of alternative punishments adjusted to the particular situation and personality of the offender, care must be taken to avoid following the current trend of numerous modern legal experts who favor individualized sentences. The limits of individualized sentencing must be considered in the light of a second opposing legal principle --the offense must correspond to the punishment it receives; perpetrators of the same offense must receive equivalent sentences. Efforts to strike a balance between the individualizing and generalizing trends of the penal code must include analysis of different aspects of the criminal act, e.g., guilt, punishment, criminal motivation, problems of crime prevention, and recidivism.

Recent Criminological Research

Recent criminological research findings make it increasingly difficult to consider the imposition of punishment an effective means of combating and preventing crime. Attempts to ex-

L'individualisation d'une peine mesurée sur la culpabilité du délinquant (NCJ 49494), 1978, 215 p. (Librairie de l'Université, George et Cie S.A., 5, rue de al Corraterie, Geneva 11, Switzerland) Translated from the French by Sybille Jobin.

plain the evolution of the criminal act or the exact causes of crime have been inconclusive. Criminologists are unable to determine why a particular person turns to crime or to sketch the personal and sociological traits of "the criminal." They are not in a position to study "the criminal portion of the population" because they cannot even identify it; in fact, the reason many offenders remain undetected is that they so closely resemble ordinary citizens. The lack of understanding of the nature of crime affects the ability to fight it. Accordingly, studies of the effectiveness of different types of punishment in preventing crime have failed to produce meaningful results. Since the causes of crime and consequently the means to combat them are unknown, the choice of the type of punishment should not be based on crime prevention considerations. Judgments pronounced on offenders should be designed to do them as little injury as possible. This concept of minimum harm to offenders is the primary consideration in the following discussion of the various types of punishment.

Imprisonment

Imprisonment offers only two advantages--it prevents the prisoners from committing further offenses against society, and it is the best guarantee that they actually will serve their sentences. On the other hand, the disadvantages of a prison sentence are well known: disruption of family and social ties; disintegration of professional relations; loss of responsibility, interest, and initiative; growing inability to face the pressures of life outside of prison; contamination through contact with other criminals; and sexual problems caused by lack of heterosexual relationships. Yet our prisons are filled to capacity--frequently with people who should not be there at all. Prison should be reserved exclusively for dangerous criminals who would represent a legitimate threat to society if they were free; it might also serve as a last resort in dealing with offenders who evade their responsibilities in alternative sentencing situations. For all other offenders, the principle of minimum harm should prompt selection of a form of punishment that is less costly and less harmful--to both the individual and society.

Alternatives to Imprisonment

What are the alternatives to imprisonment? A number of penalties may be considered, including loss of driver's license, prohibition to engage in a certain profession or public function, prohibition to enter establishments that sell alcoholic beverages, and obligation to reside in or stay away from a particular location. The practicality of these restrictions must be evaluated in the light of the following considerations:

- A restriction should not lead the offender into further crime. This might occur in the case of professional bans or sentences involving loss of social position or a serious disruption of the convict's way of life.

- A restriction is ineffective unless it can be controlled by the authorities. The prohibition on the use of alcoholic beverages does not seem to fulfill this requirement.

- All convicts should receive equal treatment. In this respect, restrictions on freedom of movement seem particularly inadequate because criminals who have relatives or friends within their permissible area of movement will be less affected by such a sentence than those who have no close ties and suddenly are cut off from their social contacts.

Of the various punishments that restrict citizens' rights, revocation of driver's license appears to be the most feasible, although it too does not satisfy the three conditions completely. Loss of the license may cause further crime in cases where offenders require a vehicle for their jobs. In addition, the driving privilege is emotionally significant to many offenders who would strongly resent losing their permit for an offense totally unrelated to a traffic violation. Accordingly, it is preferable to restrict loss of driver's license to offenses that involve the use of a vehicle.

But even then the difficulty persists because individuals have their own particular uses for vehicles and, therefore, will be affected differently by a temporary loss. This objection could be overcome if a judge would take the individual circumstances of the case into account (particularly the need for the driver's license and the availability of alternative means of transportation) and relate the sentence not only to the offense, but also to its potential effect on the offender. If handled properly, revocation of license could become an important alternative in the area of individualized sentences.

Despite the advantages of judiciously selected restrictions, such restrictions still share one defect with conventional sentences: they too are totally negative, being mere prohibitions rather than incentives to positive action.

Alternative Sentencing

Classic penal law was dominated by the famous Hegelian equation that the offense is a negation of justice, the punishment is the negation of the offense; therefore, the punishment is the affirmation of justice, since minus times minus equals plus.

For justice to be served in this system, the only demand is that the suffering inflicted on the criminal make up for the suffering caused by the original offense.

But there is a growing realization that this elegant equation is deceptive. Multiplication should not be involved because multiplication has no meaning in real life. Reality juxtaposes events, and the two events--offense and punishment--should be linked by addition. If the penalty results in suffering, this adds to the suffering caused by the offense and serves, for no purpose, to increase the overall amount of suffering. Instead, the social equilibrium should be reestablished through the elimination of the suffering caused by the offense. Only positive, beneficial action by the offender can compensate for this suffering.

To encourage such action, the English legal system was modified in 1972 to permit the sentencing of offenders (with their consent) to perform community service work. According to British Home Office studies, the results appear to be very positive. In Switzerland, this provision exists only in the case of juvenile delinquents, but it seems advisable to extend it to adult offenders as well.

A wide range of beneficial alternative sentences exists: work in hospitals, asylums, and day care centers; environmental tasks such as cleaning up forests and river areas, maintaining walkways, raking leaves in parks, and shoveling snow; simple administrative tasks; and work at public construction sites.

In the implementation of the alternative sentencing provisions, judges adjust the work conditions to the personal situation of the offenders, taking their age, education, and physical condition into account. They make sure that the service does not interfere with offenders' regular jobs, and if offenders are not employed, they may be assigned full-time tasks. In both cases, judges determine how much offenders have to pay in fines or reparations to victims.

In selecting the mode of community service, judges must avoid feelings of pettiness or revenge. They should not choose activities that are particularly painful or humiliating to the offenders, but should strive to assign especially suitable tasks. If the penalty provides a positive and satisfying experience for both society and the offenders, this undoubtedly has an added preventive effect. To enhance the chances of success, offenders should not perform their service in the company of other criminals, but should work with those who normally do the job. In addition, offenders should be allowed to determine, with the help of the penal administration and judges, where and how they will fulfill their sentences.

Repairing the Damage

Among the sentences beneficial to society, repair of the damage done to the victim is paramount. This kind of sentence should make offenders understand the consequences of their actions and promote a sense of responsibility. Therefore, drivers who cause accidents or commit serious traffic violations might be assigned work in hospitals where they can observe the suffering of accident victims first hand. It is difficult to determine whether the conventional sentence, with its total absence of offender responsibility, is more painful than the new alternatives which make offenders take the responsibility for their offenses, but it would seem that the latter is more effective in terms of crime prevention.

Fines

Despite its deplorably negative character, the fine--a penal measure that already exists--could be put to new use in accordance with the concepts outlined herein. This "lowering of the standard of living" punishment does not merely consist of a more or less important sum of money being paid on a one-time basis, but rather involves a weekly or monthly forfeiture of all income beyond the offender's minimum living requirements. If handled properly, this has the potential to become a legitimate alternative punishment which could be used even for serious offenses, provided the accused is not a danger to society.

Exemption From Punishment

In the case of minor first-time offenses, the possibility of exemption from punishment might be considered. The laws of court procedure occasionally leave it to the discretion of the public prosecutor to file charges or not. It would be interesting to find out the extent to which this option is being used and whether more binding legal provisions are required. The absence of definite legislation may permit highly individualized sentences, but it also leaves room for arbitrariness.

Individualized Sentencing

The principal difficulty of an individualized penal system is determining the equivalency of the various types of punishment. How can a fine, the loss of driver's license, the obligation to do a certain kind of work, the compensation for an injury, or a prison term be considered equivalent? How can the courts impose equal but different types of punishment on several persons guilty of the same offense? At first glance the problem

seems unsolvable, especially since the prevailing view is that no type of restriction can compare in severity to total deprivation of liberty.

But this view is erroneous in two ways. First, it underestimates offenders' difficulty not only in having their freedom restricted, but also with respect to functioning in their normal surroundings with the attendant temptations while concurrently accomplishing their penal obligations. It is a task that requires considerable willpower and basically is no more desirable than complete loss of liberty and corresponding freedom from daily cares in prison. The second error is that the prevailing view overlooks the fact that the appropriateness of a penalty is more significant than the punishment itself.

Solution of the equivalency problem may lie in consideration of two distinct aspects of the penal process--the duration of the punishment and the type of obligation that accompanies remission of the jail term.

System Modifications

Many countries, including Sweden, Denmark, Austria, and Germany, have modified their system of assessing fines to express more clearly the fact that a portion of the fine is applied to the seriousness of the offense and another portion to the particular financial situation of the offender. Thus, the judge may decide the number of days for which the fine is imposed based on the nature of the crime, and also base the daily charge on the offender's income. This practice easily could be extended to other types of punishment as well. The judge could fix the duration of the restriction on the basis of the offender's guilt and then determine its content in accordance with the offender's particular situation. Penalties could include imprisonment, fine, loss of driver's license, or a combination of several types of punishment. The length of the sentence then could be considered more or less stable for each offense, although the type of obligation would vary.

Equivalency

The equivalency between the different kinds of punishment would be easier to determine if each alternative punishment were considered a condition accompanying the suspension of the prison sentence. If this were the case, there would be no need to deal with the different kinds of punishments, but comparisons consistently would be made of the prison term and the alternative measure which replaced it. One serious theoretical error still

exists with this kind of equivalency system, however--considering the deprivation of liberty (although suspended) as the norm of penal measures when it no longer deserves this prominent position. Therefore, this method of assessing penalties should be considered as merely being a transitory stage leading to a true diversification of sentences.

A system of alternative restrictions accompanying the remission of prison sentences can become a legitimate means of individualized punishment. To accomplish this, however, it is necessary to modify existing laws governing remission of sentences to include the following provisions:

- Partial remission of a prison sentence so that the total length of the term (prison plus other penal obligations) does not exceed the term appropriate for that kind of offense.

- Extension of the conditions under which a remission may be granted. For example, remissions may be granted to recidivists who have not spent 12 months or more in prison during the previous 5 years, and obligatory remission may be permitted for short jail terms (e.g., less than 3 months) in conjunction with alternative measures.

- Remission with variable ceilings depending on the type of offense. For example, remission is not permitted for crimes against human life or other offenses involving physical injury to a person, if the sentence exceeds 5 years in prison.

- Reform of the conditions under which remission of sentences may be revoked. Prevention, rather than revenge, should be the determining factor in the decision, and the judge should have the option of changing a penal obligation imposed earlier or ordering stricter supervision if such measures would help the offender complete the terms of a restrictive sentence without having to go to jail.

Introducing a system of individualized sentences still presents innumerable problems and requires more detailed study. The penitentiary system would have to be reformed to handle the reduced number of inmates and the increase in offenders "serving their term" at large who will need assistance and supervision. Court procedures also would require modification to insure greater efforts to understand the individuality of an offender and to promote better cooperation among the judge, prosecution, defense counsel, and defendant in selecting the appropriate type of punishment. It will also be necessary to reduce the number and duration of detentions awaiting trial, for it is useless to decrease the number of prison sentences if the authorities involved in preliminary investigation are allowed to jail suspects at their convenience. Finally, comprehensive criminological research will be

needed to determine the type of punishment best suited to each type of criminal and, conversely, the sentences likely to be circumvented and therefore avoided.

Conclusion

The foregoing conclusions probably appear sketchy and somewhat utopian in character since no attempt was made to go beyond the planning stage. Further studies are necessary, and they will require the collaboration of legal and criminological experts. Nevertheless, it is hoped that this paper has contributed to the evolution of a more just penal system which permits the sentence to be adjusted not only to the offense, but also to the personality of the offender.

Seminar on Sentencing

Editor's note: This is a summary of selected papers delivered at a 1978 seminar conducted by the Institute of Criminology, Sydney (Australia) University Law School.

INTRODUCTION

This seminar focuses on problems inherent in the criminal court sentencing process, particularly sentencing disparity in Australia's lower courts. The discussions provide both interior and exterior views on the dynamics of sentencing and highlight selected sentencing alternatives.

First, La Trobe University researchers Ronald D. Francis and Ian R. Coyle describe a video tape approach to the scientific study of the variance in penalties imposed by different magistrates for related offenses. Next, Judge Adrian Roden of the New South Wales District Court questions the fundamental assumption that sentences should be equal in every case. The opposing view is taken by K. R. Webb, a magistrate of Sydney's Central Court of Petty Sessions, who argues that heavy workload, lack of defense counsels, and understaffing are to blame for sentence disparity. The final paper, prepared by the Probation and Parole Officers' Association of New South Wales, proposes the abolition of Australia's Parole of Prisoners Act of 1966 in favor of determinate sentencing.

THE SENTENCING PROCESS: A NEW EXPERIMENTAL APPROACH (NCJ 53503)

SENTENCING IN MAGISTRATE COURTS: A VIEW FROM THE OUTSIDE (NCJ 53504)

By Ronald A. Francis and Ian R. Coyle

The sentencing process has a number of problems regarding decisionmaking. First, although there are properly constituted guide-

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lines for trials, no such guidelines exist for sentencing. Second, the decisionmaking process in sentencing is less overt than the trial process. Third, sentencing appears to be accomplished in less time and with less consideration than is accorded the adjudicatory portion of the judicial process, although it may be argued that consideration is being given to the sentence while the adjudication takes place.

In contrast to the earlier stages in the legal process, however, the outcome of judicial decisionmaking--that is, the discretion exercised by magistrates in sentencing offenders--is much more visible to public scrutiny. Although this has given rise to considerable anecdotal research concerned with the sentencing process, such evaluations typically have focused on legal and sociological factors and have contributed little data of pragmatic value to judges themselves, especially regarding the problem of sentencing disparity.

Basic Empirical Approaches.

A notable exception to this trend is the use of one of two basic empirical approaches to sentencing. One relies on compiling a vast array of information to compare and accommodate variations among case dispositions. The alternative approach is to consider a few cases and simulate realism while keeping the matters being investigated under strict and precise control. A common example of the alternative is sentencing exercises or seminars in which the participants attempt to reach equitable sentencing decisions on the basis of selected model cases.

A variety of approaches has been used and rejected in such seminars. Sending observers into the courts to choose comparable prosecutions failed because it proved uneconomical and essentially impossible to find cases that are exactly comparable. Individual trial simulations were rejected because it was unreasonable and costly to expect experienced magistrates to devote their time and energy to produce only one item of information for each case. Transcript readings also were discarded because they lacked realism--sentences are decided after a defendant is seen and heard as well as after the facts of the case are reviewed.

The Video Tape Approach

The approach ultimately adopted was to videotape the pre-dispositional proceedings of model cases and play them back for various audiences--judges, police officers, management personnel--who would then recommend a sentence.

Simulated trials. Transcripts developed in cooperation with senior magistrates in New South Wales and Victoria were used to simulate trials in which the defendants plead guilty. The simulations were video taped initially in black and white using professional actors, and later, after critiques by judges, in color using actual criminal justice personnel--prosecutors, judges, detectives--in their usual occupational roles. Although the scripts were based on cases already dealt with by the Central Court of Petty Sessions in New South Wales, the defendants' names were changed and actors performed the accused's role.

Specific sections, or modules, of the tapes were reshot to allow the researchers to vary, at will, the individual legal and nonlegal factors of each case, such as the appearance of an older or younger defendant, the presence of a psychiatric report, the type and number of prior convictions, and the relevant extenuating circumstances. This approach was economical because only portions of any group of tapes required reshooting, since master tapes could be spliced with several other tapes to produce a number of cases.

One such simulated trial, involving a young female repeat offender charged with shoplifting \$99 worth of goods from a department store, was shown to 72 magistrates in Victoria and Western Australia, 31 Victorian justices of the peace, 20 Victorian police cadets, and 59 management personnel attending a course at the Australian Staff College.

After viewing the trial process, determining a sentence, and filling in standard response forms, the survey audience was divided into small groups of 5 to 10 to discuss the case, the sentences they considered appropriate, and the factors that influenced their decision. Following the group discussion, they were instructed to resentence the defendant and to indicate the factors they considered most relevant to their evaluation.

Results of the Survey. Based on the resulting data, it is apparent that the groups varied consistently in their sentencing decisions along occupational lines, both before and after the group discussion. In general, the magistrates and police tended to impose prison terms, whereas the justices of the peace and the management personnel were more disposed merely to fining the defendant. Results of the simulated sentencing are reflected in the following table:

COMPARISON OF SENTENCES PRIOR TO GROUP DISCUSSION*

| | <u>Magistrates</u> | | | <u>Others</u> | | |
|-----------------------------------|--------------------|-------|-------|---------------|--------|--------|
| | Vic. | W.A. | Total | J.P.'s | Cadets | M'ment |
| Percentage Sending to Prison | 60 | 8 | 50 | 6 | 45 | 19 |
| Median Prison Sentence (in weeks) | 4 | N/A | 4 | 8 | 12 | 8 |
| Percentage Imposing Bond | 24 | 31 | 25 | 23 | 10 | 65 |
| Median Bond (in weeks) | 104 | 104 | 104 | N/A | N/A | 104 |
| Percentage Imposing | 17 | 70 | 25 | 71 | 65 | 46 |
| Median Fine | \$300 | \$400 | \$300 | \$250 | \$200 | \$300 |

*A comparison of the sentences imposed by the groups after discussion of the case revealed the same general pattern.

In evaluating the factors considered by the participants in imposing a sentence, nine categories were identified on the basis of a preliminary analysis of the data. The relative importance of each of these factors is summarized by group in the following tables:

RELATIVE PROPORTIONS (PERCENTS) OF FACTORS INFLUENCING
DECISIONMAKING IN SENTENCING: PRIOR TO DISCUSSION

| | <u>Magistrates</u> | | | J.P.'s | <u>Others</u> | |
|--------------------------|--------------------|------|-------|--------|---------------|--------|
| | Vic. | W.A. | Total | | Cadets | M'ment |
| Nature of Offense | 11.8 | 15.6 | 17.9 | 19.4 | 36.8 | 19 |
| Prior Record | 36.3 | 26.3 | 34.2 | 30.6 | 34.2 | 30.6 |
| Rehabilitation | 4 | 10.5 | 5.4 | 11.3 | 13.2 | 14.8 |
| Contrition | 1 | 7.9 | 3 | 9.7 | 2.6 | 4 |
| Deterrence | 9 | --- | 7 | --- | --- | 1 |
| Financial/ Employment | 4 | 7.9 | 5 | --- | --- | 2.5 |
| Personal | 9 | 13.2 | 9.8 | 11.3 | 13.2 | 16.5 |
| Probation Prospects | 17.8 | 18.4 | 18 | 17.7 | --- | 5 |
| Miscellaneous | --- | --- | --- | --- | --- | 2 |

RELATIVE PROPORTIONS (PERCENTS) OF FACTORS INFLUENCING
DECISIONMAKING IN SENTENCING: AFTER DISCUSSION

| | <u>Magistrates</u> | | | <u>Others</u> | | |
|--------------------------|--------------------|------|-------|---------------|--------|--------|
| | Vic. | W.A. | Total | J.P.'s | Cadets | M'ment |
| Nature of Offense | 16.9 | 16.6 | 16.8 | 10.9 | 21.2 | 6 |
| Prior Record | 30.3 | 23.3 | 29.3 | 23.6 | 39.4 | 18 |
| Rehabil- itation | 5.6 | 13.3 | 6.7 | 10.9 | 21.2 | 16 |
| Contrition | 1 | 3.3 | 1.4 | 5.5 | --- | 3 |
| Deterrence | 7.8 | 3.3 | 7.2 | 1.8 | --- | 1 |
| Financial/ Employment | 5.0 | 3.3 | 4.8 | 5.5 | 3 | 7 |
| Personal | 7.8 | 13.3 | 10 | 20 | 18.2 | 35 |
| Probation Prospects | 16.3 | 16.6 | 16.3 | 20 | --- | 14 |
| Miscel- laneous | 8.9 | 6.6 | 8.7 | --- | --- | --- |

Cross-tabulation of these factors with each other and the sentence imposed failed to reveal any consistent pattern in a predictive sense; although it was apparent that certain factors were highly correlated with each other, they were not correlated with the sentence. For example, although "prior record" and "nature of the offense" occurred together 83 percent of the time, no significant correlation could be established between sentencing options and this pair of factors or any combination of factors involving the two.

Conclusion

The failure to find a consistent sentence, or any consistent pattern between factors related to a specific sentence, indicates that the informative approach to sentencing is unlikely to succeed in reducing sentencing disparity. Because the factors underlying sentencing are variously interpreted by individual magistrates, is unlikely that magistrates would apply the same sentence when presented with identical cases, even if they agreed on the factors that should be considered in sentencing. The implications are obvious: legal guidelines should be developed to reduce the uncertainty associated with sentencing by structuring the situation.

SENTENCING: ONE JUDGE'S VIEWPOINT (NCJ 53505)

By Adrian Roden

As long as individuals impose sentences using the discretionary power conferred, within limits, by the legislature, it is inevitable that disparities between sentences will arise. What some may condemn as disparity and inequity, others applaud as flexibility and individualized decisionmaking. Such is the nature of human justice--an acceptable feature of a reasonable, compassionate, and independent judiciary operating beyond the delegative and autocratic constraints proposed by supporters of rigid sentencing guidelines and more uniform penal remedies.

Objective of Sentencing

Beyond considerations of retribution, deterrence, and rehabilitation, a sentence is primarily society's reaction to unacceptable and therefore proscribed conduct within it. But to be effective, the sentence must be an appropriate reaction--it must suitably proclaim, by means of a tempered judicial fiat, society's denunciation of a particular illustration of a particular offense.

Accordingly, pursuit of sentencing's denunciatory objective does not mean affording an overriding concern to the nature of the offense rather than to the circumstance of the offender. No adverse effect on what the community demands of sentencing judges occurs if:

- On all occasions, judges consider the subjective factors touching the offender in determining the sentence appropriate to a particular offense.

- On some occasions, when assessing the appropriate sentence, special attention is given to a desired deterrent or rehabilitative need.

- On rarer occasions, subjective factors be allowed to exempt a particular offender from a denunciatory sentence, either in the interest of rehabilitation or on purely compassionate grounds.

Steps in the Sentencing Process

The sentencing process consequently involves a series of steps:

- learning the objective facts of the offense, as well as the relevant subjective factors affecting the offender;

- assessing the appropriate sentence, probably expressed in terms of a range, and applying the denunciatory principle;
- determining whether there ought to be a departure from such a sentence in order to enable a particular offender to receive individualized treatment; and
- fixing the penalty within the range or designating an alternative treatment, as required by the circumstances of the particular case.

Disparity in Sentencing

Although such an offender-oriented--as opposed to offense-oriented--approach leads to a natural disparity, other factors lend themselves to an unnatural, undesirable disparity. This disparity is not due to individualized dispositions, but rather to procedural pitfalls, local laws or customs, or even the class structure.

For example, presentence reports are generally withheld from the defense until just before sentence is pronounced. As a result the court is often informed through hearsay of matters which are disputed and which therefore should not be before it, except in connection with the rules regarding the admissibility of evidence.

The problem is particularly acute in New South Wales. In that State presentence reports list acquittals and even "No Bills" along with known convictions and adverse general observations on the offender's character--information which is effectively irrefutable except by cross-examination.

The Criminal Code of Tasmania, although equally lax regarding the rules of evidence in such matters, at least mandates that the defense be apprised of any information received by a sentencing judge and allowed an opportunity to challenge it. If any point of such information is challenged, the judge may require that the authorities prove its accuracy just as if it were to be received at the trial.

Causes of Sentence Disparity

In prescribing and assessing sentences, both the legislature and the courts give too much weight to the chance outcome of criminal conduct and insufficient concern to the culpability of the conduct itself. Motor vehicle offenses involving alcohol are a good example. Depending on the chance presence of a pedestrian or other vehicle, drunk driving can become manslaughter. Yet,

whether or not it involves such tragic consequences, the potential for harm remains. Indeed, it could be argued that the excessive leniency shown in such traffic cases enables the conduct to gain a degree of social acceptability, even though its outcome may be on a par with that of assault or attempted murder.

Another problem contributing to sentence disparity involves anomalies inherent in the appeal process, among them the often automatic rehearings granted in summary matters--a right typically more difficult to secure in more serious cases. Logic would seem to indicate that the more serious the case and the heavier the penalty, the greater the access to appeal. The reverse is true, however, especially for appeals of sentence, with the result that a magistrate's proper exercise of discretion often is pointlessly interfered with.

Still another problem relates to imposing a prison term in the face of nonpayment of a fine, a judicial recourse that particularly discriminates against the poor. It is repugnant, even unthinkable, to permit a poor person unable to pay a fine, to go to jail, while another person, equally guilty, but with the means to pay, is allowed to go free. To suggest that the fine and imprisonment are comparable alternative forms of punishment for the same offense in similar circumstances is to place an extremely low value on human liberty.

Measures for Eliminating Disparity

Several measures are available, however, for eliminating unacceptable disparity. Provisions for suspended sentences should be restored to the penal statutes, and such existing alternatives as periodic detention, probation, parole, and work release should be resorted to increasingly in lieu of the contemporary overreliance on the prison.

SENTENCING: A MAGISTRATE'S VIEWPOINT (NCJ 53506)

By K. R. Webb

Sentencing in Australia's magistrates' courts differs from that in the supreme and district courts. This variation is attributable to the heavy workloads, the numerous defendants who appear without counsel or who never appear before the judge at all, the lack of staff support, and the lack of alternatives for sentencing disparity.

Problems of Magistrates

Sufficient time for the consideration of an equitable sentence is a legitimate problem in many magistrates' court. In New

South Wales, where I officiate, some 98 percent of all criminal cases are concluded in magistrates' courts. As a result, the workloads of individual magistrates are high and cases are sometimes heard in absentia. Fines are the favored disposition, chiefly because they are quickly meted out in the face of overwhelming demands on both judicial and staff personnel.

Couple these factors with the occasional absence of complete information, defendants who appear without benefit of counsel, the expanded jurisdiction of magistrates' courts under the Crimes Act of 1974, and changing community attitudes--regarding certain drug violations, for example--and the potential for sentencing disparity looms even greater.

Nonetheless, although magistrates have been criticized variously as too lenient or too harsh, data from 1976 indicate that only 1.5 percent of the 600,000 cases handled by magistrates in New South Wales were appealed. This suggests that the majority of offenders accept magistrates' penalties as at least within the bounds of reasonableness.

Corrective Measures

Despite these indications of success at the magistrate court level, the use of more effective sentencing alternatives is recommended--including the community service order which requires the offender to perform work in the community--and continued efforts in the area of training for magistrates.

TOWARD AN ALTERNATIVE APPROACH TO SENTENCING

By the Probation and Parole Officers'
Association of New South Wales

This paper deals with both judicial discretion and parole board assessments. The position is taken that, although parole itself has not failed, the method for granting parole has, and therefore the Parole of Prisoners Act of 1966 should be abolished in favor of determinate sentences and judicial supervision of the timing and circumstances of release.

The existing parole board approach to assessing a prisoner's readiness for release not only conflicts with a sentencing judge's exercise of discretion, but also produces considerable anxiety on the part of prisoners, adds to the problem of prison discipline, and complicates correctional planning, especially in terms of timing rehabilitation and training efforts for prospective parolees.

Imposing judicially supervised determinate sentences would overcome those deficiencies. In addition, the issue of questionably valid parole board assessments would be effectively negated, along with the uncertainty inherent in the parole process and its potential for encouraging disparity. Finally, a judiciary empowered to decide on a determinate sentence, with specific early release conditions clearly defined, would give both the prisoner and the criminal justice system an understanding of the nature and length of the sentence, eliminate the vast amount of time now spent assessing parole potential, and free counselors and parole officers for more effective treatment of released offenders.

The Cumulation of Suspended Sentences

By Philippe Salvage

Introduction

Persons found guilty of crimes who have received suspended sentences should not consider themselves ineligible for a second suspended sentence if they commit another offense. But when a subsequent suspended sentence is granted, the preceding suspension should not be forgotten. It appears, therefore, that the existence of a first suspension is likely to affect the granting of a second, and that the presence of a second must influence the effects of the first.

The traditional suspended sentence, hereafter referred to as simple suspension, dates back to the end of the 19th century in French law. It was joined in 1958 by the suspended sentence with probation, which provides that the conditional cessation of the principal penalty--inherent to the concept of suspension--be accompanied by aid to the delinquent, who in turn is subject to certain obligations.

At that time, consideration was given to an additional extension of the suspended sentence concept: cumulation of suspensions, beginning with simple suspensions, followed by the simple suspension and suspension with probation, and proceeding to suspensions with probation. The law of July 17, 1970, recognized the possibility of cumulating suspensions in these three combinations; the law of July 11, 1975, envisages not only the cumulation of two suspensions, but of several.

"Le cumul de sursis" (NCJ 49497) originally appeared in Revue de science criminelle et de droit pénal comparé, n. 1:13-32, January-March 1978. (Sirey, 22, rue Soufflot, 75005 Paris, France) Translated from the French by Deborah Sauvé.

Of course, this is not the only privilege that can be granted several times. Attenuating circumstances, dispensation or postponement of a penalty, parole, work release, reduction of sentence, and pardon are dispositions which can be repeated, even if recidivism attests to their relative failure. However, cumulation of suspensions is special in that it is not a simple repetition of the same disposition, but an original concept from the viewpoint of its conditions as well as its effects.

The judge's decision to implement the cumulation provision cannot be made without taking the first suspended sentence into consideration; this also is true for the three instances of cumulation. Since 1970, the French Legislature has enacted certain regulations, common to the three types of cumulation, which cause the second suspension to influence the effects of the first. The law of July 11, 1975, simplified the conditions for cumulation and delineated its effects more precisely, but serious insufficiencies remain. The purpose of this study is therefore twofold: to examine the workings of the cumulation provision and to attempt to correct its deficiencies.

Influence of the First Suspension on the Conditions of Granting the Second

Although it would seem that the existence of a first suspension would preclude a second or at least make it subject to strict conditions, the position of the Legislature has always been to avoid formulating demands pertinent to granting the new privilege.

Legal effect of the first suspension on the second. Conditions relative to the first suspended sentence may be summarized as follows: the first conviction must not preclude the granting of a second suspension when a new conviction occurs.

Concerning the combination of simple suspensions, the law of July 17, 1970, expanded the conditions under which suspensions could be granted. Article 734-1 of the Code of Penal Procedure (CPP) allowed suspensions for those who had not been convicted "of a common law misdemeanor or felony resulting in a criminal penalty or imprisonment for more than 2 months." Thus a suspended sentence of imprisonment for less than or equal to 2 months permitted subsequent granting of the suspension privilege. The law of July 11, 1975, expanded the scope of this provision by making suspension applicable to persons convicted under Articles 43-1 to 43-5 of the Penal Code. This leads to the conclusion that a sentence under these articles which is suspended is not an obstacle to a new suspension.

By providing that the granting of a suspension with probation was no longer subject to any previous condition, the law of July 11, 1975, eliminated all restrictions on the simple suspension-probationary suspension combination. Probationary suspension consequently could be added to any prior conviction which resulted in a suspended sentence. Under Article 738 of the CPP, as amended by the July 11, 1975, law, probationary suspension can be added to an already suspended sentence of imprisonment for a common law misdemeanor or felony.

Accordingly, it can be stated that by simplifying the conditions for granting suspensions, the conditions for cumulating them were also simplified, to the extent that today the legal influence of the first suspension on the granting of the second is practically nonexistent. The decision to grant a second suspension rests with the judge, who must act cautiously and take the failure of the first suspension into account. The judge's actions are particularly important because the laws provide minimum guidelines.

Actual effects of the first suspension on the second. For suspended sentences to be cumulative, a new conviction must occur during the trial period of the first suspended sentence; in addition, the judge must rule in favor of cumulation. The judge grants a suspended sentence according to the "circumstances of the case in point" and the "personality of the delinquent."

Simple suspension was designed to reform petty criminals or first offenders, prevent their recidivism through the threat of a specific penalty, and keep them from the ultimately harmful effects of prison. Suspension combined with probation serves the same purpose, but also gives offenders technical support for their rehabilitation. When someone who has already benefited from a suspension commits a new offense, the desired goals obviously were not achieved, and the methods used proved ineffective.

If the judge grants a second suspension with probation, after a simple suspension, he probably does so because the simple suspension failed to achieve the desired result due to a lack of technical support. In the case of a second suspension identical to the first, the judge first must have legitimate reasons to believe that such a disposition will result in the offender's rehabilitation. The judge also must have confidence in the very institution of the suspended sentence. Although the objective of granting a new suspension remains the offender's rehabilitation, the possibility of multirecidivism must be avoided.

If granting a second suspension is not based solely on optimism, then it may be viewed as evidence of two new concepts in modern penal law: (1) the threat of a sanction substitutes for the sanction itself, and (2) imprisonment must be avoided as often as possible. Perhaps because such penal concepts could produce fears of a too-liberal trend, the granting of a new suspension is not sufficient to create a cumulation. The presence of the first suspension forces the judge to declare that the new suspension cannot revoke the first, i.e., the suspensions are cumulative only if the judge wishes to insure that the first suspension stands.

Under Article 744-3 of the CPP, as amended by the law of July 11, 1975, the granting of a partial suspended sentence with probation does not directly revoke a first suspension; revocation only results from an express decision to that effect.

Consequently, cumulation of suspended sentences is not the simple juxtaposition of two suspensions. The judge must take the first suspension into consideration in deciding to grant the second; in addition, the second suspension influences the effects of the first.

Influence of the Second Suspension on the Effects of the First

Granting a new suspension normally precludes the revocation of the preceding one. Beyond that, however, the two components of the cumulation are linked in such a way that the effects of the first suspension will depend largely on the outcome of the second. The offender can be affected favorably or unfavorably.

Reduction of the effects of the first suspension. The second suspension can reduce the effects of the first in two ways: (1) the voiding of the first conviction thereafter will depend on the voiding of the second, and (2) revocation of the new suspension will result in the revocation of the first, requiring the offender to serve both sentences.

After expiration of the trial period (5 years for simple suspensions and a period fixed by the judge for probationary suspensions), the conviction is considered void if suspension has not been revoked in the interim. When suspensions are cumulated, the question arises whether the first conviction is declared void after expiration of its own trial period, or postponed until expiration of the second suspension's trial period. According to the law, it is postponed. Moreover, the influence of the second suspension on the first is identical for the three types of cumulation.

During the time when the two trial periods overlap, both suspensions are subject to revocation. What would happen if the reason for the revocation became a factor after the first suspension's trial period had already elapsed and the second was still in effect? Could the first sentence be incurred? Although some authorities feel that revocation would apply only to the second suspension, arguments based on the text of the law tend to support the opposing view: as cumulation of suspensions unites the two sentences, both trial periods are linked, both suspensions would be revoked, and both sentences would be carried out.

Preservation of the effects of the first suspension. The second suspension can exert its own favorable effects on the first and consequently preserve it. In the case of a second suspension whose trial period elapses before that of the first suspension --which can occur in cumulations of simple and probationary suspensions--are both convictions considered void after completion of the probationary suspension's trial period, or should each conviction be considered void only after expiration of its own trial period? Although the law is silent on this point, united convictions must be favored--all convictions are void after expiration of the probationary suspension's trial period. As the probationary suspension is more precise and closely supervised and requires positive commitments from the probationer, the offender who satisfies its conditions also has satisfied the test of the less severe simple suspension.

The law of July 11, 1975, provides that "if the probationary suspension has been granted after one or more probationary suspensions, the penalties carried by the corresponding convictions are totally or partially carried out if the court orders revocation, in whole or in part, of the accompanying suspension(s)." This logically could be extended to simple suspension-probationary suspension cumulation as well, but it remains to be seen whether it also holds true for cumulation of simple suspensions. Although Article 735 of the CPP does not address this matter, the second paragraph of that article, pertaining to revocation of simple suspensions, implies that revocation of the second suspension does not necessarily revoke the first.

Conclusion

As this paper has shown, cumulation of suspensions is not the simple addition of two suspensions; it is a combination that responds to specific conditions and produces appropriate effects. Cumulation of suspensions is an autonomous institution which has become an important part of the criminal policy pursued by the Legislature in recent years. Two reservations regarding this policy must be mentioned, however:

• The powers of the judge have grown substantially. Already ample in terms of responsibility, they have also increased in terms of punishment, i.e., determining the punishment, establishing its extent, and suspending it. A priori, this is one means of arriving at a favorably regarded individualization of sanctions. Nevertheless, the growth of judges' powers must not become an end in itself, take the place of legislative reforms, or permit offenders to have doubts about their ultimate fate. The principle of legality stands in the way.

• Recent criminal policy also shows a marked vacillation between liberalism and strictness in the laws. Although the present increase in crime encourages severity, the general evolution of ideas and events calls for tolerance. The resulting uncertainties render certain institutions ambiguous. It is significant that the cumulation of suspended sentences is not immune to these dangers.

The Development of Prison Sentences in The Netherlands

By L. H. C. Hulsman

Introduction

In 1976, The Netherlands Association for Penal Reform formulated an extremely important principle for evaluating correctional systems: The more democratic a given society, the less it will make use of institutions which assume total control over a person's life. In other words, an examination of a country's "total" institutions (i.e., prisons, psychiatric clinics, and reformatories) can reveal whether that country is developing in a democratic or totalitarian direction.

The following questions may be relevant in determining the significance of these institutions: What is the total number of inmates in correctional facilities at a given moment? How many new prisoners are committed annually? How much time do the different types of inmates spend in these institutions? In addition to the numerical evidence which is fairly easy to obtain, it is also necessary to examine the quality of the living conditions to determine the relative totalitarian character of an institution. For example, a maximum security correctional facility with a large number of inmates and a reduced guard staff is more totalitarian than a small, partially open jail.

Tracing the recent development of prison sentences (the most typical form of punishment in The Netherlands) also will provide an indication of more general trends in society. To account for the peculiarities of the Dutch correctional system, this study will concentrate on the following questions: Is the prison population in The Netherlands really smaller than in comparable countries, or is this impression the result of camouflaged statistics? And if

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there are fewer prisoners, why? The second part of the study is devoted to the penitentiary problems that arose in the mid-1970's and in this context will deal with the quality of the jails and their development. These observations will lead to some conclusions about Dutch correctional politics in general.

Reduction in the Number of Prisoners in The Netherlands

The prison population of The Netherlands has decreased approximately 40 percent between 1963 and 1975. As the following figures indicate, the decline has been steady:

| <u>Year</u> | <u>Number of Prisoners</u> |
|-------------|--------------------------------|
| 1963 | 3,550 |
| 1969 | 2,880 |
| 1972 | 1,750 |
| 1973 | 1,620 |
| 1974 | 1,550 |
| 1975 | 1,687 |

In order to determine whether this marked decrease in prisoners corresponds to an actual decline in the usage of "total" institutions, it is necessary to ascertain if the cause is simply the transfer of inmates to other correctional facilities such as psychiatric wards and homes for juvenile delinquents which are not included in the statistics. Transfer to psychiatric institutions is not a factor since the number of beds did not increase noticeably during the period in question. Although exact data concerning the total number of patients hospitalized are not available, it appears that the patient-population dropped rather than increased. This is also true for juvenile reformatory facilities because during the same period the number of juvenile residents declined even more conspicuously than the volume of inmates in the regular penitentiaries. Accordingly, it may be concluded that the number of imprisonments for behavioral deviations decreased considerably up to 1975.

How does the Dutch prison population compare statistically to other countries? Studies of non-Communist nations in which the number of inmates per 100,000 inhabitants is computed reveal that The Netherlands (20 prisoners per 100,000 inhabitants) is the lowest in Western Europe (e.g., Belgium 60, France 55), whereas the United States has the highest proportion (200).

What is the reason for the decrease? It certainly is not that fewer offenders were committed to correctional institutions, since during the period of reference the number of convicts serving prison terms rose approximately 20 percent. Nor is the decline caused by a reduction in the number of prison sentences pronounced

(and other deprivations of liberty) or liberal pardon procedures. The decrease results almost exclusively from the fact that shorter prison terms were being pronounced. To illustrate, statistics for 1975 reveal that the majority of prison terms (56.2 percent) were of one month or less duration, whereas in 1959 this kind of short sentence occurred only 36 percent of the time.

How then can the relative leniency of the Dutch penal system be explained?

An Attempt at Analysis

The Dutch penal system is radically different from those of other countries in that it makes considerably less use of the deprivation of liberty. This comparative leniency also is revealed in other, nonquantitative aspects of the correctional system such as the atmosphere at the trial, the relationship between guards and prisoners, and the attitude of the press toward offenders.

Some attempts to explain this leniency have pointed to the stability and homogeneity of Dutch society. This explanation is utterly false since The Netherlands has undergone a more profound transformation over several decades than most Western industrial nations. The population increased sharply, particularly the 15 through 24 age group, which usually produces the greatest number of known offenders. In addition, there has also been a marked trend toward urbanization with a corresponding change in the traditional employment structure. Religious faith, lifestyle, and social relations also have been altered profoundly. Shortly after the war, The Netherlands became a home for a large number of repatriated Indonesians, and recently there has been a massive influx of immigrants from The Netherlands Antilles and Surinam, as well as foreign workers from the Mediterranean countries. Finally, The Netherlands is a world trading center and one of the favorite destinations for young tourists, many of whom have settled here because they found their own countries too repressive.

A combination of environmental factors (connected with the Dutch social system) and legal factors (connected to the judicial system) is responsible for the present state of the Dutch correctional process. The following environmental factors are particularly important:

(1) The social security system in The Netherlands is particularly well developed. It not only offers financial assistance, but also provides employment (in special protected workshops) to those who have difficulty competing in the normal job market.

(2) There is a vast and highly influential network of youth centers subsidized by the Government but coadministered by the juveniles themselves.

(3) There is an extensive network of approximately 8,000 social workers, many of whom are actively engaged in the correctional process. They use their special authority to try to change the living conditions that lead people into crime and, in general, act as mediators between legislators, the Government, police, and the court system on the one hand and potential offenders on the other.

(4) The mass media play an important role by not only devoting considerable attention to the correctional process, but also breaching the social isolation of minority groups.

(5) The Netherlands Association for Penal Reform constitutes a strong pressure group that is extensively involved in penal reforms.

The single most important legal factor in cause of the declining number of prisoners is the short duration of prison sentences. However, another group of factors affect the prosecution of crimes and the adjudication of penalties: the courts in The Netherlands adhere to the principle of prosecutorial discretion, and prosecutors will not file charges unless they expect the trial results to be of some benefit and use. Many problems are settled out of court as well. In addition, Dutch penal legislation prescribes minimum fixed sentences and consequently permits the punishing of most offenses with a light fine or, even in the case of serious offenses, a conditional prison term of 1 day. In fact, judges have almost unlimited power to impose conditional sentences for first-time offenders as well as for recidivists.

Another category of contributing factors is related to the organization and composition of the various services which constitute the correctional system. The Netherlands appoints only a limited number of public prosecutors and judges, and cases resulting in prison sentences require more time for investigation and trial than cases in which prison sentences are not contemplated. This causes the system to be self-limiting.

However, the number of professional social workers involved in the reclassification of offenses far exceeds the number of judges and prosecutors. Although funded through Government subsidies, the social workers are outside the hierarchical structure of the judicial system. They review the crime from the accused's point of view, analyze the various aspects of the defendant's personality, and point out the possible effects of the sentence on the accused's family. Since the adjudication of penalties in The Netherlands depends mainly on the judge's and prosecutor's opinion of the seriousness of the offense and the degree of responsibility of the defendant, this presentation of the social background tends to have a moderating effect on the sentence.

In summary, the greater leniency of the Dutch penal system during the past decade is not so much the result of a conscious

political effort--an effort that can be detected only in the latter half of the 1960's--but rather an unintentional interaction of the factors described above.

Evolution in the 1970's: What Does the Future Hold?

The decrease in the prison population appears to have terminated in the mid-1970's, and number of serious problems have begun to plague the correctional system. These problems involve the construction of new correctional institutions, the quality of prison conditions--particularly prison rules--and the delay in executing sentences. None of these problems has been resolved, and the Government continues to be satisfied with patchwork remedies. Unless there are deliberate efforts by the Justice Department and the legislators, a less lenient correctional system must be anticipated.

The New Prison Construction

In the early 1960's when the decrease in prisoners was not yet evident, a program was developed to construct new correctional establishments. This project, which was intended to replace the most antiquated prisons with large maximum-security facilities featuring the latest technological equipment and requiring fewer guards, was abandoned in the early 1970's when several existing jails had to be shut down due to a lack of inmates. Meanwhile, the Van Hattum Commission, charged with studying the future of the old prisons, concluded that small prisons were more suited to the country's needs and in particular that the prison staffs should not be decreased.

When the economy needed an increase in construction activity in the early 1970's some of the previous Government programs were resurrected, including prison projects in the cities of Maastricht and Amsterdam. Although these programs were clearly opposed to the Van Hattum report, construction was begun--in the case of the Amsterdam project, without the knowledge of top officials of the Department of Justice or the Judiciary Committee of Parliament. When the Amsterdam construction was discovered and Parliament lodged a formal protest, the Justice Department conceded that the facility violated the Van Hattum report, but insisted that the project was too far advanced to be stopped. There can be no doubt that the two most important correctional construction projects since World War II were clearly in contradiction to the country's official criminal policy.

The Quality of Prison Conditions

A means of measurement is required to determine the quality of prisons. The ratio of staff members to inmates is one possibility. Compared to other nations, The Netherlands ratio of 1.3 staff members for every prisoner (Belgium 0.5, France 0.4, England and Wales 0.5) appears quite favorable.

The picture becomes more favorable if the composition of the prison staff is considered. Only 2,500 of approximately 4,000 staff members are guards in the strict sense. The administrative staff (including medical and psychological professionals) numbers about 400, and there are more than 100 vocational and educational specialists.

Several institutions, particularly juvenile reformatories, are experimenting with a new set of prison regulations designed to allow inmates constructive use of time spent in prison. In addition, there are minimum- and medium-security institutions which enable the inmates to maintain contact with the outside world. To an increasing degree, prisoners also are permitted to take short leaves to visit their families.

If prison conditions are compared to the announced official policies, however, the picture becomes far less favorable. Policy-makers profess that the goals of correctional justice stand between two opposing principles--security and preparing criminals for their eventual return to society. They claim that minimum security is the most desirable and that the most important consideration is the bond between the inmate and society. This image is completely false. Although many penal administrators strive to promote rehabilitation and occasionally achieve limited progress, the concern for security and the maintenance of peace and order in prison remain paramount. The penal administration fundamentally is a strongly hierarchical organization whose objective is to prevent escapes and maintain order through the strict enforcement of prison rules.

The staff reorganization of 1971 is a striking example of the actual priorities of the penal administration. The reorganization involved closing a number of prisons because of a lack of prisoners. Many inmates considered this a deterioration of conditions since they were relocated far from their families, friends, and advisors. In this case, the principle of "maintaining social contacts" obviously was sacrificed to permit a reduction in administrative personnel.

The Delay in Executing Sentences

During 1975, a considerable delay (sometimes more than a year) took place before short-term convicts were able to begin serving

their sentences. The backlog grew rapidly as a result of the decrease in prison capacity in 1971 and the increase in the number of short sentences. The chief factor in the increase was a law making driving under the influence of alcohol a criminal offense--from 1970 to 1975 sentences for drunk driving soared from 9,000 to 20,300. Although the rise was predictable, the Department of Justice made no concrete efforts to deal with the inevitable consequences.

Despite vehement judicial opposition, the Government tried to reduce the backlog by declaring a collective pardon for all sentences of 14 days or less pronounced before a certain date; however, the backlog grew steadily. In 1976 prison capacity increased 25 percent or about 700 positions compared to 1975, and there was a corresponding increase in prison staff from 3,200 in 1974 to 3,900 in 1976. In spite of these drastic measures, the backlog did not decline significantly. The idea of a second pardon was abandoned because the Government feared the opposition of the court presidents. Instead of seeking alternative methods of punishment, the correctional establishment seems determined to respond to the growing number of inmates by merely increasing prison capacity. It does not heed suggestions by Parliament to reduce the number of prison sentences.

Summary and Conclusion

The evolution of correctional administration in the mid-1970's reveals the nature of that administration and the Dutch penal system in general.

Although both system and administration are noticeably more lenient than in neighboring countries, they are relatively similar to those nations in development and structure. One striking aspect is that policymakers (politicians as well as administrators) refuse to deal with the problem as a whole--their attitude toward the correctional process is a reflection of their own particular interests. Consequently, political decisions such as "the reduction of prison sentences" remain empty words which have no practical impact.

The events of the 1970's also show clearly where the true priorities of the correctional administration lie--incarceration and security are their foremost concerns. In the course of the last decade, improvement in prison conditions has been limited and sluggish. In fact, the improvement has been so slow that the disparity between the quality of life within and outside the prison walls has widened considerably. If this disparity were considered a measure of prison quality--and there is no reason why it should not--the living conditions in correctional facilities actually have grown worse over the past 10 years. When several prisons were closed in 1971, it became impossible to hire additional staff

members or even maintain the old staffs to preserve the existing quality. Although prison staffs increased 30 percent in 1975 and 1976, there was a marked increase in prison capacity as well.

A correctional system can afford to improvise prison rules, but prison conditions cannot be improved in this manner. If the quality of prison life is to be improved, a completely new approach to the entire correctional system will be required.

Evaluation of Human Resource Capabilities for Social Adaptation Agencies

By Armando Campos Santelles

Introduction: Identification of the Problem, and the Basic Methodologies

The problem of evaluating human resource capabilities requires an initial determination of the significance of the evaluation on the social adaptation agencies' stated objectives. In other words, before methodological problems in evaluations are discussed, the objectives of the evaluation must be described and clarified.

The human resources being considered constitute a vital component of social adaptation politics. This apparently obvious and simple statement leads to a concept that cannot be ignored in a serious analysis of the problem.

When an evaluation of the objectives, means, and outcomes in staffing policies for penitentiaries is attempted, a problem arises that cannot be examined abstractly as if the criteria were uniform for all sociopolitical contexts and institutions.

Planning the evaluation of human resources for prevention and treatment institutions in the field of criminology necessitates placement of the problem in a double context: penitentiary policies as distinguished from others and penitentiary policies with their respective organizational apparatus and current sociohistorical setting.

This methodology may seem complex when compared to other oversimplified versions in use today. Therefore, a portion of this analysis is devoted to justifying and explaining the methods used.

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As stated earlier, the policies for all social adaptation agencies are determined by their historical structural settings. Traditional isolation of the penitentiary environment from society produces an antisocial climate that precludes the penitentiaries attaining their rehabilitative and preventive aims. This problem cannot be solved as long as a weak penitentiary system is preserved. Integral social changes are essential to success in the effort to prevent crime. It would be a misconception to presume that the causes of crime can be attacked individually--a conscious systematic approach must be used.

When society tolerates obvious inequality and injustice, crime is bound to flourish, causing economic and human waste that ultimately will give birth to or present behavior models that others copy. As long as society preserves the mechanisms that generate crime and whimsical methods of law enforcement, penitentiary systems will maintain their repressive character. National economic development is not necessarily the most important factor in eradicating the social mechanisms that generate crime, since the most developed nations have the highest percentage of delinquency.

Any policy aimed at resocialization must be implemented by applying a social development model capable of promoting and consolidating higher social relations. Unless this is done, society will remain an instrument of injustice.

The policies of a penitentiary can relate in various ways to the structure of society in general: a penitentiary can operate as a component of a repressive society, as a mechanism for concealing or mitigating social wrongs, or as an instrument of harmony, integrated into an effective development plan. It cannot function independent of the social structure.

Correspondingly, the doctrines, strategies, and goals that make up prison policies should be in concert with those of society as whole. The capabilities of the prison system should be evaluated within the scope of society's structures and decisionmaking strategies, and the diagnosis should be formulated in this dual context.

Four Critical Questions Regarding Evaluation

The evaluation of capabilities for this or any other type of human resource primarily implies a systematic approach and procedures. There are four fundamental questions regarding the capabilities of prison staffs:

- (1) Why train personnel?

- (2) What will the training environment be like?
- (3) What will the backgrounds of the target population be?
- (4) What are the proven capabilities of our teaching programs?

Regarding the first question, this study will not be concerned with the capabilities of prison personnel, but rather with the measures being taken to train the personnel adequately, including teaching them the procedures, the use of firearms, and other skills relevant to their jobs.

The institutional conditions that inhibit, impede, facilitate, or encourage the use of required skills also must be considered, and the socioeconomic, cultural, and ideological characteristics of the workers must be identified to design and evaluate the capability of prison staffs. In training security and guard personnel, officials often neglect these factors, as well as the students' attitudes toward crime and delinquency. Then, when correctional personnel become frustrated or involved in corruption, society attributes their downfall to meager salaries and daily contact with the vile environment of prison life. It is important to note that the experiences of correctional personnel in real life place them in an ideological sphere that approximates that of the inmates. This fact makes them extremely vulnerable when it is associated with repressive forces affecting persons in their own socioeconomic class.

The professional staff, which has an ideology completely different from that of the inmates, is incapable of understanding the needs and frustrations of the prisoners and adopts an attitude of pretention by forcing them to assimilate their own values and attitudes.

The final question concerns the objectives that the programs hope to attain. Most modern training programs for professional staff are based on the tenets of various disciplines, including psychology, criminology, human relations, and penal rights. Some personnel--the guards for example--often have no more than a primary education. It would seem logical, then, to develop training programs that present the study material in a much simpler form. The training should be structured to deal with the different problems inherent in working with various types of prison populations, male, female, and juvenile.

Definitions or Desired Qualities for the Evaluation

To evaluate training programs systematically, a scientific measurement should be made of their legitimacy, as well as of their immediate and intervening effects. Analytical definitions of each

of the program elements should be formulated so that factors that facilitate and impede their effectiveness can be determined. These elements then must be examined to determine their proper relationships to each other and to establish their position within the social context, so that they can be considered as a whole and not in isolation. Four qualities will be required for this type of evaluation:

(1) Objectivity. It will be necessary to eliminate or control subjective estimations or opinions. Some officials prefer to introduce external evaluators to insure objectivity, although a mixture of external and internal evaluators is probably best.

(2) Accommodation to the program environment. Deficiencies and difficulties in training program evaluations frequently arise from inappropriate methods. Although economists can apply production functions or cost-benefit analysis, psychologists can use behavioral techniques, and sociologists can measure social costs, a combined technique is needed for these programs.

(3) Application feasibility. The choice of evaluative techniques will be determined by the possibility of applying them in given local conditions.

(4) Dynamism and flexibility. An essential attribute of all training programs is the capacity to respond in a positive manner to change being produced in the environment. Consequently, these programs should not be evaluated from the rigid adherence to initial objectives. Instead, the evaluation process should be the orienting nucleus of the desired adjustments and modification, and therefore should be dynamic and flexible.

Relationship With the Socioeconomic and Political Sphere

The evaluation of prison training programs should consider a variety of interactions between the programs and the sphere in which they are to be accomplished. Many external variables obviously influence the planning and execution of formative activities. Political changes can open horizons, hinder the program, or even set it back. Political changes also tend to transform the evaluation into an instrument for manipulating public opinion.

Efficiency

The efficiency of an evaluation will depend, in some respects, on the factual synthesis of the qualities that were previously

discussed. Yet the major criterion for assessing the effectiveness of an evaluation is the capacity it has for opportune concept readjustments and execution at the varying levels of the program. For this reason, the evaluation should be a continuous and scientific process. The legitimacy of the evaluation should be established, and the initiative for investigation should not come from the top level of management, since this can result in apathetic attitudes, fear or even open hostility among personnel.

It is imperative to inform all persons involved that an evaluation is in process and to listen to any criticism and suggestions made by these persons. An evaluation that is improperly conducted can create unexpected events or conflicts.

Scope of the Evaluation

The evaluation can involve three areas: the program itself, with its various activities; the social, economic, and institutional systems that are related to the program; and the systems that determine indirect effects of the program. These phases can be distinguished--the evaluation introduction program, referring to the conception stage, development of operating and measuring procedures, and establishment of objectives, the actual evaluation process; and the measurement of inductive effects.

A Basic Model for Evaluating Prison Training Programs

Like the following proposed operative model for evaluating training programs, all evaluation should be continuous and critical. However, any evaluation model is workable only if it incorporates the following procedures:

- (1) Applying techniques that can be assessed objectively.
- (2) Applying methodological models that will be adequate for interrelating facts inside the plan.
- (3) Developing investigations that will illuminate the interaction of the dual context within the program: prison policies and socioeconomic policies.

There are two principal phases for conducting the operation: preparation of the evaluation strategy and execution of the evaluation. Information from previous studies should be compiled and summarized in the most efficient manner. This involves data on the doctrines to be followed in the evaluation, as well as strategies and goals to be pursued. Components of the evaluation must be determined. These include the subject to be evaluated, the training activities, the staff, and the resource use. Finally, the evalu-

ation criteria reflecting the behavior of each component in the development and application of the training program must be selected.

Application of the Evaluation

The application of the evaluation can occur in three phases: (1) implementation of evaluation instruments, (2) fact-gathering, and (3) the interpretation of the data and application of the results. These phases require team effort.

The success of the evaluation depends, of course, on the extent to which it is used to correct, innovate, and plan future training programs for prison personnel. Many such evaluations fail because findings are written in a language and on a level geared toward academic speculation, but inappropriate for actual practice.

Concluding Remarks

In dealing with the issue of personnel training evaluations, this paper has endeavored to illustrate the importance of the evaluation as an indispensable guide for training prison personnel. It also has attempted to show complex and integral nature of the evaluation. This operational model has been tested and is feasible.

Consequences of Penal Conviction on the Police Record and on Curtailment of Rights

By A. Lorieux

Introduction

Penal conviction involving a fine or imprisonment results in serious consequences for the convicted person. It automatically becomes part of the police record and receives limited dissemination through three kinds of reports or "bulletins" and, more significantly, it entails curtailment of political, legal, and professional rights.

The police record, and principally Bulletin 2, cause most of the curtailment; however, curtailment of certain rights is mentioned specifically in the sentence provisions. The reintegration into society of convicted offenders often is hampered by the secondary consequences of a sentence, as well as by auxiliary sentences and security measures.

Lawmakers have taken this concern into account to some extent--legal provisions, some of them recent, permit limiting or suppressing the dissemination of information about convictions and the resulting curtailment of rights. Members of probation committees who are faced with the problems of reintegrating persons on parole or probation into social and professional life should keep these procedures in mind.

The Police Record

Bulletin 1. Bulletin 1 is released solely to the legal authorities and contains the complete statement of conviction. The jurisdiction

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in question cannot exclude from Bulletin 1 information about the sentence pronounced. The following policies are also pertinent:

- The card containing the information is destroyed after 40 years if no further felony or misdemeanor conviction has occurred.
- A pardon erases the conviction, therefore causing the destruction of the corresponding card.
- Restoration of preconviction status does not remove the card and the listing in Bulletin 1.

The listing for suspended sentences with probation thus remains in Bulletin 1 even after a satisfactory probationary period. It perhaps is regrettable that the probationer's good conduct does not wipe the slate clean and that convictions voided by the Code of Penal Procedure (CPP) are still cited.

Bulletin 2. Bulletin 2 is released to the military authorities and to certain public agencies. All convictions are cited in it, with the following exceptions provided for in Article 775 of the CPP:

- Convictions involving minors (ordinance of February 2, 1945).
- Convictions followed by restoration of preconviction status.
- Convictions pronounced by police courts.
- Convictions pronounced in application of Articles 43-1 and 43-5 of the Penal Code 5 years after their final date.
- Convictions suspended and considered void, including those partially suspended.
- Convictions whose citation in Bulletin 2 was expressly excluded by decision of the court in application of Article 775-1 of the CPP.

Suspended sentences with probation are generally cited in Bulletin 2, except when the conviction is considered "void" following the probationary period (which can be reduced to 2 years by the court upon request of the probationer). In addition, the court officially can prohibit citation in Bulletin 2 at the time of conviction or later by decision of the council chamber on request of the interested party (without need for a probationary period).

This suppression of Bulletin 2 is interesting because "exclusion of the mention of a conviction in Bulletin 2 entails lifting of all interdictions, forfeitures, or curtailment of rights of all kinds resulting from that conviction" (Article 775-1 of the CPP). Although such suppression is possible after any conviction, it seems particularly appropriate in the case of a successful probationer. More often than not, convicted individuals are unaware of their legal recourses, and the probation officer can provide counseling, thereby enabling deserving probationers to be eligible for professions closed to them as a result of the conviction (civil service, for example).

Bulletin 3. Bulletin 3, released solely to the interested party, contains the statement of the most serious sentences pronounced for felonies or misdemeanors not excluded from Bulletin 2, essentially sentences of more than 2 years' imprisonment without suspension. It is especially noteworthy that Article 777 of the CPP requires citation in Bulletin 3 of sentences involving prohibitions, forfeitures, and loss of rights pronounced without suspension in application of Articles 43-1 and 43-5 of the CPP for as long as the measures last. This disposition can entail serious problems for individuals sentenced (often for minor offenses), especially when they are looking for work. The correctional tribunal applying these articles, foreseeing "substitutes for short prison sentences" so as not to hinder the convict's smooth return to society, could prohibit inclusion of its decision in Bulletin 3 (Article 777-1 of the CPP).

Restoration of preconviction status permits the exclusion of a conviction from Bulletins 2 and 3. It can be requested after a period of 5 years for a felony and 3 years for a misdemeanor.

Curtailment of Rights

These often automatic consequences of conviction restrict the individual's freedom of action in three principal areas: political, legal, and professional. The loss of rights is not usually the result of a specific provision involved in conviction, but rather is caused by provisions scattered throughout penal legislation.

Although security measures belong to a different legal category, they fulfill the same objective as curtailment of rights since they restrict the freedom of action of the convicted individual in the interest of protecting society. They are often individualized measures, pronounced in a special provision of the sentence (e.g., driver's license suspensions). The law of July 13, 1975, sometimes raises them to the level of principal penalties, as a substitute for short prison sentences. Their

nature and the possibilities for their removal make them germane to this study.

Loss of political rights. This loss affects the individual as a citizen; e.g., the permanent prohibition against serving on juries, provided in Article 256 of the CPP for anyone sentenced to more than 1 month imprisonment with or without suspension.

"Civic degradation," an automatic penalty for any criminal sentence, is a permanent measure which deprives convicts of all of their civic rights (e.g., voting, seeking public office, testifying in court, etc.), under Articles 8 and 28 of the Penal Code.

Electoral penalties are provided for by the Electoral Code in Articles L5 and L6. L5 prescribes loss of rights for an unlimited time, L6 for a period of 5 years. Article L5 states that individuals must not be registered on electoral lists if sentenced (1) for a felony; (2) to an unsuspended prison term of more than 1 month for theft, fraud, breach of trust, theft committed by trustees of public funds, perjury, false affidavit, influence peddling, morals crimes, or private or bank forgery; and (3) to a prison term of more than 3 months without suspended sentence or more than 6 months with suspended sentence for any other offense.

This is a permanent curtailment; however, its application is linked to inclusion of the cited convictions in Bulletin 2. For suspended sentences, therefore, the convict regains the right to vote after the probationary period.

Article L6 provides that individuals must not be registered on electoral lists for a period of 5 years beginning from the date of final conviction if sentenced (1) for an offense mentioned in Article L5 if the straight prison term of less than 3 months is equal to or more than 1 month, or the suspended prison term of less than 6 months is equal to or greater than 3 months; and (2) for any offense subject to an unsuspended fine which exceeds a certain amount.

In this instance, the convict regains full rights as a citizen after 5 years--or sooner if a satisfactory probationary period results in removal of the conviction from Bulletin 2. Probation officers can assume responsibility for informing offenders of these legal provisions, since offenders often are unaware that the suspension of their voting rights is temporary, not permanent.

Article L420-8 of the Work Code prescribes that "electors are delegates of the salaried workers of both sexes over 16 years of age who have not been convicted under Articles L5 and L6 of the Electoral Code." Articles L433-3 and L513-1 of the Work Code contain the same provisions concerning election of members to the

company committee (composed of employee delegates), and to arbitration boards.

Loss of legal rights. These provisions pertain to personal, familial, and property rights of individuals. Article 29 of the Penal Code prescribes a general suspension: "Whosoever is sentenced to a corporal or degrading punishment will be in a state of legal interdiction for the duration of the penalty; a guardian and a deputy guardian will be appointed to manage and administer his property. . . ." It should be noted that this total interdiction is suspended when parole is granted. The property of the convict is then returned by the guardian, who must account for its management.

Article 42 of the Penal Code provides that the correctional tribunal may suspend all or part of some rights in certain cases particularly the right to vote in deliberations of the family council (concerning the interests of a minor), and the right to be guardian or trustee of children other than one's own.

Loss of professional privileges. This sometimes constitutes a considerable obstacle to the reclassification of convicts, especially regarding entry into professions.

Article 776 of the CPP lists curtailed professional privileges as well as the authorities who are to receive Bulletin 2. No listing of convictions, or of certain convictions, in Bulletin 2 is required in hiring, appointment, or professional matriculation files of Federal Government offices; military authorities; local public collectives; parapublic companies (electricity, gas, coal, railroads); and councils of the medical profession, professional bodies of the health occupations (e.g., dentist, midwife), and of other professions such as certified public accountant.

Similarly, the laws governing professions often mention the need to produce Bulletin 2--persons wishing to serve as crew members of a French vessel, for example, must not have been sentenced for certain offenses. It should be noted, however, that the law (decree 69-504 of May 30, 1969) permits the easing of these prohibitions by the minister in charge of the Merchant Marine after consultation with the sentencing judge. The scope of the prohibition extends to all types of professional navigation and applies notably to coastal fishing.

The Civil Aviation Code contains prohibitions for persons sentenced to prison or otherwise punished for offenses against honesty and morality. Special loss of privileges also exists for conviction of certain crimes, e.g., individuals found guilty of pandering are forbidden to manage or work in hotels, roominghouses, clubs, and dance halls as well as to operate liquor stores. The Public Health Code contains provisions for forbidding persons

convicted of narcotics violations to continue working in the job held when the offense was committed, usually employment in hotels, restaurants, and liquor stores.

In a more general sense, Article 43-2 of the Penal Code creates a substitute penalty. When persons guilty of offenses punishable by imprisonment knowingly use facilities available to them through a social or business activity, the court can forbid them to exercise that activity for a period of 5 years or more, except where elective mandates or union responsibilities are concerned.

The Commerce Code prohibits employment in a commercial profession in the case of persons sentenced to unsuspended prison terms for felony and to at least 3-month unsuspended prison terms for theft, fraud, breach of trust, receipt of stolen goods, morals crimes, forgery, fraudulent bankruptcy, and certain special fiscal or economic offenses. Employees of commerce or industry who are convicted for such offenses must stop work within 3 months of the final date of the decision. Although the automatic quality of this extremely general interdiction seems particularly severe, the law provides that the prohibition can be withdrawn or its duration limited.

Security measures. These measures are designed to protect society from potentially dangerous convicts. Some are health care measures (e.g., for drug addicts and alcoholics) intended to rehabilitate the offender. Others are more pertinent to this study in that they restrict the convict's rights.

This is the case for driver's license suspensions pronounced as a principal penalty for offenses involving a motor vehicle or as a substitute principal penalty for traffic violations. Similar measures include prohibition on driving (e.g., motorbikes), withdrawal of hunting licenses, and prohibition on possessing weapons.

Removing Prohibitions

A study of the police record reveals that certain losses of rights connected with citation in Bulletin 2 automatically terminate after a given period from the time of the sentence, e.g., 5 years for sentences pronounced under Articles 43-1 and 43-3 of the Penal Code (except when the sentence states otherwise), and the probationary period for a suspended sentence (since, except in the case of revocation, the sentence is declared void at the end of the period).

The law contains other provisions for lifting prohibition. Among them, restoration of preconviction status is general, and others are special.

Restoration of preconviction status. This erases the sentence and the prohibitions resulting from it, although indication of conviction remains in Bulletin 1. Legal restoration, provided for by Article 784 of the CPP, benefits convicted individuals who have not been convicted subsequently of felonies or misdemeanors. In general, it can be requested 5 years after expiration of the prison term (full release or parole) for felony sentences, 3 years for misdemeanors, and 1 year for minor infractions.

Special measures for lifting prohibitions. Article 775-1 of The CPP states that "the court pronouncing a judgment can expressly exclude its mention in Bulletin 2" The penal code provides that any person affected by a forfeiture or loss of privileges may ask the pronouncing court to lift them, in whole or in part. This applies to any type of loss experienced as an accessory measure, complementary penalty, security measure, or substitute principal penalty. The sole exception concerns sentences substituted for prison terms--since the guilty party benefits from this substitution, lifting or lightening it would defeat the purpose of punishing offenders.

Suspensions of driver's licenses may be pronounced as complementary sentences, principal sentences, or substitute sentences. Their lifting or mitigation is always possible in the first type or sentence, impossible in the second, and possible under certain circumstances in the third.

Conclusion

In conclusion, although it appears certain that these recent provisions are complex in both their legal and practical applications, they are part of a trend toward individualization of penal treatment. In this respect, they are indicative of legitimate progress.

Probation and Conditional Release: The Myth of Community Participation

By Yves Leveille, Michel Nicolas, and André Normandeau

Introduction

The theme of community participation in the corrections process in Canada seems to be a myth which too often provides practicing criminologists with easy justification for professional deficiencies and actual incompetence in the intelligent use of community resources. The practitioners defend themselves by claiming, sometimes justly, that modern citizens want nothing to do with the corrections system, especially concepts such as probation or conditional release, and that the burden of failure consequently must be borne by the citizenry. If this is the case, two myths exist instead of one: the myth of the practicing criminologist's willingness to appeal to the community, and the myth of the public's willingness to participate in a corrections venture. In simple terms, neither the practicing criminologist nor the public really wishes to collaborate, which "inconveniences" the criminologist as much as the citizen.

Public Opinion and Participation

Most of the reports issued during the past 10 years by the numerous committees and commissions of inquiry in the area of criminal justice have reached a conclusion which has become a cliché. These reports recommend the involvement of citizens and the community in probation, conditional release, and community residential centers, as well as in matters related to prisons and penitentiaries.

"Probation et liberations conditionnelles: Le mythe de la participation communautaire" (NCJ 56241 and 57238) originally appeared in Revue Internationale de Criminologie et de Police Technique, v. 31, n. 3:231-239, July-September 1978 (NCJ 56241); and v. 31, n. 4:343-352, October-December 1978 (NCJ 57238). (Revue Internationale de Criminologie et de Police Technique, Case postale 129, 1211 Geneva 4, Switzerland) Translated from the French by Kathleen Dell'Orto.

Is the ordinary citizen prepared to participate in the process of rehabilitating convicted criminals? According to opinion polls usually conducted for the committees or commissions of inquiry, the answer unfortunately is negative. It is common knowledge that the success of corrective measures is closely associated with the understanding and support of the public, but it is sad to find that the citizenry is not tolerant of returning a criminal to the community. Practicing criminologists have been deluding themselves in thinking that the attitude of the public has become more favorable to the rehabilitation of criminals. In this respect, polls showing that three out of four Canadians approve of capital punishment are significant.

General attitudes toward corrective measures. Polls in North America clearly indicate that the public considers modern society incapable of controlling crime effectively. The public is disappointed in the results the correctional system has achieved in areas such as probation, prisons, and conditional release. Yet the same public refuses to pay more taxes to improve the quality of correctional services.

Polls suggest that although the public is aware of the importance of returning the criminal to the community, it is not prepared to receive the criminal. Modern citizens feel ill at ease when they anticipate contact with an ex-convict. The problem is even more serious because this hesitation is more pronounced in the less educated and less socioeconomically prosperous groups which produce many criminals.

Public resistance to community-centered corrective measures is also evident in the fact that only one person in four favors wider use of probation, one in five expansion of conditional release, and one in three community residential centers. Is it necessary to change the system or the public? Both solutions seem to be correct--it is necessary to make the system more effective and change the attitude of the public so that citizens contribute to a more humane system.

The polls indicate that the public has very limited knowledge of the corrections system. Public attitudes often are based on prejudice rather than reality. Many criminologists have not taken their responsibility to inform the public as seriously as other public services have.

A problem of educating the public. To accomplish its mission, the correctional system should seek the support of the public without delay, explain its objectives and problems, take a realistic position as a public service agency, and obtain increased government financing to improve services.

If additional financing is to be obtained, it is advisable to keep in mind that the taxpayers have the right to know the facts regarding the expenditures for these services. The lack of interest of the public and legislators in supporting improved services is due, in part, to the chronic inability of corrections system administrators to justify the funds allocated and to emphasize the successes achieved. For example, it is typical to hear about conditional release only when there is a spectacular case of relapse into crime.

Financial support is not enough, however. The correctional system will not achieve its objectives unless citizens assume some responsibility for reintegrating the criminal into the community. By concentrating their interest on the criminal personality and individual personality modification in the past criminologists forgot to make the public aware of the social conditions partially responsible for criminal behavior. One need not be a radical criminologist to recognize the necessity of correcting socioeconomic inequality.

If Canadians are interested exclusively in criminals and neglect the socioeconomic environment, the correctional system will have little success. A society determined to reduce crime must wage war against the conditions that spawn criminal behavior. Practicing criminologists must confront the public with political perspectives that lie beyond immediate courses of action. The role of the community and of every citizen begins at the root of the problem.

Active Participation by Citizens

Efforts to reintegrate convicts into the community require not only the theoretical support of society, but also its active material assistance. Some criminologists currently are content with the moral support of the public, seeking only to make programs for probation, conditional release, or community residential centers acceptable to the public. However, citizens interested in the fate of prisoners or ex-convicts could be given the opportunity to work with the correctional system.

One hypothesis holds that the population is willing to change. Despite the belief that people are content with the status quo, it has been demonstrated that members of the community constantly alter their lifestyles. The desire to change is often stifled by social forces which are so compelling that withdrawal is the only response possible, resulting in apathy, indifference, and maintenance of the status quo. This statement also applies to professional criminologists who are sorely tempted to retreat into their papers and evaluations after unpleasant participation experiences.

The success of corrective measures is associated with the tripartite participation of the ex-convict, the professional criminologist, and the citizen volunteer. The participation implies individual but mutually supportive efforts by the three parties, which increases the chances of success tenfold.

Who participates? Citizen participation is based on the principle of volunteering. Examples of citizens who can participate include the friend of a prisoner or a probationer, a family member or even an ex-convict, and active community members such as bank managers, grocers, other neighborhood trades people, housewives, and students.

A number of questions about the two indispensable factors, recruitment and selection, come to mind. Recruitment is the most difficult stage, requiring decentralization of the probation office and, especially, the conditional release office. It is also essential that practicing criminologists become familiar with active persons and groups in the region, get to know bank managers and trades people, and attend reunions or club meetings. Articles on participation programs in regional or local newspapers also could inspire citizen interest.

Every volunteer certainly cannot be accepted. Suitable individuals must be screened on the basis of information regarding their professions, education, leisure activities, interests, related experiences, and family histories. Interviews and, in some cases, psychological tests also must be considered.

Initial selection must be followed by training of the chosen individuals. Such training does not involve formal sociology, psychology, or criminology courses, but rather consists of an introduction (e.g., over a weekend) to the program's objectives, participants' roles, and available community resources, followed by discussions of problems and concrete cases. The training period could take the place of a second selection process.

The problem of who participates is far from resolved, however. This is particularly true because the criminologist and the released prisoner or probationer must participate. In any case, it is necessary to select probationers and released prisoners who are likely to benefit from the citizen's presence.

How do citizens participate? Citizens do not predict and evaluate. Their role is closely related to the needs of the probationer or ex-convict. In some cases, young probationers need role models, a friend with common interests, or concrete assistance in finding a job, leisure activities outside clubs and taverns, or maintaining a family budget. Finally, the citizen volunteer can aid the ex-convict or probationer in overcoming certain emotional problems,

e.g., anguish or matrimonial conflicts. The professional criminologist must be able to evaluate the needs of the ex-convict and the capabilities of the citizen to arrive at an effective match. A citizen should not be permitted to deal with several probationers or former prisoners at the same time.

Certain initial steps are probably necessary, for example, a preliminary meeting between the criminologist and the released prisoner or probationer, and then a meeting with the citizen. Agreement is reached in the beginning on a certain number of obligatory meetings between the citizen and probationer or released prisoner. This is one example of a participation project structure.

Participation is essential but not without risk, especially for the probation or release officer. Will the individuals who transmit scientific knowledge be the ones to handle difficult cases? Will they be specialists in criminological diagnostics? Will they become the type of officials who are content to remain at their desk, receiving and evaluating appeals of probationers, released prisoners, and volunteers?

Recent Examples of Experiences in Community Participation

Criminologists are not alone in favoring broad community participation. The Minister of Social Affairs of Quebec, for example, has joined the movement by supporting citizen participation in the administrative councils of the health and social services establishment.

Does this reaction indicate a legitimate need or does it represent an administrative or professional failure? Have criminologists and social workers forced society to abandon its responsibility by seeking to center their efforts entirely on criminals? Is the term community participation used to hide the failure of the profession, at least in the correctional area?

Recent experiences in establishing halfway houses or community residential centers are relevant to the community's role in corrections.

The "Join In" community residential center. In the first case, the "Join In" community residential center of Granby, the Canadian Penitentiary Office (CPO) and the National Office for Conditional Release (NOCR) decided to establish a Community Corrections Center (CCC). Because of the imminent closing of that portion of Cowansville Penitentiary reserved for work-release prisoners, a place to continue the program was urgently needed. Since a shortage of workers existed in Granby and some industries were willing to hire convicts, it was decided to locate there.

A low-priced building was found to accommodate 30-day-release prisoners and NOCR personnel, and the regional directors of CPO and NOCR as well as the penitentiary director approved the location. The urban commission, the municipal council, the police, the manpower center, and representatives of industry then were approached to determine if there were objections to such a project in a well-to-do neighborhood.

The urban commission initially provided verbal agreement, but written refusal was submitted almost a month later. In the meantime, the mayor, the chief of police, and the manpower center director had agreed but the industrial commissioner, who was a former mayor, objected and contacted several members of the urban commission and the municipal council.

A municipal council meeting was held in which the councilors approved the proposal in principle and the mayor backed the project. This news spread rapidly, and a local citizen made statements in the newspaper the next day about mental deficiencies of some prisoners, the risk to children's security, and diminished property values. This individual formed a citizens' opposition group numbering 250 members which steadfastly declined the offer of an information meeting. The municipal council refused to establish a citizens' committee to find a location for a CCC, but the mayor exercised his privilege of creating an ad hoc committee under his direction.

A joint committee was then formed by the NOCR, the prisoners' committee, citizen volunteers, and classification officers to establish a CCC implementation strategy and to improve public awareness. Radio and television programs, contact meetings with prisoners in citizens' homes, and open houses at Cowansville Penitentiary were organized, but the 250 member opposition group did not respond to appeals for a meeting.

Publicity led to debate at the Provincial level. Political organizers became involved and sent a minister from Ottawa to discredit the project's initiators. Since it had become apparent that a CCC would not be opened in Granby, a group of citizens attempted to establish a community residential center.

Several months later the mayor's ad hoc committee recommended creation of a nonprofit corporation to establish and operate a rehabilitation project, now called a community residential center instead of a CCC. The first released prisoner entered "Join In" on July 16, 1974. When the opposition citizens' group learned of the center, however, it exerted pressure to prevent issuance of an occupancy permit. The municipal council rejected the corporation's request despite positive recommendations of the urban commission and legal counsel.

The matter was taken to court, and the judge ruled in favor of "Join In." The municipal council resolution was annulled and the town was ordered to issue an occupancy permit as requested.

The lesson of Granby is that the community is not prepared to accept ex-offenders in its midst, even if people agree in principle, and that in such cases governmental agencies must retreat under political pressure. A nonprofit organization in the community, on the other hand, has more freedom of action and can seek redress in court. The struggle must be continued, even against a segment of the community, if zoning restrictions permit establishment of a center in a given neighborhood.

The Katimavik Citizens' Committee. A similar situation occurred when the Katimavik citizens' committee, Chicoutimi, attempted to establish a community residential center. A suitable location was found--an elementary school--and a purchase agreement was signed. Local residents then were contacted door-to-door to adjust their thinking to the presence of ex-convicts in their immediate area. While the interviews were being conducted, a petition was circulated to have the town of Jonquiere purchase the school as a recreation center. The public meeting to discuss the interview results was disrupted by young people demonstrating in favor of the recreation center, and the information on the residential center project scarcely could be presented. The majority of the population agreed with the humanitarian aims of the project, but expressed frustration about the neighborhood recreation situation. Shortly afterward, the school was sold for a recreation center. The project organizers concluded that efforts to make the public responsive create new needs which basically are no more than fear reactions to ex-convicts. Accordingly, public consultations have been abandoned in favor of the results of polls.

The "New World House." A different approach was adopted in the third case, the "New World House" of Quebec. An attempt was made to stimulate Rosemont College students' awareness of the problems of ex-convicts through courses in social psychology, social apprenticeship, and industrial psychology. The students were primarily neighborhood residents employed in various businesses and industries.

Several members of the administrative council who lived in the Rosemont area served as an indirect source of action and influence. Such personalities and their backgrounds, the education program, and progressive sensitivity to the aims of the project subdued resistance and gave key members of the neighborhood a sense of security.

The policy of quiet action seemed to be the best method of dealing with the general public. The public did not learn of the existence of the halfway house until 6 months after its establishment and probably was reassured after that interval because the daily lives of the citizens had not been altered or endangered by the halfway house residents.

The site was chosen because the Rosemont population, which represented the socioeconomic class closest to the norm, was in a constant state of transformation and appeared to be aware of the potential for human change. A residential area also zoned for commercial purposes was selected because changes in it were pronounced and occurred frequently, and integration difficulties appeared surmountable.

Concluding Remarks

The common feature of the three experiences is that the citizen is not prepared to accept the ex-offender's immediate presence. Establishment of centers without fanfare seems to be the most effective solution for creation of halfway houses. It is clear that the community residential center remains the central element in establishing a balanced relationship between the community and the probationer or the conditionally released prisoner.

Yet citizens are concerned only when they feel threatened, offenders because of self-interest, and professionals because of the failure of traditional treatment forms.

Quebec has yet to satisfy dissenting citizens and to convince the population that centers are valuable to offenders and that conditional release or probation affords greater protection than incarceration. A social imperative becomes apparent here: the citizen who does not break the law is rewarded when the criminal is branded as unfit to be a member of the human race--this is the source of the fear of the person who has "done time" and the certainty that every prisoner is uncontrollably driven.

The prejudice is manifested much more subtly in criminologists. Instead of rejecting offenders, they refuse to recognize environments conducive to crime and even to accept the reality of organized crime, they do not really believe that certain criminals are violent, and they minimize the consequences of certain acts for the victims.

Treatment in Medium- and Minimum-Security Institutions and in the Community

By Armida Bergamini Miotto

Introduction

There was a time when helping and caring for the sick, the miserable, and the poor meant keeping them in institutions. Several religious orders were created for this purpose, and many people failed to realize that even the best of these institutions was an ineffective substitute for the family.

Concepts for treating juvenile delinquents have changed and advanced during the last past century, however, and rehabilitation of youth has focused on psychiatric help and educational programs. Although rich and developed countries began experimenting with psychiatric treatment for individual delinquents during this period, the individual still remained in prison, often a maximum security facility, while the treatment was being administered. And despite the new treatment and rehabilitation methods, the rate of delinquency did not decrease in those countries, even rose in some nations.

Such psychiatric treatment methods nevertheless have contributed to the development of approaches for preventing and treating delinquency. The fact that many people are lonely--a characteristic of the times, especially in large cities--has fostered a better understanding of the loneliness in institutions such as hospitals, prisons, and homes for the elderly. Modern transportation and communications have simplified contact between individuals separated by great distances, and the intensity of life has increased to the extent that what people experience in a month today took a year in earlier times.

"Tratamiento en Regimen Semi-abierto, en Regimen Abierto y en la Comunidad" (NCJ 56264) originally appeared in Sistemas de Tratamiento y Capacitación Penitenciarios (Systems of Treatment and Personnel Training in Penitentiaries), 1976, p. 135-157 (Instituto Latinoamericano de las Naciones Unidas para la Prevención del Delito y el Tratamiento del Delincuente, Apartado postal No. 10338, San José, Costa Rica) Translated from the Spanish by Mario Galarraga.

Treatment of Prison Inmates

Accordingly, logic dictates that the loneliness of a convict in prison be alleviated. Inmates should be permitted more direct contact with their families and their communities. The penal laws which deprive inmates of such freedoms should be modified.

As a general rule, it is believed that most offenders are normal people and consequently should be treated as such. Biopsychological treatment ignores the basic premise that an inmate is a human being. This kind of treatment does not motivate the offender to make an effort to avoid further wrongdoing.

The concept of resocialization is based on the belief that society and social well-being are not ends in themselves or ultimate goals, but that society is an instrumental goal for human beings. People need to live in society and be integrated into it, and for this reason they not only should be adapted to it (a biological concept), but also should be adjusted to it (a social concept). Most inmates are as relatively adjusted to society as the general public. But when they are removed from society and placed in seclusion, their adjustment to society is disturbed and hampered.

Need for Penal Reform

Penal institutions are categorized as maximum-, medium-, or minimum-security facilities. Maximum-security prisons feature full security with a coercive approach to internal discipline. Medium-security prisons are characterized by full security or semisecurity and disciplinary approaches that are not entirely coercive, but based partly on persuasion. Minimum-security institutions are nonsecure, are not structured to prevent escape, and are characterized by noncoercive persuasive approaches to discipline.

This serves to introduce the matter of minimum- and medium-security penal institutions and residence in the community. Preliminary observations lead to the conclusion that maximum-security institutions are inappropriate for 70 percent of inmates in prisons, and that only a little more than half of the remaining 30 percent require maximum security.

Yet, in Latin American countries the only penal measures available to the criminal justice system are fines or incarceration. Brazil is in the process of modifying some articles of its General Penal Code to allow convicts to pay for their crimes while living in their communities. It is also passing legislation that will permit convicts eligible for community release programs to spend more time away from prison and in the community.

These reforms will make it possible for inmates to attend school, work outside the prison, and receive treatment in centers for alcoholics when necessary.

With respect to treatment in medium- and minimum-security institutions, it should be noted that this type of treatment is no substitute for punishment. Instead, it should be used as part of the function of punishment. Inmates who have served their sentences should be treated as persons with all the rights and obligations of normal citizens.

Inmates should be given a thorough physical and mental examination at the time of release from an institution. If psychological disturbances are detected, they can be treated. It is reemphasized, however, that this treatment is no substitute for punishment.

When the court sentences the offender, it should base the kind of sentence and type of institution on the needs of the offender. Inmates condemned to a maximum-security prison should be allowed to spend some of their sentence in a medium-security institution. Then, as they progress toward the end of their sentence, they spend some time in a minimum-security facility.

The characteristics of treatment in medium-security and minimum-security institutions are described in the following sections.

Medium-Security Facilities

Institutions of this type are generally located in rural areas or in suburban areas outside the inner city. They usually include facilities for cultural activities, and should be surrounded by walls with adequate land for work and recreation in the open air. An area also should be set aside for inmates and their visitors (parents, spouse, children, etc.).

These institutions should have a medical department with dental facilities. The daily schedules should be sufficiently flexible to encourage inmates initiative, imagination, and dependability. Work, which is to be viewed as a right and an obligation, should be performed on a salary basis. An appropriate room should be designated for the visits of lawyers and other judicial personnel. If this treatment is to be efficient, the capacity of the institution must be limited to 500 inmates.

Minimum-Security Facilities

Institutions in this category do not have physical barriers to obstruct the escape of prisoners. Inmates are expected to have a sense of responsibility and to be able to follow institutional rules and norms without coercion. A climate of trust should permeate these types of institutions.

Although the community can serve as a major resource for work opportunities for inmates in open prisons, the institution should

have enough land for agricultural and industrial operations. It also should maintain educational facilities. Medical and dental services can be obtained in the community, and religious and judicial services and assistance should be conveniently available.

The minimum-security facility functions best with no more than 100 inmates. Its success is demonstrated by the low level of recidivism rates among former inmates.

Permanent Residency of Offenders in the Community

The permanency of inmates' residence in the community can be established when certain forms of punishment are adopted without such extreme devices as incarceration. This type of situation also can occur when an inmate serves the final portion of the sentence in the community. In both cases, the individual must live a normal life and adhere to the conditions and restrictions imposed by the law. Inmate conduct must be supervised, of course, by the corrections authorities. These authorities also should help the inmates locate employment and living quarters, and assist and support them in their effort to readjust to society.

The community also bears a responsibility for offenders. It can help supervise them, but only in an unofficial manner. A judge alone has the right to recommend discipline or the use of coercive measures against offenders.

Specific Recommendations

I view convicts as relatively normal and relatively well-adjusted individuals, just like the rest of the population. For that reason, not all of them should be subjected to extensive personality testing and psychoanalysis. Instead, they should be encouraged to accept responsibility for their crimes. In addition, offenders have rights, obligations, and responsibilities. Their punishment and treatment following conviction for behavior should have a judicial basis.

Only a small number of offenders need to be, and should be, sentenced to maximum-security prisons. The types of punishment which permit offenders to spend a large amount of time in the community and to interact with its residents (social coexistence) to stimulate their senses of responsibility should be used to the greatest extent. Experience has shown that recidivism is low for offenders after release from a minimum-security institution.

Since the objective of punishment is to prevent further crime, the types of penalties most often used should be those most conducive to achieving this objective.

Although the involvement of the community in accepting and working with offenders is indispensable, guidelines for such involvement should be established and caution must be exercised. Community participation should not be confused with community interference.

The penal code should be revised to allow more inmate interaction with the community for work, study, religious services, and family visitations. In Brazil, revision of one section of the General Penal Code could accomplish this purpose easily.

Offenders who are not deemed responsible enough for minimum-security prisons, or whose behavior precludes their placement in such institutions, must be assigned, at least temporarily, to maximum security prisons. The possibility of a transfer to a medium-security or minimum-security facility should be used to motivate them. They should be sent to facilities close to their homes so they can maintain contact with their families and suffer less disruption of social adjustment.

It must be emphasized that the community will not be amenable immediately to the idea of minimum-security prisons and that the process of altering citizens' attitudes will be long and difficult. Correctional personnel and other authorities will need patience, ability, and perseverance to overcome this obstacle.

Part IV

Law and Law Enforcement

The Public as Police Officer—Help or Hindrance

Editor's Note: This is a summary of two articles in an anthology about various aspects of law enforcement.

PART I.

THE POLICE PRACTITIONER (NCJ 56464)

By Waldemar Burghard

Unofficial citizen assistance to the police is not as new as recent terrorism-related events might seem to indicate. It actually has been a longtime factor, particularly with respect to the pursuit of criminals. The rules governing the police in such pursuits serves as a sort of buffer zone between the necessity of police action on one side and the basic right to freedom of thought and information on the other.

The Press

The press is the most effective medium for publicizing pursuit of criminals, but it should be used only when other measures fail. In every case, public interest in effective criminal prosecution must be weighed carefully against the rights of the wanted individual or of other persons concerned. Specific factors to be considered are the general preventive effect of rapid case resolution, the danger of further crimes if apprehension possibilities are not exhausted, the danger of the offenders' being warned, the risk of suggesting imitation of criminals, and potential damage to the reputation of affected persons. Endangering the rights of the pursued and of bystanders and the crime-generating effects of publicizing spectacular offenses are possible reasons for limiting public disclosure of information regarding pursuit of criminals.

"Kommissar Öffentlichkeit--Hilfe oder Hindernis?" (NCJ 56464, 56465) originally appeared in Presse und Polizei (Press and Police, NCJ 56461), Eighth Symposium of the Police Union, March 30-31, 1978, p. 31-34 for Part I, p. 35-37 for Part II (Deutsche Polizei GmbH, Zweigniederlassung Berlin, Genthiner Strasse 38, 1000 Berlin 30, West Germany) Translated from the German by Kathleen Dell'Orto.

Problems in Releasing Information

Four overlapping problems must be kept in mind by officials responsible for pursuit: imitation of spectacular cases resulting from publicity, stimulation of certain offender groups by publicity, use by some criminals of publicity given to other offenders, and commission of crimes by offenders merely for propaganda purposes. In this regard, the point of contention is whether the police should suppress news or fully inform the public in hopes of apprehending offenders. Agreements are often made between police and journalists on the basis of the journalists' argument that they must be briefed by the authorities in order to perform their information function in a democracy. But the situation is difficult in certain spectacular cases because of the competitive nature of the media.

When human lives are in danger or when publication of details could enable offenders to avoid arrest, cause the loss of important leads, or even eliminate witnesses, the police should not publicize their actions. But the position of the police deteriorates the longer the restrictive information policy is maintained. The police must accept journalistic criticism and can only hope their critics are fair and knowledgeable.

The question arises whether the police should intentionally release incorrect information as a tactical device to prevent fugitives from learning too much about the scope of police activities. Such action is permissible when participating journalists are familiar with all aspects of the case and cooperate willingly. At times "doctoring" information by maintaining silence about certain facts is also necessary because the police cannot afford to disclose to journalists the clever technical methods they use to solve cases.

On the other hand, it is a mistake to believe that the police can conduct an effective dragnet without help from the citizenry. In the course of police actions, innocent bystanders inevitably will be confused with fugitives and be exposed to personal inconvenience; however, this cannot be avoided and perhaps should be included among the obligations citizens must accept for the common good, along with the obligation to observe possible criminal activity in the immediate surroundings.

Finally, one of the most difficult problems the police face in making public their pursuit of criminals is sorting out the relevant tips from the false leads. Although so-called hot tips frequently do not provide the most enlightening information, the police must learn to accept this and not be discouraged from launching search actions with public assistance.

The police basically cannot do without the help of the public and the media. Although fear of increasing use of news blackouts has been voiced recently, and although the police sometimes may find it simpler to work without pressure from the public, police dependence on the public makes the danger of excessive information suppression highly unlikely.

PART II.

THE MEDIA PRACTITIONER (NCJ 56465)

by Horst Schattle

The police in a democratic society must be constantly aware of the public. A modern democracy cannot function without the support of the public, and in a populous democracy the public can be reached only by the media. Article 5 of the German Federal Republic's Constitution implies not only a formal guarantee of freedom of thought and information, but also an obligation of Government agencies to provide information to the media and consequently to the public. This obligation applies to the police even though they may disagree with it--the public cannot be viewed as a hindrance to police work.

Informing the Public

The government clearly cannot inform the public in certain cases because of overriding public interests, but these "overriding interests" must be examined very carefully; glib references to endangered citizens' rights or democracy are not enough. Furthermore, news blackouts are not practicable--especially since terrorism involves so many countries whose newspapers are accessible throughout Europe--and are acceptable only on a temporary basis despite the circumstances.

The government must inform the public eventually, inasmuch as the media alone can fulfill the necessary informational and critical functions. In the Hanns Martin Schleyer kidnaping case, information was withheld for 7 weeks in the interest of freeing Schleyer, capturing the kidnapers, and keeping the prisoners behind bars whose release the terrorists demanded. Citizens were given no information, although in many cases journalists questioned why police requested that they refrain from printing news of certain events. The terrorists, on the other hand, were determined to obtain release of certain prisoners to humiliate the government, and to appeal to public sympathy by inducing repressive measures. The government's decision to withhold details of the kidnaping was justified since terrorists rely heavily on publicity. As events proved, however, it was a dangerous strategy which could lead to an escalation of terrorism.

Relationship of Police and Press

The general distrust of journalists by the Government overlooks both the role they play in a democracy and the existing ground rules for cooperation between journalists and Government agencies--sensational journalism to sell newspapers is not as widespread or risky as some suggest. All journalists will withhold information from the public with reasonable justification, although they must violate confidentiality if there is evidence of police misuse of the information. It is questionable however, for the authorities to make journalists party to untruths used as a ploy to apprehend criminals. In general, information restrictions must remain the exception if the concept of free press is to be maintained.

Receiving information on police actions before publication is allowed enables journalists to perform essential preparatory functions such as analyzing information prior to publication, drafting commentary pending information release, and monitoring whether the ostensible conditions for news restrictions still exist. But even in carrying out functions, basic confidential information on police or executive measures is essential to responsible journalistic assessment of rumors and speculation.

A news blackout like that used in the Schleyer kidnaping can have a paralyzing effect on the formation of public opinion in areas where such control is not needed. The result is an extremely one-sided view of events: in the Schleyer case, the concessions made by the police in an effort to save the victim's life were not revealed. Uncertain information thus prevents journalistic expression of divergent opinions.

The police-media relationship is based on trust, making possible rules which permit both to function with maximum efficiency. On the other hand, the roles must remain separate since use of the media as an agent of the police would compromise media credibility. In a democracy committed to the principle of freedom, freedom of information and thought are not only concepts on which democratic society is based, but also concepts with which the society can be defended.

Outlawing Terrorism

By S. Ginossar

One of the main driving forces of man is fear and its paralyzing effects have been used for both offensive and defensive purposes. As the French political philosopher and jurist Montesquieu recognized, fear is the guiding principle of despotic rule. In the modern world, however, organized terrorism on a broad scale has become the instrument for undermining the authority of established government.

Although the origins of terrorism can be traced to anarchism, the 19th-century anarchists, repelled by organization in every form, were incapable of banding together even for the sake of concerted action. Modern terrorists, having overcome such qualms, have evolved into closely knit, highly efficient groups which, despite often divergent political aims, cooperate and interact on a worldwide scale.

Failure of International Antiterrorism Initiatives

For all that has been written and said about terrorism, for all the international conferences, and for all the resolutions, treaties, and statutes adopted, signed, and enacted in recent decades, the disease of terrorism continues unabated and is approaching epidemic proportion.

The failure of various international conventions to prevent terrorism is due, in the first place, to their reluctance to confront the phenomenon on the proper level. It is futile to fight international crime within a narrow framework of national responsibility. It is largely a symbolic gesture that nations adhering

"Outlawing Terrorism" (NCJ 55407) originally appeared in Israel Law Review, v. 13, n. 2:150-159 (Israel Law Review, c/o Hebrew University, Faculty of Law, P.O. Box 24100, Mount Scopus, Jerusalem, Israel) Summarized by K. B. Leser.

to conventions against terrorism have pledged to make such activities punishable under local laws. Indeed, the laws of virtually every civilized country already make ample provision to the effect.

Universality of Terrorism

The true dimension of terrorism, and the only one which must be considered, is its universality. Only by dealing with it as a crime against humanity will it be possible to meet terrorism's worldwide challenge. The first consequence of the proposition of universality is that it relieves a nation of the burden of weighing the degree of unlawfulness of a terrorist act. If the hijacking of civilian aircraft, for example, did not amount to more than a violation of the law of war, there conceivably might be some room to consider such factors as compulsion or obedience to a superior's orders. But what circumstance can mitigate the responsibility of the perpetrator of such a diabolical crime as hijacking?

One aspect that has been widely stressed in mitigating criminal responsibility is a terrorist's avowed political motivation. It is commonly held that political crimes deserve some measure of leniency. Accordingly, they are tried by jury, even in countries where the jury system does not apply to other crimes, and they are excluded from the scope of extradition and from the operations of Interpol. The attitude toward terrorists as political operatives in fact has been so indulgent that many common criminals have endeavored to benefit from it by disguising their misdeeds as political in intent.

However, far from mitigating the odiousness of terrorism, the political element only serves to aggravate it all the more. Even if society were to grant the master of genocide, Adolf Hitler, and his followers a high degree of "good faith" and sincerity in their desire to purify Germany and the rest of Europe by ridding them of the "evil" influence of the Jews, Slavs, Gypsies, and other inferior races, their political belief only makes the Holocaust more sinister and the application of sanctions more urgent.

Antiterrorism Proposals

Only the most radical sanctions are commensurate with the enormity of the crime. If terrorism is to be eradicated, it is necessary to eliminate all of its attendant agents, both physical and moral. Again, the means to this end lies in the concept of universality.

If terrorism is correctly described as a form of genocide, the apprehension and suppression of its perpetrators are not only

within the purview of national governments, but also become a duty they owe to the family of nations. Thus, under the concept of universality, the initiation of proceedings ceases to be a matter within the discretion of the prosecutor of any specific nation. Any qualified court of justice before which a charge of terrorism is brought will have both the competence and the duty to try the accused, with the only possible alternative being extradition, if requested by some other nation.

This proposal calls for the reversal of the well-known and accepted approach to dealing with transnational criminals: the nation on whose territory the terrorists has been apprehended could either exercise the power of repression or deliver the accused to another country for trial and punishment. In neither case would the criminal be allowed to go unpunished.

An essential element of this approach is that the sentence imposed should be executed fully because--in the case of an enemy of humanity--the right to punish is a duty of the entire world. Accordingly, the laws of amnesty cannot apply, release on parole is out of the question, and even the power of pardon cannot be exercised.

Although proposals for a world court modeled on the experience gained in the proceedings at Nuremberg have received much support but little action, such a transnational judiciary would be hampered by two factors. First, the current world climate, as gauged from the radicalism of much of the United Nations, probably would result in terrorist representation among the judges. Second, the structure and constituency of the court probably would lead to excessively lengthy trials and ineffective sanctions.

Although a world court may be established in the future, local national courts must fill the void for the moment and assume responsibility for the strict prosecution and punishment of terrorists caught within their borders. They must do so even if no terrorist act has been perpetrated within their country or against their citizens living or traveling abroad. National courts must be concerned less with their own sovereignty and that of other nations, and more with their duty to protect the world from the activities of a few violent individuals or groups determined to force their views on society or annihilate a segment of that society.

Despite questions of apprehension and prosecution, the crucial issue of just punishment remains. As society deviates more and more from its original penal goals of revenge, expiation, retribution, and deterrence, it becomes more deplorable that terrorism's growth requires society to reverse this humanitarian trend and seek out sanctions on a par with the despicable nature of the terrorist act. The survival of society demands that those

found committing acts of terrorism be placed in a position where they no longer will be able to repeat their offenses.

The most radical method of incapacitation, of course, is the death penalty--it is instantaneous, irrevocable, and its finality puts an end to the infernal game of alternating capture and release. On the other hand, abhorrence of the spilling of blood and of restoring cruel physical punishments had led many progressive countries to abolish capital punishment or to restrict its use to exceptional cases. In those nations, life imprisonment has replaced the death penalty and, when imposed with no chance for release, represents a commendable alternative.

Finally, it could be argued that, from the lawyer's point of view, the fight against terrorism involves the practice of supracriminal law, a distinctive and autonomous discipline which must exceed the limitations of orthodox criminal law in order to repress terrorism successfully. Since the goal of supracriminal prosecutions is the complete annihilation of terrorists, the mandatory sanctions--the death penalty or life imprisonment--require that such prosecutions be restricted to courts empowered by national law to impose such severe punishments.

Basic Elements of the German Federal Republic's Data Protection Law

Editor's note: This pamphlet was published by the West German Ministry of the Interior to explain the provisions of the Federal Data Protection Law of 1977. An English translation (NCJ 57202) was furnished by Dr. Auernhammer of the Ministry of the Interior.

Introduction

Data protection has remained the exception to the rule in industrial regulations despite the need to protect citizens from abuses in the processing, storage, and use of personal information. In the German Federal Republic, separate State laws are limited to data processing in the State government. The Federal Data Protection Law of 1977 provides general guidelines which can be supplemented with special Federal regulations. It protects the citizen's privacy by safeguarding personal data. Data stored for ready accessibility must be protected with special care, especially information in data files, which is defined by law as certain traditional card indexes and electronic storage units.

Areas of Application

The law applies to the business sector as well as to Federal agencies.

In the public sector, the law pertains to processing of personal data by public authorities or agencies of the Federal Government as well as of the States, communities, and associations of communities when they are executing Federal law and when data protection is not regulated by State law.

In the private sector, the law applies to internal processing of personal data, e.g., by mail order houses, banks, and insurance companies. It also applies to business-related processing of personal

Bundesdatenschutzgesetz (NCJ 53219) April 1977, 35 p. (Bundesminister des Innern, Rheindorfer Strasse 198, Bonn, West Germany) Summarized by Kathleen Dell'Orto.

data to be sold, e.g., information and address services; the anonymous transfer of data, e.g., market and public opinion institutes; and at the request of third parties, e.g., data service centers.

Prohibitions of and Reservations on the Use of Data

The Federal Data Protection Law provides new legal parameters for processing personal data. Heretofore only a few special regulations governed the processing of personal data, e.g., jeopardizing of trade secrets and credit information. Now, however, processing such data is prohibited except when permitted by the Federal Data Protection Law or when agreed to by the affected party.

The Federal Data Protection Law contains provisions on the permissibility of storage and alteration, as well as on dissemination and erasure of personal data, which clearly outline pertinent citizens' rights.

Citizens' Rights

The significance of personal data usually lies in the context in which the data are processed and stored. For this reason affected citizens must decide whether processing of their data violates interests in need of protection, i.e., citizens have the right to determine how their own data are to be used.

Access to information. All citizens have the right to demand the particulars of data stored about them. They can find out where the data are stored from the public authorities, who are required to publish information on the kind and purpose of data being stored. All other data processing centers are obligated to inform affected parties of the data storage if they have not been otherwise notified. Legal access extends to all personal data about citizens which is on file.

Providing information can entail considerable expense if several data files must be searched. Legislators therefore have made the provision of information in the public sector subject to fees. For private business, the law permits a charge for direct costs incurred. The amount of the fee charged by Federal agencies is set forth in a Federal regulation. Under no circumstances is the fee intended to deter the requestor, and information is free when there are indications that data have been inappropriately stored, e.g., the citizen receives a notice containing false information.

The right to correction. The law clearly states that personal data must be corrected when they are inaccurate. This is especially important because computerized data processing permits the combining of personal data from many sources to create an individual profile. Unless it is altered, information obtained in this manner can assume a completely different meaning, since it is taken out of context. Citizens also can demand correction of such cases of data distortion.

The right to prohibit release of data. The prohibition of personal data release has been specifically included in the Federal Data Protection Law. Data which are no longer required are identified as nonreleasable and may only be used under certain circumstances specified in the law. Release of personal data also may be prohibited at the request of the affected parties if they question data accuracy or if accuracy cannot be verified. Personal data stored by information or address services cannot be released after 5 years.

The right to erasure data. Erasure of data can violate interests of the affected parties. For that reason it is seldom ordered by the Government except in cases where storage of the data was inappropriate from the outset. Citizens can demand that data be erased when no longer required or, in certain cases, after 5 years. Data pertaining to health, criminal records, disorderly conduct, and religious or political views must be erased when the affected parties contest their accuracy and the agency storing them cannot verify their accuracy.

Data protection regulatory institutions. Citizens who encounter difficulty exercising their rights or who believe their rights have been violated by the processing of their personal data can appeal to the responsible data protection regulatory agency. If the violation was committed by Federal authorities, the affected party can apply to the Federal Commissioner for Data Protection, who will investigate the complaint and render assistance within the framework of his legal authority. This official is appointed under the law, and his duties and legal status are outlined in detail. In addition, every private data processing firm with more than five employees is required to designate a data protection officer.

The States will also establish data protection regulatory agencies to monitor data protection in the public sector. Even if the violation is perpetrated by a private institution, the affected party still can apply to the responsible regulatory agency. The States decide which authorities are to assume regulatory responsibility, and duties and responsibilities of the regulatory agencies are defined in the Federal Data Protection Law.

Individuals and corporate bodies in the private sector are regulated by State authorities which can investigate only when an affected citizen registers a complaint. The regulatory authorities are empowered to investigate by entering business offices and examining business documents, personal data, and computer programs. The businesses under investigation must supply the regulatory authorities with necessary information.

Other private computer businesses, e.g., information services, public opinion institutes, or computer centers which process large quantities of personal data, are controlled even more closely. In such cases, the regulatory authorities can take action either because of complaints or on their own initiative.

Obligations of Data Processing Organizations

All data processing personnel and organizations subject to the law are obligated to operate strictly in accordance with the provisions of the Federal Data Protection Law or other regulations. If there are no applicable data processing regulations, affected parties must give their consent to the intended form of data processing. Even if data are sought by a Federal agency, affected parties must be informed of the pertinent regulations or advised that supplying information is voluntary.

Individuals or firms processing data in the business sector for their own purposes may store these data only for specific contractually defined purposes, for situations in which confidentiality is required by contract, or for authorized purposes when there is no reason to assume that individual interests requiring protection will be violated. The data processing agencies and businesses are also obligated to maintain data security through technical and organizational measures.

Data Protection in Mass Media

Personal data processed by press, radio, or film organizations or their auxiliaries for their own journalistic purposes are not covered by the law; such data must be protected by laws that apply specifically to the media.

Further Provisions

The Federal Data Protection Law provides for fines and penalties--1 year imprisonment or fines may be imposed on anyone who disseminates, alters, or retrieves protected personal data or takes such data from a closed data file without authorization. These acts can be investigated only at the request of the affected party.

Violation of certain regulations can be considered a criminal action with violators liable to fines of up to DM50,000.

Special Federal regulations for personal data stored in data files have precedence over the provisions of the Federal Data Protection Law, which is intended to cover cases not governed by other laws.

Most of the law's provisions took effect on January 1, 1978. The Commissioner for data protection and the data protection officers in private firms were to be appointed by July 1, 1977. The requirement that data processing firms institute technical and organizational data security measures became effective on January 1, 1979.

Supplement to the Federal Data Protection Law's Provisions on Technical and Organizational Measures

For the automated processing of personal data, measures geared to the particular type of personal data to be protected must be taken to insure compliance with the law's provisions. These provisions include:

- preventing unauthorized individuals from gaining access to data processing facilities which process personal data (admission control);
- preventing those involved in processing personal data from removing storage materials (leakage control);
- preventing unauthorized input into the memory as well as unauthorized examination, alteration, or erasure of stored personal data (memory control);
- preventing the use by unauthorized persons of data processing systems into or from which personal data are automatically disseminated (user control);
- guaranteeing that persons authorized to use a data processing system can gain access to information with automatic devices only if authorized to do so (access control);
- guaranteeing that it is possible to determine which agencies can receive personal data by means of automated equipment (dissemination control);
- guaranteeing that it is possible to determine afterwards which personal data were entered into the system, when they were entered, and by whom (input control);

- guaranteeing that processing of personal data on request is accomplished only in accordance with the instructions of the requesting party (control of processing on behalf of other parties);
- guaranteeing that, in the dissemination of personal data or transport of data media, the data cannot be read, altered, or erased without authorization (transport control); and
- structuring the internal agency or organization to insure that it satisfies the requirements for data protection (organization control).

Summary of Excerpts From Addresses of the Parliamentary Secretary,
Mr. Gerhart Rudolf Baum

To the Bundestag, lower house of the Federal Legislature, on June 10, 1976. The new Data Protection Law extends to all areas, including private ones, in need of protection. To date it is the most comprehensive law of its type anywhere. It achieves the vital goal of protecting citizens' privacy without placing strictures on data processing in government and the business sector.

Additional special laws will be required for specific fields, and data protection guidelines for the European Economic Community's statistical network must be pursued to eliminate the danger of competitive distortions resulting from variance in data protection laws.

To the Bundesrat, upper house of the Federal Legislature, on November 12, 1976. Certain points of the law should be clarified:

- In the public sector the law only applies at the Federal level, although the States are strongly encouraged to bring their individual statutes into conformance with the Federal law.
- The law requires that data transferred to foreign countries be afforded adequate protection in those countries.
- Although the law pays particular attention to sensitive data, it is impossible to follow the suggestion that every data transfer in public matters be authorized separately, since the number of transfers is too large.
- Only those regulations regarding publication and notification requirements--not the regulations on data protection in general--are not applicable in the area of confidentiality protection.

Summary of the Government's Reply to Inquiries From Several
Representatives of the Christian Democratic Union and the
Christian Socialist Union

The Government has always maintained that the Federal Data Protection Law is the first attempt to deal with a complex subject and that national and international discussion on effective data protection must continue. The question of what portion of the law will need revision can only be answered after practical results have been evaluated.

To insure that required technical and practical information will be supplied in time for discussion and for review of the feasibility of the security measures cited in the law's supplement, yearly reports summarizing the Government's experience will be furnished to the Bundestag, and information exchange with the States and the business sector will be encouraged.

Manually processed internal data are subject to the same protection from misuse as computerized data, but special measures such as those provided in the law's supplement are not necessary.

Finally, the exact costs of data protection measures cannot be estimated, as yet. Nevertheless, the opinion is frequently expressed that since many of the security measures would be implemented anyway to insure orderly data processing and to protect hardware, software, and the data, the costs of such measures should not be attributed solely to the Federal Data Protection Law.

Police Organizational and Role Conflicts—Results of an Opinion Poll

By Peter Waldmann

Introduction

This article is based on the assumption that both the system under which the police force is organized and the role of the individual police officer are characterized by a number of structural contradictions and tensions.

The results of a poll of uniformed patrol officers and members of the detective force are discussed, and an attempt is made to determine how the police officers view the contradictions and tensions. The opinion poll, which was conducted in 1974 under the direction of Professors C. Helfer and W. Siebel of the Sociological Institute of Saarland, constitutes part of a study, called "Job Image of the Police," of the professional image of the police force requested by the interior departments of the individual German States.

Responses were received from 84 percent of those surveyed. The 775 uniformed patrol officers participating represented 0.7 percent of their professional group, while the 656 detectives made up 3.5 percent of theirs. Those polled were given the opportunity to reply to specific assertions in one of four ways: "agree," "partly agree," "disagree," and "don't know."

Extension Versus Restriction of Police Duties

In order to determine the duties which most police officers believe should fall under the exclusive purview of the force, Pro-

"Organizations-und Rollenkonflikte in der Polizei--Ergenbnisse einer Meinungsbefragung" (NCJ 44467) originally appeared in Monatsschrift für Kriminologie und Strafrechtsreform, v. 60:65-82, April 1978. (Karl Heymanns Verlag KG, 5 Cologne 1, West Germany) Translated from the German by Robert Jobin.

fessors Helfer and Siebel included in the questionnaire a list of the most important tasks in the maintenance of order, with instructions that these tasks be ranked accordingly. The majority of respondents asserted that the police should have full authority in cases involving the use of weapons (84 percent) and explosives (60 percent)--an indication that police professionals clearly believe the police should be involved whenever violence occurs. Other functional areas with a relatively high degree of acceptance were protecting the young (43.5 percent), covering public gatherings (39.2 percent), aid in national emergencies (33.8 percent), maintaining the registration lists of those living in their districts (32.6 percent), protection of the environment (31.8 percent), and control of noise pollution (29.9 percent).

Directing traffic was listed separately on the questionnaire. Since recent estimates indicate that 50-80 percent of police productivity is directed toward performing this duty, it is understandable that 42.4 percent of those polled believed it would be sensible to transfer traffic control to a special, independent organization; however, only 27.5 percent accepted the notion that directing traffic is not significant as a legitimate police function.

In recent years, increasing crime rates have forced a reduction in one important area of police activity: officers involved in the investigation of crimes already committed find little time to work on crime prevention measures. The survey revealed that 67.4 percent of those questioned were aware of this shift in their activities, but only 62.7 percent indicated that prevention, rather than prosecution, should form the focal point of police work.

Police Power and Its Acceptance by the Public

Considering that the police perceive a close affinity between their profession and violence and danger, and since the questionnaire revealed that 80 percent felt that they would always be required to employ some form of coercion, one might expect the inclusion of coercion and violence in the police profession's self-image to affect the profession's views of its relationship to the public.

That relationship will always be tense. Since the police are dependent, to some extent, on the public for assistance in performing their duties effectively, they cannot afford to alienate the population through arbitrary and brutal behavior. The force's monopoly on violence places it in an ambivalent social position: on one side is the obvious potential for power and disciplinary influence, and on the other the sense of frustration, inefficiency, dependency, social rejection, and isolation.

The officers revealed their awareness of the situation in responses to two assertions on the questionnaire. More than 68 per-

cent agreed that persons who utilize violence in Germany expose themselves to public criticism (only 3 percent disagreed), and 62 percent polled indicated that they would rather be viewed as public servants than authority figures.

Pursuant to a desire to counter public criticism while meeting the real or presumed demands of the job, a minority of police professionals confess to an inclination to take the law into their own hands. Responding to the assertion "no harm is done if some offenders are handled somewhat more roughly than others in preliminary investigations since the courts, lacking evidence, will acquit them anyway," 18.9 percent agreed, 17.3 percent had mixed opinions, and 60.7 percent disagreed. It is interesting to note that a large portion of those who agreed were members of the force's lower echelons and, therefore, possessed only a limited knowledge of the law and the legal implications of the assertion.*

Police Power and Its Dependency on Higher Authorities

The relationship between the police and those elements of society (other than the general public) that exert an influence on the use of police power was also considered. The influence of the boards of control is felt most directly by police officers. There is a striking contrast between the power potential of the police and their dependency and obligations of obedience. The subordinate status of the officers is evident not only in the requirement that they act only in accordance with their orders, but also in the requirement for documentation and approval in those instances where they have had to take the initiative in a situation of immediate danger.

Other groups in society also have a noticeable influence on the exercise of police power. The results of the opinion poll indicate that police officers believe they clearly understand their actual and desired dependency on such groups. The questionnaire contained a list of the important institutions, organizations, and groups that exert influence on the police force, and the respondents were requested to specify first those that have a real influence, and those that should have influence.

*In another study, L. Hinz found that 87 percent of police officers questioned admitted that the police have some latitude within the law to operate independent of the courts; 76.5 percent agreed to the assertion that many people enjoy the protection of democratic rights who do not really deserve it. "The Image of the Police Officer in the Context of His Job and Society," in J. Feest and R. Lautmann, eds., The Police [in German] (Opladen: 1971), 123 ff.

The average difference between "have" and "should have" was about 10 percent for all groups, with the "should have" figure lower in every case. This indicates that those polled generally believe that the outside influences are greater than they should be and that their own independence is overly restricted. Only five or six of the many institutions that the officers consider to be influencing their profession were felt to possess a legitimate basis for such influence: the State governments ("have" 84.8 percent v. "should have" 72.5 percent), the police unions (77.4 percent v. 68.6 percent), the district attorney's office (79.7 percent v. 67.1 percent), the Federal Government (68.0 percent v. 65.9 percent), and the courts (65.1 percent v. 57.4 percent). The influence of most other groups was unwanted, especially the political parties (47.1 percent v. 10.4 percent), lawyers (28.3 percent v. 4.3 percent), trade associations (15.5 percent v. 1.5 percent), press and mass media (62.7 percent v. 6.5 percent), and active political minorities (30.5 percent v. 2.1 percent).

Formal Versus Informal Organizational Structure

Like most government agencies, the police force is organized formally according to the standard bureaucratic pattern: it is strongly hierarchical with precisely defined responsibilities, obligatory chains of command and information channels, rigid guidelines for decisionmaking, and fixed rules of procedure. At the same time, police work is carried on under conditions uncommon to most other bureaucratic organizations. In particular, the police act less on their own initiative than on stimuli from the outside world, and their actions therefore are reactive.* Because events in the world around them are difficult to control and predict, their organization must retain a reasonable degree of flexibility which allows them to adjust their response to any situation that might arise. Accordingly, there is a limit to the development of rules governing the performance of police duties.

Since service regulations may constitute the major obstacle to the establishment of optimum flexibility, two assertions concerning them were included in the questionnaire. The first, "Service regulations don't simplify the work of individual police officers, but serve instead to relieve supervisors of their responsibility," received a good share of full (about 40 percent) and partial (about 32 percent) acceptance among the lower ranks, but approximately 50 percent of the higher ranking officers rejected it. Seventy percent

*The special characteristics of the bureaucratic operations of the police force are discussed in D.J. Bordura and A. J. Reiss, "Environment and Organization: A Perspective on the Police," in D. J. Bordura, ed., The Police: Six Sociological Essays (New York: 1967), 25 ff.

of those polled concurred with the second assertion, "In most stations, more service regulations are issued than the individual officer can remember," indicating that most officers feel overwhelmed by the volume of regulations.

The activities of the police force, more than any other bureaucratic organization, depend on the rapid and efficient transmission of information. For this reason, State and Federal police agencies continually have made intensive efforts to improve the flow of information among the stations. But the results of the poll indicate that criminal investigations still depend, to a great extent, on an informal network of personal, information-trading relationships: 61.9 percent agreed entirely and 22.8 percent partially that a police officer who needs particular information can obtain it faster through friends at other stations than through official channels. This finding reinforces the general observation that, in this aspect of police work, there is a tendency toward the disintegration of formal hierarchical behavioral patterns. Informal talks with police officers indicate that the problem seems to lie in the quality of the information available through official channels rather than in its quantity. Excessive information can be just as disturbing as too little. The important thing is that available information should be utilized to the best advantage through careful selection and control.

The Mandate To Prosecute Crime Versus Legal Control Mechanisms

Although the police force may be justified in seeking a greater degree of autonomy, the major risk in granting it must be considered. If the legitimate and necessary levels of responsibility and latitude for decisionmaking are overextended, the demand for a certain amount of independence may, as a matter of principle, degenerate into the rejection of various legal control mechanisms. Indications of this are already observable. The inclination of some members of the police force to take the law into their own hands has already been noted, and the replies to the assertions in this section of the poll demonstrate that police officers have a somewhat negative attitude toward legal protections and institutions.

Consider the replies to two assertions concerning laws regulating criminal investigative and court proceedings. The statement, "The present arrest laws make it too easy for the judge to order detention for investigation," was rejected by 80 percent of those polled, which indicates that the majority feel the laws regarding such detention are not severe enough.

The second assertion, "The interrogation of a suspect by the police should serve, above all, to solve the crime, rather than to exonerate the suspect," refers to a current law intended to provide suspects an opportunity to prepare a proper defense against charges--

suspects must be informed of their right to refuse testimony. It might be argued that the law requires too much of those police officers who are unwilling to hinder their own efforts to solve a crime and who, therefore, will try to evade the law's requirements. One-third of those polled agreed with the assertion, one-third agreed in part, and one-third rejected it. Those who agreed characteristically, were found to have less legal education than those who disagreed.

Sociological studies of the police often refer to the strained relationship between the law enforcement profession and the legal system--lawyers and courts in particular. The usual explanation is that the laborious investigative work of the police often is wasted because of judgments favorable to the accused.* The replies to three assertions on the questionnaire confirm this claim and indicate a widespread feeling of resentment toward judicial institutions.

About one-fifth of those polled agreed that an acquittal is the equivalent of a defeat for the police, and 26.5 percent partially agreed. It would seem that many officers disapprove of a judgment in favor of an accused they consider guilty.

The officers' general mistrust of courtroom justice became especially evident when the role of lawyers and the goal of punishment were considered. Full agreement by 39.8 percent and partial agreement by 38.6 percent were the responses to the assertion "Lawyers don't contribute to the realization of justice, but feel their duty is the onesided protection of an offender." In addition, 42.1 percent agreed fully and 31.2 percent partially that punishment, above all, should serve the purpose of discouraging crime. The replies to the first question reflect antipathy toward the influence of lawyers, and the results of the second suggest that the police may overrate the use of imprisonment as a means of frightening potential lawbreakers.

The Desire To Serve Society Versus Repressive Behavior Toward the Public

The relationship between the police and the public has been touched on previously, but it is appropriate to present a more complete picture.

Although respondents expressed the desire to serve the public rather than appear as authority figures, many of them believe that some people deserve more severe punishment than the courts might

*See James Q. Wilson, Varieties of Police Behavior: The Management of Law and Order in Eight Communities, 4th ed. (Cambridge, Massachusetts: 1970), 53 ff.

allow. Further, a majority recognizes, as a matter of principle, that citizens must be protected from encroachments on their rights by the police, but, as the responses to one assertion indicate, 68.1 percent rejected the wearing of identity badges and so were unwilling to give the public this opportunity of protecting itself better against such encroachments. Until now, opinion polls have been unable to clarify such discrepancies--they have merely confirmed a certain ambivalence in the attitude of the police toward the public.

Responses to other assertions on the questionnaire provide further information regarding the police force's perception of its relationship to the public. The responses to two statements support previous evidence that many police officers feel uneasy about public opinion and worry about being considered marginal members of society. The first, "The police are too concerned about what the different groups in the population think about them," was agreed to by only 13 percent, with 54.4 percent rejecting it on the grounds that the police should be even more concerned about their public image. The officers' belief that such efforts have had little success was reflected in their 65.5 percent rate of agreement with the next assertion: "The work of the police is not as appreciated by the majority of citizens as it actually deserves to be."

The fact that directing traffic is the most unpopular police duty is often cited as proof of the notion that police officers seek to avoid unpleasant encounters with the public. Most of the friction occurs in that area. According to 63.6 percent of the respondents, the decisions of the traffic police are usually contested, by members of the middle and upper classes wishing to flaunt their economic and intellectual status before the police. Officers generally can react to this situation in one of two ways: they can be especially cautious or even indulgent when dealing with this group to avoid provoking opposition and complaints or they can take a firmer position. Both reactions appear to have their share of adherents. In response to the assertion that a police officer must be particularly careful and polite when dealing with middle- and upper-class drivers, 33.9 percent agreed and 39.5 percent disagreed.

Just as favoritism for the upper and middle classes cannot be observed, there is no indication of programmed oppression of the lower classes. Although most police officers seemed fully aware of the fact that disadvantaged persons are less likely to evade the law (60 percent agreed with the assertion that members of the lower classes who have committed a crime are easier to apprehend), there is still no evidence that the police consider themselves the protectors of the socially underprivileged.

Final Observations

It may be of interest, in conclusion, to determine how police officers judge their own profession. Law enforcement was compared with other professions in the following assertions: "Officers have a greater sense of duty and responsibility than members of other professions" and "There is a better working atmosphere in the police force than in most other professions." The responses were somewhat skeptical. Replies to the first assertion were almost equally divided among "agree," "partially agree," and "disagree," and more officers rejected the second assertion than accepted it. It is difficult to perceive in these responses the vast amount of professional pride and sense of superiority that the public often attributes to the law enforcement profession.

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