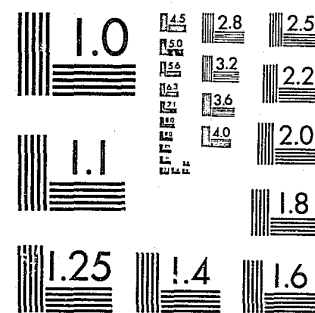


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9/20/83

ANNUAL REPORT OF 1979

A REPORT TO THE
HAWAII STATE LEGISLATURE



BY THE
HAWAII CRIME COMMISSION
State Capitol
Honolulu, Hawaii 96813

86955

NCJRS

OCT 8 1982

This report is respectfully submitted to the Legislature of Hawaii, pursuant to Act 16, First Special Session, Ninth Legislature, State of Hawaii, 1977 as amended.

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FOREWORD

This report provides a summary of the activities of the Hawaii Crime Commission during the twelve-month period from January through December 1979.

The Commission also issues reports under separate cover in respect to crime and criminal activity, analysis of crime patterns and causes, review of the institutions and procedures of the criminal justice system, review of laws, and studies of crime and its impact on the society, government and people of Hawaii. The Commission will often present recommendations.

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I. INTRODUCTION

The Crime Commission serves an important and unique purpose in the State of Hawaii. It is mandated by the Legislature to report its findings on criminal activity and the criminal justice system. By contrast to the police or prosecutor whose purpose is to develop cases for trial, the Commission discovers facts and develops conclusions in order to educate the public and assist the Legislature in forming sound proposals to improve the criminal justice system. If criminal evidence is obtained and developed in the course of its factfinding, such evidence is ultimately turned over to the appropriate agency.

The Commission also undertakes, with the aid of a professional staff, academic studies and public hearings relating to the criminal justice system. It does so upon a foundation of citizen perspective: No report is released for distribution unless the citizen Commissioners approve and endorse it in its entirety. The citizen Commissioners bring a healthy common sense to these studies and recommendations, because they represent the victims and the taxpayers who pay the costs of a high crime rate, of gross injustice, and of inefficiencies in the criminal justice system.

The Commission has been in operation for thirty months, and

many obstacles had to be overcome. There were formidable growing pains. In the course of its progress, however, the Commission has been able to accomplish a large number of projects that have had a significant and actual, as well as a long-term potential, impact on crime and the criminal justice system. Among those projects not described in this year's report are the earlier Commission reports on wiretapping, organized crime, survey of crime and the criminal justice system, extortion, and grand jury, as well as the proceedings of the rape task force and the handling of hundreds of individual complaints and information.

During the 1980 session, the Legislature of Hawaii will consider issues fundamental to the nature and direction of the Commission. Among these issues are whether citizens will continue to be members of the Commission, the life of its mandate, and what kind of projects the Commission will be able to undertake.

II. 1979 LEGISLATION

II. 1979 LEGISLATION

A. Introduction

The Crime Commission drafted and submitted to the 1979 session of the Legislature five bills amending the Penal Code. These included bills on terroristic threatening, eliminating the prompt complaint requirement for certain sexual offenses, mandatory minimum fines for misdemeanor gambling offenses, expanded forfeiture provisions for gambling offenses, and a consolidated extortion statute.

The sixth bill, concerning the Commission's own legislation, included a section on statutory immunity, and sections clarifying the Commission's authority to engage in projects aimed at reducing crime, and to obtain information from other government agencies. In addition, the Commission submitted its budget request as part of House Bill (HB) 1.

At the end of the session, all but one of the Commission's proposals--mandatory gambling fines--passed in some form. Additionally, the Commission's budget was approved.

Finally, the Commission was the subject of three resolutions proposed or passed by the Legislature. The following explains the Commission's legislative fortunes in greater detail.

B. Legislation Proposed by the Commission

All of the Commission's bills were introduced in both chambers of the legislature by the chairmen of the respective Judiciary Committees, Senator Dennis O'Connor (D-7th Senatorial District) in the Senate, and Representative Dennis R. Yamada (D-27th Representative District-Kauai) in the House of Representatives. These bills are reviewed in the order in which Governor George R. Ariyoshi signed them into law. (The date of enactment is placed in parentheses.)

1. Crime Commission Bill.

Act 82 (05/18/79), relating to a Crime Commission, had earlier been passed as Senate Bill (SB) 1680. The corresponding House version was HB 1383 which was not reported out by the House Judiciary Committee. The Commission had originally proposed three amendments to its legislation. First, it requested immunity from civil suit for the Commission and its staff "for actions done or statements made in the performance of their duties" under law. Second, it asked for authorization to implement "such other programs as may result in the reduction of crime" as a clarification of the functions implied by the Commission's statute. Third, the Commission requested the addition of the phrase "and provide information to" as a clarification of the clause providing that state and county governments "shall cooperate with" the Commission to the extent necessary to fulfill its functions.

The Senate bill as reported out by the Judiciary Committee

made the following modifications to the bill as proposed by the Crime Commission:

a. With regard to civil immunity, the Senate bill amended the proposal to authorize only a qualified immunity by adding the phrase: "except when done or made with actual malice."

b. With regard to programs which may result in the reduction of crime, the Senate bill amended the proposal to allow the Commission to "receive, manage, and tender funds for rewards for apprehension and conviction of criminals."

c. With regard to government agencies being required to "provide information" to the Commission, the Senate bill adopted the proposal without change.

As a result of major disagreements between the House and Senate, a Conference Committee session was held with the following results:

- a. The civil immunity provision was deleted.
- b. The reward provision was adopted as a separate function of the Commission.
- c. The information provision was deleted.

The Conference Committee Report, however, stated its agreement with an Attorney General's Opinion that the Commission and its staff possess a qualified privilege against civil suit and, as a result, "the Committee has not included a provision on civil immunity" in the bill.

The Committee Report also stated that the provision in the

Commission's statute that government agencies "shall cooperate with the Commission" is a "provision sufficiently broad to cover information gathering and sharing." As a result, the Report stated that the Legislature had "not included an additional provision on the subject to avoid confusion."

2. Forfeiture of Property.

Act 83 (05/18/79) relating to forfeiture of property used in illegal gambling had earlier been passed as SB 1682. The corresponding House version, HB 1380, was not reported out by the House Judiciary Committee.

The Senate Bill was the subject of Conference Committee deliberations and was eventually passed with the following modifications:

a. The Commission bill proposed that a wide range of property be forfeited when used as a stake or in connection with illegal gambling. The bill as passed deleted some of the property enumerated as follows:

1) Only paraphernalia used on fighting animals and birds, and not the birds or animals themselves, are forfeitable. The Senate had included birds and animals, but because of strong House objections, agreed to the deletion.

2) The Commission proposal that "no furniture, personal property, vehicles, vessels, or aircraft used only in connection with casual gambling activities in a bona fide social context shall be forfeited" was deleted completely.

b. The Commission bill made no mention of the burden of proof necessary for forfeiture, but simply invoked HRS § 701-119, procedure for forfeiture, to the extent that it was applicable. The bill as passed provides specifically that property may be forfeitable "where the evidence satisfies the court by its preponderance that the owner allowed the illegal use of his property."

c. The Commission bill made forfeiture discretionary with the court. The bill as passed retains this feature.

3. Extortion.

Act 106 (05/25/79) relating to crimes (extortion) was passed earlier as HB 1386. The corresponding Senate version, SB 1681, was also reported out by the Senate Judiciary Committee.

The Commission submitted two versions of the Extortion Bill to the Legislature. The first version proposes two degrees of extortion. Extortion in the first degree includes extortion by threats of illegal action or by threats involving extortionate credit transactions. Extortion in the second degree includes extortion by threats of legal action. The former is a Class B felony; the latter a Class C felony.

The second version submitted to the Legislature restructures the degrees of extortion differently from the bill as originally proposed. Extortion in the first degree, in the second version, includes: (1) any extortion of property or services exceeding \$200 during any 12-month period; (2) any extortion resulting in great mental anguish to the victim; and (3) any extortionate credit

transactions.

Extortion in the second degree, in the second version, includes any extortion of property or services exceeding \$50 during any 12-month period. Extortion in the third degree includes extortion of property or services of any value. Extortion in any degree is a Class A felony if it involves the use of a dangerous weapon.

Both the House and Senate Judiciary Committee reported out the second version almost verbatim. A joint House and Senate Conference Committee met, however, because of modifications made by the House, and the Conference Committee deleted the provision that made extortion resulting in great mental anguish to the victim extortion in the first degree.

The Conference Committee stated:

[D]efining extortion in the first degree in terms of the great mental anguish of the victim is too subjective a definition for so serious an offense, extortion in the first degree being a class B felony. That is, inasmuch as the thresholds for great mental anguish differ with the individual involved, inconsistent, at best, or unjust, at worst, results would occur from making the person who causes such anguish guilty of a class B felony.

House Conference Committee Report 40 and Senate Conference Committee Report 43.

The Commission had proposed a "great mental anguish" standard because as it stated in its written testimony:

The emphasis is upon the harm suffered by the victim While some victims may be more susceptible to emotional distress than others, the extortioner bears the risk of injury com-

pletely, and takes victims as he finds them. The law should not penalize people for their frailties but should focus instead upon those who seek to exploit such frailties illegally.

Except for the difference in views between the House and the Commission, and the resultant deletion of the "great mental anguish" provision, the Legislature passed the second version of the consolidated extortion bill as proposed.

4. Terroristic Threatening.

Act 184 (06/05/79) relating to terroristic threatening was earlier passed as HB 1382. The corresponding Senate version, SB 1677, had also been reported out by the Senate Judiciary Committee. The Commission had proposed that: (1) a threat to commit a felony criminal offense be considered a terroristic threat; and (2) that repeated terroristic threats, a pattern of terroristic threats, a terroristic threat made to a public official, or the use of firearms, explosives, or dangerous weapons, in connection with a terroristic threat, be made a Class C felony.

Amendments by the House and Senate significantly changed the scope and impact of the bill as proposed by the Crime Commission.

The differences between the bill as submitted by the Commission and as passed by the Legislature include the following:

a. The Commission proposal makes no mention of degrees of terroristic threatening. The bill as passed divides the offense into two separate degrees--first degree (felony) and second degree (misdemeanor).

b. The Commission proposal makes into a Class C felony repeated threats that are part of a "pattern of conduct." The bill as passed substitutes the phrase "common scheme" because, as the Senate Standing Committee report states, "the phrase" has obtained precise usage in criminal law and procedure." The intent of the Commission proposal was unchanged by the bill as passed.

c. The Commission proposed making a terroristic threat to a "public official" a felony. The bill as passed uses the term "public servant." The justification given is that the latter term is already defined in the Penal Code. The change broadens the group of people protected by this felony sanction because "peace officer" is defined in the Penal Code as a type of "public servant."

d. The Commission bill proposed making into a felony a terroristic threat by use of a "dangerous weapon" based in part on the notion that the trier of fact--a judge or a jury--would be able to draw, with a greater likelihood of accuracy, an inference that a terroristic threat had actually been made if a "dangerous weapon" were involved. To illustrate, explosives or sawed-off shotguns, both per se dangerous weapons, are not usually found or used in normal everyday social intercourse, and their actual presence in a situation where a terroristic threat is alleged would be less likely to be explained away. This is especially the case where there would probably be no other physical evidence that would substantiate a terroristic threat in which only words or gestures are used. The bill as passed substitutes the term "dangerous instrument," because

it is already defined in the Penal Code as any instrument, material, or substance capable of producing death or serious bodily injury. The substitution broadly expands the scope of the statute because a "dangerous instrument" can be any legitimate tool--a household or gardening implement, or even a household cleaning fluid containing a poison, all of which are readily available in everyday life.

5. Prompt Complaint Requirement in Rape Cases.

The bill proposed by the Commission sought to eliminate the prompt complaint provision which requires sex offenses to be reported to authorities within one month of the occurrence, in the case of adults, or one month after a parent, guardian, or other competent person learns of the offense, in the case of minors less than 16 years old. The bill passed in an amended form, Act 6, which eliminated the requirement for victims who are minors or otherwise incompetent to make a complaint.

6. Bills Not Passed.

SB 1679/HB 1381 relating to mandatory gambling fines died in committee. The Commission had proposed that, because regular illegal gambling is known to be a staple of organized crime revenue, repeat offenders should be penalized on a graded mandatory scale. The first several violations would be penalized less harshly as a warning against further illegal gambling. The full force of the monetary penalty would take effect in subsequent violations. The fines are mandatory upon conviction.

The Commission therefore recommended that mandatory fines for misdemeanor convictions be imposed on a graded scale according to

the following schedule:

1st conviction	\$25
2nd through 5th convictions.	\$100
6th through 9th convictions.	\$500
10th and subsequent convictions.	\$1,000

C. Budget

During the summer of 1978, the Commission submitted a request to Budget and Finance (B&F) for a FY 79-80 budget of \$500,000. About half of that amount was to continue operations at the 1978-79 level ("Current Approved Program") and the other half to expand Commission activities ("Program Change Request"). Basically, the Commission proposed to increase its investigative capacity by adding six investigators plus support staff and to concentrate on the areas of white collar crime, government corruption, and organized crime. It was believed that the Commission, because of its independence, citizen control and staff integrated from several disciplines, could accomplish things in those areas that traditional crime-fighting agencies were limited in doing.

The budget request was trimmed to \$213,398. Commission Chairman Nelson K. Doi then proposed a compromise budget of \$350,000 and took the Commission's request before both houses of the Legislature where he testified that it was time to set a more permanent direction for the Commission. He proposed not only to continue the Commission's successful and important academic studies, but also to supplement these with investigations into the areas of white collar crime,

government corruption, and organized crime, including the use of undercover agents.

Despite the Commission's testimony, HB 1, final version, contained a FY 79-80 appropriation for the Crime Commission of \$213,398. This amount is unchanged from the executive budget as originally submitted to the Legislature by the Governor. This sum, though not what the Commission requested, nevertheless compares favorably with the 1978-79 appropriation.

D. Resolutions

1. Senate Concurrent Resolution 108 relates to the appointment of the Chairman of the Hawaii Crime Commission. Act 219, which in 1978 extended the Commission to June 30, 1980, required that a chairman be appointed for a term to commence July 7, 1979. The current chairman was to serve until a new chairman was appointed. This resolution declares that interim hearings of the Senate and House Judiciary Committees will be held to "review potential candidates" for the position and that a chairman will be named during the 1980 Regular Session.

2. House Concurrent Resolution 181 congratulates the Commission for sponsoring the Seminar for Potential Victims of Terrorism and Extortion. It quotes from the Commission report on extortion as to the need for more public education on these topics and "extends a heartfelt 'Thank You and Mahalo' to the Commission and to the featured speakers in appreciation of their

efforts in bringing to fruition a much needed educational experience."

3. House Resolution 420 requests that the Hawaii Crime Commission study vandalism. The resolution states:

Be it resolved that . . . the Crime Commission is requested to conduct a study on vandalism and to develop an action plan to curb vandalism; and . . . that the study include identification of specific problems associated with vandalism, the extensiveness of vandalism, existing programs and policies relating to vandalism, the relative success of such programs and policies, and other pertinent matters

The proposed resolution did not pass.

III. INVESTIGATIONS

III. INVESTIGATIONS AND CITIZEN INFORMATION AND COMPLAINT

A. Introduction

One of the legislative mandates of the Crime Commission is to secure citizen input concerning the working of the criminal justice system. Indeed, the Commission did receive many suggestions, complaints and information from the public. The Commission gathered information through the use of a Confidential Message Center and by interviewing telephone callers and walk-ins, as well as through personal sources of information.

The Confidential Message Center is one of the successful projects established by the Commission. This is an automatic tape recorder attached to a telephone, which allows citizens to call in at any hour of the night or day. Those who call have the option of leaving their message anonymously or leaving their name and phone number for the staff to return the call.

Established in 1977, this service has been warmly received. Although a number of calls were either from "cranks" or were frivolous, most of the calls provided information concerning criminal activities, ideas for reform, or a specific complaint about a governmental agency.

In addition to information received from calls over the Confidential Message Center, the Commission has obtained sub-

stantive information from a large number of citizens who have either walked into the office or called by telephone to communicate their problems. The content of the information was similar to that received over the Confidential Message Center.

B. Information, Complaint and Commission Policy Regarding Investigations

All information and complaints were initially screened by the staff to determine its legitimacy. An appropriate disposition procedure would then be followed to determine whether the case would be investigated by the staff. The following are categories of the types of information which the Commission received and the manner of disposition.

1. Referral or Deferred Investigation.

a. Those complaints relating to criminal activity were referred to the proper federal or local law enforcement officials for them to follow through. The following are a few instances:

Case 1: A person reported that he and his wife were being threatened by a police officer and the officer's wife. The person had previously reported the matter to the Police Commission but thereafter decided to call the Crime Commission for assistance when he continued to be threatened. The staff contacted a high level staff officer in the Police Department who agreed to personally handle the matter. Arrangements were made for this caller to speak with the officer, and the problem was subsequently resolved.

Case 2: A male reported what he believed to be drug transactions in progress at a certain address because of the number of persons visiting there. A check was made and it was verified that many persons

who visited that address did not live on the premises. A preliminary inquiry did not reveal evidence of drugs being sold on the premises and the information was passed on to the Honolulu Police Department Narcotics Division.

Case 3: The Commission received three separate calls which reported that an individual, whose father was a police captain, was selling narcotics at a specific high school and was in possession of a firearm. One caller stated that the individual had used the firearm on the caller to "heist" some narcotics. The staff conducted an initial inquiry at the school. The information was given in confidence to a high level officer in the police department and no further complaints were subsequently received on this individual.

b. In some cases, however, the staff conducted its own inquiry, referred individuals to other agencies for follow-up or further assistance, settled a dispute, or followed through on a complaint. Prior to any investigation, the Commission would initially make an inquiry to the local law enforcement agency to learn whether they had already undertaken an investigation. If a police investigation was already underway, the Commission would not pursue or enter into the matter unless requested by them. The Commission has always strived to maintain a spirit of harmony and cooperation between itself and the police. The following are instances where investigation was deferred because the police were already engaged in an investigation.

Case 1: The Commission was informed that an individual employed at a pawn shop located on a military base was selling stolen goods. Sources in the military stated that they knew of his operation and that he was under

surveillance. Upon contacting the pawn shop detail of the police department, the staff learned that the individual and the pawn shop in question were already under police investigation. Further investigation by the staff ended.

Case 2: A person reported that ownership papers could be bought in certain junk yards for use on stolen cars. After the police were contacted, they stated that investigation into that matter had already been underway and that the violators would be arrested after sufficient evidence was compiled.

Case 3: A real estate salesman reported that two prostitutes had stolen money from him while he was in Kona. The Kona police had reported to the Commission staff that the caller had initiated a complaint as to the alleged crime but that the women, in addition, charged him with assault. The salesman was later arrested by the police for possession of drugs. No investigation had been undertaken by the Commission since the police were already handling the matter.

Case 4: Although very few calls concerning gambling were received, a large number concerned a large arena constructed in the Leeward area. The staff took no action on these calls as the information was already known to the police who were in the process of shutting down this illegal operation.

Case 5: A call was received from a Kona resident who stated that he had been threatened by a friend of his former girl friend. Apparently, the complainant and his former girl friend were previously former partners in a bar in Kona. An investigation by the staff revealed that a civil suit was already pending between the parties and that the Kona police had completed an investigation into the case. The caller was then informed that the Crime Commission could take no further action.

2. Joint Inquiry.

In some cases, the Commission investigated the matter jointly with the police investigators.

Case 1: A pedicab operator reported that he had received threats from an unknown individual who was also damaging his pedicabs. When it was learned that the police were already investigating his case, arrangements were made for a staff investigator to work together with the police. It was found that the damages were caused by a disgruntled former employee whom the pedicab operator had fired earlier.

Case 2: A person, who wished that his visit be kept confidential, reported to the Commission that certain individuals had demanded that he employ them, threatening a disruption of his business on the North Shore. The Commission, with the assistance of the police, contacted these individuals and requested a meeting to resolve the problem. These individuals never appeared at the arranged meeting and have not attempted to communicate with the victim again. Recently, the victim reported that the matter was under control and conveyed his sincere gratitude to the Commission for its assistance in clearing the matter.

3. Direct Assistance.

The Commission would also act as a mediatory body between local law enforcement agencies and citizens who were either reluctant to report the matter to the police or had viewed the Commission as the agency of "last resort." In the latter instance, the Commission would receive a request for assistance from a citizen who had already reported his or her complaint to the police but for legitimate reasons desired Commission assistance. The following are several examples:

Case 1: An owner of a bar on the Windward side of Oahu reported that a former employee and the employee's husband made an extortionate demand. The employee was the former manager of the bar who had hired her husband as a bartender. This upset the owner and she requested the manager to let the husband go. The manager refused so she dismissed both of them. Later, the former manager phoned the owner allegedly informing her that certain tough individuals would visit her bar and cause some damage. As the bar had been burned in the past, the owner became frightened and called the Commission. When the staff contacted the former manager, she denied making threats. Instead, she stated that she merely reminded the owner that prior to her employment, the owner had been experiencing problems with certain individuals from that area; but after she was hired as manager, the trouble had been abated. The owner and former manager were subsequently able to straighten out their problems in a later meeting.

Case 2: A tour agency head reported that he was a victim of extortion by a person who threatened him and his family demanding money. As a warning, his home had been burned by the extortionists. Because he was unable to obtain sufficient police protection for himself and his family, he sent his family away temporarily and thereafter contacted the Commission for help. After an investigation by the Commission staff, complete protection was provided to him immediately until the police were later able to take over. Arrests in this case were made by the police and the persons responsible were convicted.

Case 3: A contractor contacted the Commission, reporting that he had been threatened and assaulted by persons who demanded money from him. Through an interview with the contractor, the following facts had been explained. When the contractor repaired a house, the renter of the house demanded that the contractor pay him \$500. When the contractor refused, the renter showed up with two friends while the victim was working on another house, and again demanded money. When the contractor refused, he was threatened with his life. This incident, which had been

witnessed by the contractor's two employees, was told to the police officer. When threatened again by the same person over the phone, the victim decided to call the Commission as there had been no follow-up investigation conducted by the police. It was discovered, through a staff investigation with the Honolulu Police Department, that a copy of the police officer's report had not been received by CID, so no other officer was assigned to investigate the case. After the Commission contacted CID, a detective had been immediately assigned to work on the case. Arrangements were made for the extortionist to collect money on a certain date but under police supervision. The person, however, never showed and the victim never heard from that person again. Although the case was sent to the prosecutor by the police, the case has never been brought to trial.

Case 4: A bar owner reported that he had received threats from someone who claimed that he had syndicate connections. The staff met the owner at his bar and obtained the following information. Apparently, the person who had made the threat had been drinking in the bar, running up a bill of \$48. When he was about to leave, he refused to pay the amount. When the owner refused to lower the amount, this customer stated that his brother was in the syndicate and that they would be back later. The person then paid the bill, went outside, and broke the window of another establishment. He was detained until the police arrived.

The staff checked with the police and obtained this person's name, address and place of employment. It was found through confidential sources that neither he nor any member of his family had any connection with the syndicate. He was contacted by the staff who advised him to cease his misrepresentations and threats.

Case 5: An owner of a bakery reported that a person entered his business demanding he contribute a certain amount of money a week to him. If the owner did not comply, he was warned by the individual that something would happen to

either the bakery, his family, or himself. The owner had reported the threats and demand to the police but, although he was contacted over the phone, no detective ever came to interview him. The owner then hired a private investigative firm which loaned him a recorder to use on his phone. However, no phone calls were made. At that point, the owner contacted the Commission requesting its assistance. The staff got in touch with the head of the Criminal Investigative Division in the police department who promised that a detective would be sent to see the victim. The staff also obtained the department's cooperation in having police officers make regular checks on the baker and the owner's home. The staff kept in touch with the owner every day for two weeks. Although the extortionist was never identified, he never made another call or visit.

4. Commission Investigations.

There were many calls that registered specific complaints concerning alleged illegal activities. These callers, however, sometimes refused to elaborate the same information to the police. The Commission would undertake first a preliminary inquiry into the allegations and then, if necessary, undertake an investigation to substantiate or disprove the complaint. Upon completion, the Commission would report its findings to the administrator of that particular agency or to a law enforcement agency, when appropriate:

The Commission received reports concerning the illegal constructing of booths at a tourist stop center located on the Windward side of Oahu. The person alleged that these booths were being built without proper building permits; and that the Building Department inspec-

tors would take no action because the owner of the site provided women and parties for them. The Commission staff visited the site and verified the constructing of the booths. Upon checking with the Building Department, the Commission learned that the inspectors were aware of the illegal construction and had reportedly referred these violations to the Prosecutor's Office. Through an inspection of court records and inquiries made with court personnel, the Commission found that the violations had never been prosecuted.

5. Information on Organized Crime.

Information on organized crime is collected from many sources. This information is subjected to analysis and used in a strategic manner.

Such a function is described in the Report of the Task Force on Organized Crime, National Advisory Committee on Criminal Justice Standards and Goals, Washington, 1976.

The sophisticated and conspiratorial nature of organized crime requires an increased capability for analyzing and probing sources of data Analysis is a critical part of the intelligence process. It involves assembling bits and pieces of related information to reveal a pattern of meaning.

6. Miscellaneous.

The Commission has also responded to citizen inquiries or complaints that were non-criminal in nature. This included mediating disputes with the relevant state agency or directing citizens to the agency capable of providing the necessary assistance.

Case 1: A man from Molokai was dissatisfied with the way a certain matter had been handled for him in circuit court, claiming he had not been properly informed of the requirement of sending certain papers to the court within a specified time. The staff looked into the matter and arrangements were made with the circuit court for a solution to his problem.

Case 2: A proprietor of a small business wanted a speaker to talk to this employees about internal theft and shoplifting. The person was referred to the community relations division of the Honolulu Police Department and arrangements for the informal presentation were made. Later, the staff was informed that the police made an excellent presentation.

Case 3: A male was beaten outside a bar and wanted the State to help pay his medical bills. The man was referred to the Criminal Injuries Compensation Commission.

C. Full Investigations.

During the past year, the Commission has conducted several major investigations. An investigative study was undertaken in response to a complaint regarding alleged improprieties in governmental operations. Information received was developed and referred to appropriate Federal authorities for follow-through. This investigative study was called, "Operation Cassius." The following is an explanation of another completed investigation.

Alleged Extortion of an Inmate of a Correctional Facility.

The Commission's preliminary inquiry led to an investigation of alleged extortion, with the full cooperation and assistance of the Department of Social Services and Housing. The Commission

believed that such an investigation was appropriate. Throughout the investigation the agency affected was kept informed of the investigation at all stages, and was furnished a copy of the Commission's report per this request. Because of the alleged offense, namely extortion, and because extortion was a subject of considerable prior effort, the Commission believed it should examine this problem together with DSSH.

The investigation uncovered information about alleged extortion made against an inmate of a correctional facility and it aided the Commission in its mandate to investigate and collect evidence necessary to study criminal activity and the operation of another part of the criminal justice system. The Commission investigation provided basis for future administrative action by the relevant department in cases of this type.

Although the matter is still pending, a number of areas of concern were highlighted by the Commission's investigative inquiry. First, it is a belief of many persons interviewed that inmates on conditional release into a CRC setting, as well as convicts on parole or probation status, are favored targets of underworld elements both in and out of prison. Thus, the case investigated may represent just one of many similar cases that are unreported and unknown to responsible officials. Second, the policies, guidelines, and procedures of the Corrections Division were inadequate to deal with the problem revealed in the investigation and a searching in-house analysis of the situation was required.

IV. RESEARCH REPORTS

IV. RESEARCH REPORTS

A. Violence and Vandalism in Public Schools

1. Nature & Scope of the Study.

In response to proposed House Resolution 420, and pursuant to its legislative mandate to study school violence, the Crime Commission conducted a study of violence and vandalism in Hawaii's public schools. The objectives of the study were: 1) to identify the nature and extent of the problem statewide; 2) to determine the effectiveness of current policies and programs; and 3) to discover remedies for controlling violence and vandalism in the schools. Data for the study was obtained through library research, preliminary interviews, questionnaires and formal interviews. A public hearing may also be held.

2. Stages in the Study.

The early stages of this study included library research into literature on violence and vandalism in schools as well as preliminary interviews with education officials familiar with the subject. Officials from the state offices of the Department of Education, the Hawaii State Teachers Association and the Honolulu Police and Fire Departments were interviewed.

The Commission started the search of the literature on school violence and vandalism by reviewing information in the Educational

Resources Information Center (ERIC) files at Hamilton Library, the Department of Education and the Hawaii State Library. A commentary on some of the major previously published studies and government documents on violence and vandalism is included in the report.

While conducting the preliminary interviews and the literature search, the Commission also began designing the survey instrument. A considerable amount of state and district level information and data already existed in aggregate or summary form. By combining information from preliminary interviews, library research and the existing aggregate data, a questionnaire suitable for use in Hawaii schools was developed. The questionnaire was designed to obtain information about the experiences and attitudes of the people in the schools relating to violence and vandalism.

This survey--which was one part of the study--measured and recorded 1) the perception of reality from four viewpoints: students, teachers, counselors and principals. Then it also asked each of the respondents about 2) actual incidents that occurred to them. The questionnaire was made simple and straightforward with closed multiple choice type questions. These closed questions also made tabulation of the responses by computer relatively simple. As a control and comparison device, a common set of questions was asked of all four sets of respondents. In addition, the better to acquire knowledge special to each group, certain questions were asked of each group that were not asked of the others. Owing to the difficulty of analysis, open-ended questions were only asked of the

principals. Each group of respondents was given a different colored questionnaire to facilitate the distribution and collating of the returns.

3. The Questionnaire.

Questions identified the respondent as teacher, counselor, student, or principal. They also identified biodata factors such as ethnicity and length of residence in Hawaii.

The common set of questions on the questionnaire elicits information on the type, frequency and the causes of acts of violence and vandalism. These questions begin by broadly assessing the school environment. Then, questions are asked about the communication and explanation of the rules of proper behavior at the schools. Additional questions focused on the causes and controls of violence and vandalism. These questions were closed questions in which the respondents were asked to select only one answer. The respondents were required to assess several factors and to select the most pertinent factor from lists ranging from five to twelve items. Most of the questions contained five items. Response "one" was the most positive, and response "five" was the most negative. Choice "three" was usually as near to a neutral as could be found. An "other" category was not included on the questionnaire except one question on dominant ethnic background. However, during the card punching phase, an "other" category was added to ensure that no questionnaire would be invalidated because of a missing or non-categorized response. The

next series of questions were aimed at specific acts of vandalism and violence. These are frequency questions in which the respondents had to indicate by numerical value (0-Never, 1-Seldom, 2-Sometimes, 3-Often, 4-Always) how often specific acts occurred at the school in general, and to the respondent in particular.

A specified set of questions was prepared for each group of respondents (i.e., teachers, students, principals, counselors). These four groups were asked the common questions to enable the researchers to compare the perceptions and observations of the four groups for each school, for each district, and on a statewide basis.

The strengths of this questionnaire are its relative brevity, its precision in eliciting responses, and its flexibility, since it asks different sets of questions for the four different groups as well as a common set of questions for all respondents. The closed questions were also easily adapted to computer analysis. This made it possible to greatly increase the size of the sample. This offset the loss of detail obtainable with open-ended questions. The extensive use of such open-ended questions would have forced a severe reduction in the sample size. Moreover, the Commission also conducted more than 120 taped, 30-minute interviews at eight targeted schools to supplement the quantitative data with free-ranging personalized responses.

4. Sample Selection.

The intent was to make this survey as comprehensive as

possible within the limits of temporal and logistical resources.

The closed questions on the questionnaire and the availability of Electronic Data Processing (EDP) computer analysis made it possible to survey a relatively large group of respondents. In effect, the staff was concerned with the number and types of respondents before making any conclusions about violence and vandalism in the schools. As is the case in any well-thought out formal survey, the Commission was also concerned that the number and kinds of people in the sample be sufficiently representative of the whole population to make sound generalizations about that population. It was also decided at the start that the sample should include those persons who together are representative of the secondary schools.

5. Accuracy of the Sample.

How precisely the sample reflects a population characteristic can be estimated from the sample itself, as long as the sample is a probability sample at all stages. The Commission was careful in making sure that the sample included both elements of randomness and probability.

Because the sample chosen for the violence and vandalism survey is stratified, with elements of randomness and probability included at all stages, the sample size could have been theoretically smaller than it was and still be relatively accurate in terms of estimates based on that data. This was especially true in the case of the teachers, principals and counselors since nearly 50%

of the total population in each of these strata responded to the questionnaire. (Note: 100% of the total population of teachers, counselors, and principals in secondary schools received the questionnaire.)

Randomness in the student sample was achieved by sampling at least two grades in each secondary school in the State. One grade chosen in each case was targeted by the HSTA representative who was responsible for distributing the questionnaire in his own school. The other grade of student respondents in the school was to be a class targeted by a teacher other than the HSTA representative. Also an attempt was made to distribute the questionnaire to different ability levels at the schools. The HSTA representative at each school also distributed the questionnaire to all counselors and teachers via the mailbox in the main office of the school. Principals received the questionnaire via mail under cover letter directly from the Crime Commission office.

In all, there are 75 secondary schools in the State with an approximate student population of 76,000. There are also 4,500 teachers, 200 principals, or its equivalent, and 220 counselors. The survey attempted to reach all schools. An attempt to achieve a 6% sample of the student population was made in the manner described above. Therefore, overall, the complete population of professional staff and 6% of the student population was sent a questionnaire.

United Parcel Service was employed to deliver and return

the questionnaire on Oahu. The U.S. mail was used to send and return the questionnaires to the neighbor islands. Return postage was paid by the Commission. All of the other questionnaires were mailed without return postage. These procedures produced a very large return.*

6. Data Processing.

Because of the large sample and the complex relationship between the various questions, a computer was used to process the data. The 5,908 returned questionnaires were keypunched onto tape by the EDP section of the State Department of DAGS for easy handling and permanent storage. The tape was then used in conjunction with a program designed by Commission staff and implemented by a programmer at EDP.

The first output was a simple frequency count of totals for each question, specified by school, by district, and for the entire State. These totals provided the most direct indications of the extent and nature of the problems and allowed easy comparisons by schools and districts.

This data was then broken down by category of respondents (i.e., principals, counselors, teachers, and students) for each

*Return rates for mailed-out questionnaires are usually considered significant when 30% or more return.

geographical division. This specification allowed a comparison of answers by occupation, which was not only a check on the accuracy of the data but also a gauge as to the amount of communication about violence and vandalism within each location. The premise tested by this output was that not all groups at the school level were equally aware of the problems.

Copies of these tables will be sent to each school that participated, to each district superintendent, and to the central office of the Department of Education. One copy will go to the principal and one to the HSTA/HFT union representative in each participating school. It was believed that the administration and faculty should see the results of the study in which they participated as soon as possible. Also, it was desirable that the schools and district office should have the data as an aid to future planning.

The program used to analyze the results, beyond the mere generation of totals, was the cross-tabulation program. This computer technique was chosen because the available information on the correlation between factors relevant to the problems of violence and vandalism was strictly limited. In order to identify and isolate the significant trends, it was necessary to cross tabulate responses to most of the questions. This procedure generated tables of comparisons, some of which proved inconsequential but which nevertheless had to be tested. The cross-tabulation process was at the heart of the analysis because one of the

most important aims of the project was to identify trends and relationships. Other statistical programs designed to provide the same kind of information, such as factor analysis and small space analysis, were considered and discarded as less relevant than cross tabulation because of the limited number of factors involved.

In designing the computer output, the Commission chose to test not only existing hypotheses about trends and causes but also any other conceivable relationship. In this way, it was hoped that bias could be reduced to a minimum while all significant trends would be identified. One drawback of the cross tabulation program was that it did not compare the responses to more than two questions simultaneously. However, this limitation was minimized by improvised composite comparisons which comprised a combination of relevant and associated tables as well as special vigilance on the part of analysts in identifying other significant factors.

In addition, an abbreviated form of the questionnaire was sent to all of the security personnel at all of the schools in the State. This questionnaire consisted of questions 16-32 on the original form. These are the questions that inquire about incidence of specific acts of violence and vandalism. In addition, open-ended questions were included to allow the security personnel to report on their situation more fully. Specific open-ended questions to security personnel included, inter alia, the role of the

security officer, the problems they encounter, and areas for recommendation.

Secondary principals were also asked to complete two open-ended questions which were attached to the questionnaire distributed by mail. One question concerned current programs to control violence and vandalism and the success of those programs while the second question concerned desired future programs. These questions were detached from the questionnaire and subjected to separate analysis. Likewise, questionnaires completed by the elementary principals, the private school principals, and security aides were tabulated manually and the results summarized.

7. Interview Phase.

The interview phase of the study was designed to further supplement the findings of the questionnaire. It was intended that the interviews would provide firsthand information not obtainable with a questionnaire. Visiting a campus and talking with a cross section of its people offers an opportunity to gain direct knowledge about the physical plant and the atmosphere of a school. In this manner more explicit information could be acquired about what additional measures are needed and what assistance is required to implement effective measures. In the initial phase of the questionnaire distribution, state and district level officials were not sent questionnaires because it was intended that the interview phase would provide an opportunity for these officials to provide information. Officials of other agencies were also contacted,

including a representative of the Honolulu Police Department, the Honolulu Fire Department, the Hawaii State Teachers Association, the Hawaii Federation of Teachers, the Hawaii Parent Teacher Student Association and the Hawaii School Counselors Association.

8. Selection of Schools for Interviewing.

The large number of secondary schools in Hawaii (75) made it necessary to select a sample from this total. Six factors were isolated as relevant to the selection of these schools.

These six factors are as follows:

- a. School district - one school from each of six districts in the state, and two schools from the more densely populated Honolulu district--total, eight schools.
- b. Balance between intermediate and high schools - four high schools, three intermediate schools and one combination (7-12) school.
- c. Size of school population - four large schools, three medium sized schools and one small school.
- d. Location of school -- two urban schools, five suburban schools, and one rural school.
- e. Composition of school population - one school with a large percentage of immigrant students, one school with a large population of military dependents, six schools of mixed population.
- f. Income level of the area in which the school is located - three low income schools, four middle income schools, and one high income school.

With the above criteria as a guide, the following schools were selected in which to conduct the interviews:

- (1) Aliamanu - Central district
Intermediate school (7-9)
Student population - 1,116
Suburban location
Large percentage of military dependent students
- (2) Baldwin - Maui district
High school (9-12)
Student population - 1,832
Suburban location
Population ethnically mixed
- (3) Farrington - Honolulu district
High school (10-12)
Student population - 2,625
Urban location
Large percentage immigrant students
- (4) Hilo - Hawaii district
Intermediate school (7-9)
Student population - 861
Suburban location
Population ethnically mixed
- (5) Kapaa - Kauai district
Combination high & intermediate school (7-12)
Student population - 1,121
Rural location
Population ethnically mixed
- (6) King - Windward district
Intermediate school (7-9)
Student population - 1,627
Suburban location
Population ethnically mixed
- (7) Roosevelt - Honolulu district
High school (10-12)
Student population - 1,643
Urban location
Population ethnically mixed
- (8) Waianae - Leeward district
High school (9-12)
Student population - 1,928
Suburban location
Population ethnically mixed

At each school the following individuals were interviewed:

the principal
one vice-principal
two counselors
three teachers
six students
one security aide

There was a dilemma in selecting a representative group of teachers and students. From a list of the teachers at each school the Commission chose every tenth name until a sample of six teachers for each school was obtained. This list was included in a letter containing instructions to the principal of the school. The principal was asked to select three of the teachers on the list, and to ask each teacher to select two students who would be willing to be interviewed.

Interviews were conducted by teams consisting of one Commissioner and one staff member. All interviews were tape-recorded and brief notes were taken. Only selected recordings were transcribed. Interviews were kept uniform by the use of a standard list of questions during the initial parts. The duration of the interviews was approximately thirty minutes. A standard interview form was developed to enable the staff members to take notes.

9. Analysis of Interview Data.

All interviews were recorded to ensure the accuracy of any subsequent referral. As the schools where the interviews took place were representative of a type of school, the initial

step in the analysis was to obtain a profile of the school. Next, responses to interview of questions were compared according to the position of the respondents (i.e., teachers, students, etc.). Inferences were made on the basis of this summarized data. Particularly interesting or pertinent statements were selected for quotation where permission had been granted by the interviewee.

The final step in the analysis of the interview data was made by comparing interview responses to those obtained from the questionnaire.

The final report, soon to be published, will provide a wealth of information and ideas regarding violence and vandalism in the schools of Hawaii. Findings of the Commission study will be distributed to the central office of the Department of Education, the district offices, and the individual schools, as well as to the Legislature.

B. Principles of the Hawaii Criminal Justice System

The Principles of the Hawaii Criminal Justice System is intended to be a monograph usable as a textbook in college courses such as political science, criminology, sociology, journalism, police science and pre-law studies. It provides an introduction to key concepts and procedures of Hawaii's criminal justice system. Principles had originally evolved from certain chapters of a training manual, developed by the Commission, which was intended to train volunteers in the Commission's Court Observer Program. Based

on comments received from court observer volunteers and others, it became apparent that a textbook of this nature could have wide application as an educational tool.

After months of research and drafting, the Commission released a preliminary publication of the monograph in August of 1979. Prior to publication, a draft of the monograph had been sent to the Honolulu Office of the Prosecutor, the Office of the Public Defender, and to Professor Jon Van Dyke of the University of Hawaii School of Law. Their individual suggestions and written comments were greatly appreciated.

The monograph contains (1) a substantive description of the organizational structure and processes within the district, circuit, and appellate court system of Hawaii; (2) an analysis of the roles of the various court personnel, the prosecutor and the defense attorney; (3) an explanation of key concepts; (4) an explanation of evidentiary rules and types of evidence; (5) a discussion of major procedures that occur prior to a trial before the district or circuit court level; and finally (6) an examination of what occurs at a trial by jury from the initial procedure of voir dire through sentencing. A pictorial case history illustrating the procedure from arrest to trial and a glossary containing definitions of legal terms commonly used in the judicial system were also included in the monograph.

This publication, at the present, has already been used, or ordered for use, by the political science and journalism departments

for courses at the University of Hawaii at Manoa; in sociology and criminology cases at Chaminade University; in the Criminal Justice Administration classes at West Oahu College; in political science and sociology departments at Kapiolani Community College; and by the political science and sociology departments at the University of Hawaii at Hilo. The monograph is also being used or ordered for use by the Hawaii Council on Crime and Delinquency (Oahu) and the Maui Council on Crime and Delinquency, as well as by the League of Women Voters as a training manual for their own court observer program in family court.

Extensive revisions to update the publication for subsequent reprinting have already been completed. It includes the most recent legislation affecting Hawaii's criminal justice system and provides a more extensive elaboration of the procedures and key concepts of the judicial system that were discussed in the preliminary publication. The Commission will begin soliciting orders in earnest after it publishes the final edition in February 1980.

Principles has already drawn the highest of critical professional acclaim for filling an educational need in an area of high public concern. One professor at the University of Hawaii at Hilo, who had requested sixty copies of the monograph to use in his course, recently wrote that "[t]his is to my knowledge, the only such publication available, and therefore fulfills a real need in our educational system." Based on the number of favorable

responses received from those groups who have already used the monograph, it can be expected that the demand for available copies will steadily increase in the near future. With its widespread use, it is the desire of the Commission that a publication of this nature will immediately encourage a larger public interest in a more efficient and fair criminal justice system.

C. Aspects of Efficiency and Quality in the Courts

1. General Methods.

This project produced data and observations collected from court observers under the Crime Commission's Court Observer Program described in another section of this annual report. The report on the courts also contained 1) the results of a survey to professionals in the criminal justice system, and 2) the results of Commission interviews with judges, prosecutors and public defenders.

2. Court Observer Data.

Court observer data were derived from 69 district court sessions, 130 circuit court sessions, and 410 circuit court cases. Included in the 410 circuit court cases observed were 103 pre-trial motions, 103 sentencings, 63 trials and 47 changes of plea. Judge Yoshimi Hayashi was observed in 156 cases, Judge Toshimi Sodegami in 129 cases, and Judge Wendell Huddy in 125 cases.

There were 320 circuit court cases observed in the morning and 90 in the afternoon. Most commonly observed were cases

dealing with theft, robbery, and burglary. The sixty-nine district court sessions included forty-five trials, twenty-eight arraignments, seventeen sentencings, and thirteen preliminary hearings. The judges observed in courtrooms one and two of the Honolulu Division of the First Circuit District Court included Judges Andrew J. Salz, Ronald B. Greig, Philip T. Chun, and James Y. Shigemura.

3. Survey.

The survey was sent to 261 people: which included judges with criminal court experience, prosecutors, public defenders, private practicing attorneys on the criminal court appointment list, other government attorneys with criminal court experience, court reporters, court clerks, and bailiffs in all the circuits. Only sixty-nine of those polled responded, including two circuit court judges, four district court judges, seven bailiffs, nine court clerks, nine court reporters, three public defenders, four government attorneys, thirteen prosecutors, and eighteen private practicing attorneys.

4. Interviews.

In-person interviews were obtained with nine judges (six on Oahu and one in each of the other circuits), eight prosecutors (five on Oahu and one in each of the other circuits), and twelve public defenders (nine on Oahu and one in each of the other circuits). The interviews were conducted by a combination of a Commissioner and staff member, or in some cases by two

staff members.

The data obtained through the court observer program, the survey of participants in the criminal justice system, and the interviews with judges, prosecutors, and public defenders are summarized according to categories: (1) audibility; (2) comprehensibility; (3) continuances; (4) recesses; (5) delays; (6) viability of court observer program; (7) scheduling and court calendars; (8) case overload of courts and attorneys; (9) prosecutors and public defenders; (10) court facilities and decorum; and (11) credibility of the criminal justice system.

D. Rape: A Survey of Issues

1. The Sexual Assault Offenses Task Force.

a. Background.

On September 14, 1977, approximately 20 persons representing agencies dealing with sexual offenses, or familiar with the problems and issues, met as the result of an invitation extended to them by the Crime Commission. It was unanimously agreed that the Commission create a special advisory committee to coordinate the efforts of existing legal and social organizations and to conduct research on issues selected by the committee.

On November 22, 1977, the Commission formally established an ad hoc task force to act as an advisory body for the examination of current laws and procedures relating to sexual offenses. The individuals on the thirteen-member committee were chosen on the

basis of their experience and expertise in dealing with the problem of sexual offenses. From the interaction of these people who represented diverse backgrounds and interests, it was believed that recommendations could be developed that would contribute to the reduction of sexual offenses.

It became apparent, however, that certain issues were subject to profound conflicting positions among the members. Although a consensus had been reached that Hawaii's sexual offense laws needed to be revised, particularly in shifting the statutory focus upon the conduct sought to be proscribed rather than on the reaction of the victim, deep philosophical disagreements existed among the membership as to how such statutory revision could best be implemented.

The issues that created the most disagreement among the members were (1) whether the "forcible compulsion" requirement should be retained, redefined, or simply deleted from the proposed sexual offense model statute, and (2) whether the degree of the offense should be based on the extent of injury to the victim.

With regard to the first issue, a minority faction of the Task Force believed that requiring proof of the victim's "earnest resistance" in order to establish "forcible compulsion" was inconsistent with the intent of the proposed statute which emphasized the conduct of the offender rather than the behavior of the victim.

Regarding the second issue, a large number of members disagreed with the view of the majority that the culpability of the offender should depend upon the extent of injury suffered by the victim;

that is, it would have to be established that the victim not only resisted but suffered injuries as well. The minority believed that this requirement would be too great a burden and would discourage both the reporting and prosecution of sexual assaults which would act to the detriment of other potential victims.

The members also disagreed on the classification of sexual offenses. A faction of the Task Force proposed a statute that divided the crime of sexual assault into five separate degrees based on specific conduct by the offender and type of injury suffered by the victim. The majority of members believed that describing the prohibited conduct with greater specificity would increase the number of arrests by law enforcement officers. The minority, however, believed that this complex method created confusion in the enforcement process. In general, the minority favored fewer degrees of sexual assault and adopted a more comprehensive criteria to describe culpability.

Finally, the members of the Task Force were divided as to: (1) whether psychological injuries should be included in the definition of "serious bodily injury" and, if so, to what extent; and (2) what class or classes of persons should be protected from sexual offenses by persons in a "position of authority"; and (3) how effective were existing administrative procedures, such as screening used by police and prosecutors.

Because of irreconcilable differences, the Task Force was not reconvened after fourteen meetings and one year of deliberations.

It was decided by the Commission that further solicitation of ideas would be obtained by other avenues, though the basic framework and ideas of the project were predicated upon the work accomplished by the Task Force.

2. Issues.

The survey questions reflected issues discussed by the Task Force and raised by advocate groups proposing reform of the sexual offenses statutes. The survey accordingly concentrated on the following issues:

- (1) Whether sexual offenses should be redefined with respect to the requirement of "consent";
- (2) Whether sexual offenses should be classified into degrees of "sexual assault";
- (3) Whether sanctions for sexual offenses should be made less severe;
- (4) Whether the enforcement and administration of the sexual offenses laws are adequate;
- (5) Whether there is a need for rehabilitation programs for sex offenders.

3. Selection of Sample.

The sample was drawn from stratified select groups of knowledgeable persons with experience in the prosecution and administration of the sexual offenses laws, or in the providing of assistance and support services to the victims of sexual assaults.

a. "Attorney" Group.

Opinions from persons in this category were believed to be especially cogent because of their experience in the defense and prosecution of sexual offenses cases.

Names of the attorneys in the Prosecutor's and the Public Defender's offices were obtained. Also, names of private attorneys accepting defense assignments were obtained from the criminal appointments list at the First Circuit Court. (These attorneys are appointed by the court in any case where the Public Defender's Office is unable to handle the defense.)

These names were further screened to determine the attorneys who have had experience in sexual offenses cases. Based on this determination, 46 questionnaires were sent to private attorneys; 17 were sent to deputy prosecutors; and 7 were sent to public defenders.

b. Enforcement and Correction Personnel.

The below-listed departments and agencies were contacted because of their dealings with sex offenders during the investigative stage and in the pre-trial and post-trial periods. Each department and agency was asked to submit the names of persons who would be knowledgeable about the issues dealt with by the survey because of their professional experience with sex offenders.

- (1) Honolulu Police Department. (Three questionnaires were sent for completion by the detectives assigned exclusively to the investigation of sexual offenses.)

- (2) Pre-Trial Intake Service. (Five questionnaires were sent for completion by personnel handling the preliminary reports regarding the sex offender for use in pre-trial proceedings.)
- (3) Department of Health, Mental Health Division, Courts and Corrections Branch. (Eleven questionnaires were sent for completion by psychiatrists and psychologists who assisted the courts in making relevant determinations and also provided care and treatment for sex offenders in state correctional institutions.)
- (4) First Circuit Court, Adult Probation Division. (Three questionnaires were sent for completion by personnel who prepared pre-sentencing reports regarding sex offenders for use by the courts in the sentencing proceeding.)
- (5) Hawaii Paroling Authority. (Twelve questionnaires were sent for completion by parole officers who have had experience with sex offenders.)

c. "Advocate Groups".

The respondents representing the advocate groups were members of the 1980 Committee on Criminal Sexual Violence, formed out of a portion of the membership of the Crime Commission's Sexual Assault Offenses Task Force. Spokespersons for the following victim-oriented organizations were surveyed:

- (1) Women Helping Women, Maui Rape Crisis Center;
- (2) Sex Abuse Treatment Center;

- (3) State Commission on the Status of Women;
 - (4) Women's Center, Hilo, Hawaii;
 - (5) Women's Center-Kona, Kealahou, Hawaii;
 - (6) People Against Rape;
 - (7) Victim-Witness Kokua Center;
 - (8) National Organization for Women (NOW);
 - (9) Honolulu City and County Commission on the Status of Women.
4. Tabulation of Results.

Respondents were grouped according to profession and assumed orientation: attorneys (prosecution and defense); enforcement and correctional personnel (apprehension, custody, and treatment of sex offenders); and advocate groups (victim-oriented). The "attorney" and "enforcement and correction" categories were further broken down to stratify responses to specific issues.

"Propositions" about sexual offenses were presented, and the respondent was asked to state whether he or she "strongly agreed," "agreed," had "no opinion," "disagreed," or "strongly disagreed."

The survey attempted to determine the opinions of respondents in a number of different subgroups. Each subgroup was accorded an equal vote because it was recognized that the size of the relevant community represented by the subgroup would be difficult to ascertain with precision. However, the use of a weighted average method was employed as a cross-check on the reporting of the number of subgroups that agreed or disagreed with each proposition. For example, those individuals in the minority in any given subgroup would have their

responses registered on a weighted basis in the overall results of the poll, so that even if a group were counted in favor of the proposition, dissenting opinions would be reflected. It was expected that the overall weighted results would generally track the proportion of subgroups that were in the majority and minority with regard to each proposition in the questionnaire.

a. Preliminary Questions.

Question #1: What is your current profession? This was used to group responses according to profession and assumed orientation.

Question #2: In how many sex offense cases have you ever participated or been involved? Responses validated the sample selection methods as more than one-half (55%) stated that they had been involved in or handled more than ten sex offenses cases; whereas, only four (6%) stated that they had never been involved in or handled such cases.

b. Effectiveness of Present Laws.

Proposition: The present sexual offenses provisions (Hawaii Revised Statutes Chapter 707 sections 720-742) are effective in controlling the conduct sought to be proscribed.

The Commission's Task Force was formed in response to the expressed concerns of various segments of the population that the current state laws dealing with sexual offenses were not effective. This proposition was intended to test this premise of perceived ineffectiveness among the groups surveyed.

c. Proposed Comprehensive Statute.

Proposition: There should be a new statute which defines rape, sodomy, and sexual abuse as "sexual assaults" in different degrees.

As an alternative to the present statutes that deal separately with the offenses of rape, sodomy, and sexual abuse, a Task Force sub-committee had proposed a model statute patterned on the Michigan statute, which consolidated the existing offenses into one comprehensive category termed "sexual assault" and also eliminated the requirement for evidence of resistance by the victim. The intent of the Michigan reforms was to simplify the law in order to expedite the prosecution and conviction of sex offenders, thereby reducing the incidents of sex crimes.

d. Retention of the "Earnest Resistance" Provision.

Proposition: The requirement that resistance be "earnest" results in inconsistent decisions in rape cases.

Proposition: The requirement that resistance be "earnest" results in too burdensome a standard for conviction.

Proposition: The rape statute should focus exclusively on the actor and his or her actions rather than on resistance by the victim.

Proposition: Resistance by the victim may result in unnecessary danger to the victim and therefore proof of resistance should not be required.

In order to find a person criminally liable under the present

sexual offenses statutes, the sex act must be compelled by "forcible compulsion" which indicates the nonconsensual aspect of the offense that makes it a substantial threat to both the victim and society. "Forcible compulsion" is defined in part as "physical force that overcomes earnest resistance." Hawaii Revised Statutes §707-700(12). However, the fact that "earnest resistance" is not statutorily defined has led to the criticism that it is an ambiguous standard resulting in inconsistent decisions.

e. Circumstances Justifying the Imposition of Criminal Liability in Sexual Offenses Cases without Requiring Proof of Resistance.

Proposition: The use of a dangerous instrument, physical force, a position of authority, or a threat, express or implied, by the actor, without proof of resistance by the victim, justifies the imposition of criminal liability in sex offense cases.

Reform groups had suggested that certain circumstances were so coercive that the imposition of criminal liability for sexual assault offenses without a showing of resistance by the victim was justifiable. The proposition was intended to elicit the opinions of the respondents as to the circumstances considered so coercive, so reprehensible, or so serious in some way as to establish presumptively that resistance need not be shown by the victim.

f. Lack of Consent.

Proposition: A standard of "lack of consent" should replace the standard of "forcible compulsion" in the definition of

rape 2nd degree.

Under the existing sexual offenses statutes, lack of consent by the victim is implied in that the prohibited sexual act must be by "forcible compulsion" and the victim must show resistance that is overcome by physical force or acquiescence without resistance because of a reasonably perceived threat of death, maiming, or kidnapping. Reform groups have suggested that the "earnest resistance" provision of "forcible compulsion" be replaced by "lack of consent", and made applicable to the less culpable degrees of sexual assaults. The proposition was intended to elicit the opinions of the respondents as to whether criminal liability, at albeit a lesser degree of culpability, should be legitimately imposed where consent cannot be clearly demonstrated.

g. Classification of Sexual Offenses.

Proposition: The classification of sexual offenses according to degrees should continue to be based on the injury to the victim.

Under the existing statutes, the degree of culpability of the actor is determined by the nature and extent of the injuries suffered by the victim of a sexual assault.

Reform groups have argued that the focus on the nature and extent of the injuries suffered by the victim detracts attention from the assailant whose conduct caused such injuries and which conduct is sought to be proscribed by the sex offenses statutes.

This proposition was intended to elicit the opinion of the

respondents as to whether they believed that the nature of injuries suffered by the victim, to the extent that the concept is embodied in current law, should continue to determine the degree of the sexual offense.

h. Penalties for Sex Offenses Violations.

Proposition: The sanctions under the present sexual offense provisions discourage the investigation, prosecution, and conviction of sex offenders.

Under Hawaii's indeterminate sentencing statutes, conviction of first degree rape or sodomy, both class A felonies, subjects the offender to a possible 20 year maximum term, or may be extended to a term of life imprisonment. When imposing imprisonment for a felony, the court must impose the maximum term allowed for the class of felony. Subsequently, the Hawaii Paroling Authority determines the minimum term of imprisonment to be served before the offender is eligible for parole.

Some members of the Task Force and various advocate groups have argued that the severity of existing sanctions for sexual offenses may impede the investigation, prosecution, and conviction of sex offenders. For example, in the area of investigation, law enforcement officers may investigate sex offense cases less enthusiastically where they believe an offense, even if technically committed, does not warrant the severe sanctions that are possible. Moreover, because of inadequate evidence that thereupon results, the officer may not refer the case for possible prosecution. In regard to

prosecution, the severity of the punishment ensures that appropriate cases will be carefully investigated and that, when they are not, the prosecutor may be reluctant to seek indictments or go to trial. Finally, in regard to convictions, it has been argued by reform groups that juries are reluctant to convict offenders for first degree sexual offenses because of the severity of the sanctions.

This proposition tests the opinions of the respondents with respect to whether harsh penalties act to deter the investigation, prosecution, and conviction of sex offenders.

i. Psychological Injury.

Proposition: Serious psychological injury should be included as a factor in determining the degree of the offense charged.

Under current law, rape and sodomy in the first degree include the element of "reckless infliction of serious bodily injury." "Serious bodily injury" is defined to mean "bodily injury which creates a substantial risk of death or which causes permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ." Hawaii Revised Statutes § 707-700(3).

This definition has been interpreted by the courts to mean serious physical injury and does not include serious psychological injury.

The model statute proposed by a faction of the Task Force considered the imposition of liability in the second degree for the infliction of serious mental anguish in the context of a sexual assault. The rationale that underlies the proposed inclusion of

psychological injury as a determinant for criminal culpability is based on the premise that, because of their intimate nature, rape and sodomy are crimes that inflict uniquely devastating psychological and emotional trauma upon their victims. Such trauma, reform advocates believe, should be recognized in assessing criminal liability and determining the nature of society's response to the crime.

The proposition was intended to elicit the opinions of the respondents as to whether psychological injury should be a consideration in determining the degree of the offense charged.

j. Prior Sexual History of the Victim.

Proposition: Those who oppose including serious psychological injury in the definition of rape have argued that proof of "serious psychological injury" would result in the introduction of evidence as to the prior sexual experience of the victim.

Because the psychological injury to a sexual assault victim may turn upon the victim's sexual experience, legitimate inquiry may be requested into the prior sexual conduct or history of the victim. The prosecutor may attempt to use sexual inexperience to establish the basis for psychological trauma; the defense may attempt to use sexual experience to discredit or minimize the existence of such injury.

This proposition was designed to measure opinion among the sample group as to whether the inclusion of serious psychological injury into the definition of rape and sodomy would result in the

introduction of evidence as to the prior sexual experience of the victim.

k. Voluntary Social Companion.

Proposition: The "voluntary social companion" requirement should not be the basis for distinguishing between degrees of rape.

Under current law, rape and sodomy in the first degree are defined, in part, as acts of sexual or deviate sexual intercourse by forcible compulsion where the victim was not a voluntary social companion who had within the last twelve months permitted the accused such intercourse. This definition presumes that a victim who had consensual sex with the assailant in the past is more likely to have consented to the sexual offense charged, and that even if nonconsensual, such an assault does not import the amount of humiliation and trauma that would exist if the assailant were a complete stranger.

This provision has been severely criticized by reform groups on the ground that the presumption underlying the provision is invalid. This proposition was intended to elicit the opinions of the respondents concerning the advisability or legitimacy of using a "voluntary social companion" provision to determine degrees of culpability for rape or sodomy.

l. Other Propositions.

- (1) The "voluntary social companion" requirement should be retained but the twelve-month period should be reduced.

- (2) It has been argued by some reform groups that many rape cases never get to court because the victims are unwilling to submit to pre-trial screening procedures. Please comment.
- (3) Would you favor the establishment of rehabilitation programs specifically designed for sex offenders as part of the sentencing procedures? Please comment.

E. Extortion

1. Authorization and Preliminary Report.

On September 7, 1977, the Commission authorized an investigation and study of extortion. During 1977, certain cases and complaints were dealt with, preliminary research was carried out, and a survey of 15,000 small businesses were conducted. In early 1978, a preliminary report was written and published. This report had a large impact on the public because its findings were widely and prominently reproduced by the newspapers and broadcasting stations.

2. Methods of Investigation and Study.

This Commission project was not limited to obtaining evidence for prosecution, though the Commission has provided the police with developed information in certain cases and conducted joint investigations in others. In addition, the Commission sought to examine the whole dimension of the crime of extortion, with a view toward diminishing its frequency by means of discovering facts and remedies in each state of the crime and its treatment by the criminal justice system. The following is a description of the methods used by the Commission.

a. Examine reported cases of extortion.

Beginning in 1977, the Commission examined reported cases in police and court files. Newsclippings on extortion cases

during the last fifty years were also examined.

b. Discover and examine unreported incidents of extortion.

The Commission was particularly interested in the total number of incidents, location, types of businesses victimized, amounts of money demanded, methods of operations, and causes of non-reporting. To do this, the Commission had to open new channels of information, cognizant of the difficulty of obtaining precise figures. Therefore, the Commission gathered information and estimates from as large a variety of sources as possible and then evaluated them critically by the light of contradictions or confirmations from each of the other sources. These different sources of information and estimates included the following:

Confidential Message Center. The Commission made known its particular interest in extortion. The public was invited to phone in tips and other information. The Message Center allowed people to deposit their information without entering into direct contact with a government official, though on occasion the callers left their names and telephone numbers for the staff to contact them.

Direct contact with victims and informants. A large number of individuals called the Commission office and were interviewed by staff.

Formal interviews with law enforcement agencies. Interviews conducted by the staff with local and federal law enforcement officials yielded information and varying estimates, as well as recommendations.

Small Business Survey. The Commission sent a letter, with an attached questionnaire, to 45,000 small businesses whose character invited extortion. This was a form of survey, though it was clear that nothing could be generalized from the figures and written information, unless these were analyzed for credibility and, further, verified against information from the other sources. The survey was simply an inexpensive means to collect raw information on a large scale. The questionnaire produced a basis for general estimates about extortion and also a number of concrete leads and tips on specific cases that could be investigated directly.

c. Obtain recommendations from law enforcement officials.

Federal and local police and prosecutors were interviewed regarding reporting investigation, prosecution, courts and the law. The contents of the interviews were evaluated in order to isolate the issues or problems in extortion cases.

d. Analyze Hawaii and Federal laws on extortion.

The Commission compared the Hawaii and Federal statutes and compiled information on the other states' extortion laws. Specifically, the Commission was concerned with finding remedies

to deficiencies in Hawaii's law.

e. Revise Hawaii's extortion laws.

During the 1979 legislative session, the Commission proposed legislation to reform the extortion laws. The legislature enacted these reforms as described in the legislative chapter of this report.

f. Publish Commission findings and implement recommendations.

The final report, soon to be published, includes the following sections: (1) General nature and history, (2) Reported cases, (3) Unreported cases, (4) Crime Commission investigations, (5) Revised Hawaii Extortion Law, (6) Federal law on Extortion, (7) Conclusion and recommendations, (8) Appendix: Other state extortion statutes.

V. SEMINARS AND COMMUNITY PROJECTS

V. SEMINARS AND COMMUNITY PROJECTS

A. Seminar for Potential Victims of Terrorism and Extortion

In cooperation with business associations, the Commission sponsored a program called a "Seminar for Potential Victims of Terrorism and Extortion," held on the 9th and 10th of April, 1979 at the Ala Moana Hotel. This seminar was designed to provide practical information on defensive measures for Hawaii's businesses. Over two hundred people attended the full day seminars.

The curriculum covered the topics of terrorism, personal security, hijacking, extortion, kidnapping, bombing, assassination, and assaults. Emphasis was placed on security planning as a way to help prevent the occurrence of life-threatening situations.

Two experts in this field lectured at the seminar: Mr. H.H.A. Cooper and Mr. Richard W. Kobetz. Mr. Cooper has been a consultant on terrorism to the International Association of Chiefs of Police, and Mr. Kobetz has been an assistant director of the Bureau of Operations and Research, International Association of Chiefs of Police.

In addition, the program included speakers Michael Sterrett, Organized Crime Strike Force Attorney from the Office of the U.S. Attorney, and the Honorable Judge Paul De Silva, former prosecutor

on the Island and County of Hawaii and community District Court Judge.

A program like this seminar has been requested by many individuals in business as a result of their fear of becoming victims of violent crime and terroristic threatening. There are similar programs on the Mainland, but their information has not always been relevant to the particular situation in Hawaii.

The program was conducted because the Commission was contacted by a large number of businessmen who expressed a strong interest in education in defenses against terroristic situations including extortion, terroristic threatening and hostage situations. Some of these businessmen had been actual victims of terroristic threatening and extortion attempts, while others were alarmed by the pervasiveness of these activities. Also, it was recognized that the common crime of armed robbery can lead to terrorism and hostage situations.

The curriculum was structured into two-hour segments according to the following topics.

1. Terrorism - the nature and dimensions of the threat.

A brief introduction to terrorism and quasi-terrorism as it affects the businessman. The personalities, types and objectives of terrorists, with special reference to extortion, criminal coercion, and terroristic threatening as they affect the small and medium businessman in Hawaii. A brief assessment of the threat nation-wide and worldwide.

2. Planning for security.

Options and alternatives for a comprehensive personal and professional security plan. A full range of practical possibilities with regard to the magnitude of the assumed risks and the

resources available to meet them. For small, medium and large businesses.

3. Personal and family security - What is involved.

The concepts of personal and family security. The practical aspects of being looked after as opposed to looking after oneself. Hardware vs. software approaches and the respective economics of both.

4. Life threatening situations.

Assassination, bombings, assaults, hostage-takings, and skyjackings, with special reference to medium-sized cities and suburbs like Honolulu. Some discussion of current trends.

5. Kidnapping.

- a. Preparing to meet the threat - The dynamics of the kidnapping situation and measures to frustrate the kidnapper in his endeavors. Prevention and those steps that might prudently be taken by businessmen to avoid being victimized.
- b. Surviving the experience - The actions and procedures in the event of a kidnapping taking place. Individual coping techniques and the mechanics of a rescue operation from the outside.

6. Security in transit.

The risks inherent in personal travel. Recommendations to minimize risks.

7. Home and building security.

Hard and software aspects of residential and "place of business" security. Various security devices and systems and their respective merits.

Lecturers

1. Richard W. Kobetz is an assistant director of the Bureau of Operations and Research, International Association of

Chiefs of Police. He directs research and projects in security and terrorism and conducts the IACP training programs on Protective Services, Hostage Rescue Operations and Crowd and Spectator Violence. He also has been adjunct faculty member at the University of Maryland since 1973 and served as a member of the National Advisory Committee Task Force on Disorders and Terrorism. He brings to his present position law enforcement experience as a member of the Chicago Police Department. His publications include Guidelines for Civil Disorders and Mobilization Planning, Criminal Justice Education Directory, Juvenile Justice Administration, The Police Role and Juvenile Delinquency, Crisis Intervention and the Police and Campus Unrest: Dialogue or Destruction.

Dr. Kobetz holds the associate degree in arts from City College of Chicago, a master of science degree in public administration from the Illinois Institute of Technology, and the master of public administration and doctor of public administration degrees from Nova University.

2. H.H.A. Cooper is the president of Neuvevidas International, Incorporated, a Texas corporation specializing in safety and survival techniques, and the Director of European and Middle Eastern Studies, Aberrant Behavior Center, Dallas, Texas. He is also a consultant on terrorism to the International Association of Chiefs of Police and various government agencies. A member of the Board of the International Society of Social Defense, he has represented that organization before the United Nations since 1972. From 1975

through 1977, Professor Cooper was the Staff Director of the National Advisory Committee Task Force on Disorders and Terrorism. While serving as Director of the Criminal Law Education and Research Center of New York University, and Deputy Director of that University's Center of Forensic Psychiatry, he was the special consultant to the National Wiretapping Commission and author of the Commission's comparative international report. Professor Cooper holds a bachelor of law degree from the University of Liverpool, and a master of law in criminal justice from New York University. He is the author of numerous books and articles on terrorism and related problems.

B. Seminar on Church Arson

In an effort guided by Commissioner Maggie Bunson, the Crime Commission sponsored a seminar and meeting on the subject of arson against local churches. This was held at the State Capitol on July 27, 1979. About forty-five people representing various churches and church groups were in attendance.

The featured speaker was Victor Palumbo from the National Fire Academy, who spoke on arson prevention and the problems of arson in the local churches. Mr. Palumbo emphasized that incidents of arson, whether committed maliciously or done as a means to cover up other crimes such as burglary, can be stopped. The methods for preventing all types of arson are the same: greater surveillance and the prevention of unauthorized entry.

Participants discussed possible visits by local police to give churches specific advice on securing their premises; the necessity of following the advice of experts; the establishment of community watch programs; and the perceived leniency of the courts especially regarding repeat juvenile offenders. Mr. Palumbo observed that, in Seattle, firemen with CB radios patrol potential trouble spots and report any suspicious activities to the police. In Los Angeles, the city government sued for the sum of \$127,000 the convicted perpetrator of a fire, which was set to cover up fraud, for the cost of extinguishing and investigating the fire. Similar strategies may be used against parents of youthful offenders.

Interest in the seminar and meeting was generated because of threats of fire insurers of many local churches to terminate coverage unless churches made greater efforts to meet and cope with the growing problem of arson. The seminar was instrumental in persuading the insurers to continue their fire coverage.

The success of the arson seminar led participants to endorse overwhelmingly the idea of further seminars that would deal with the role that the churches can play in solving the problem of crime in the community.

The Commission also prepared a brochure on tips of "Do's and Don'ts" aimed at preventing arson and vandalism. This brochure was distributed to the participants. Two denominations republished the brochure, at their own expense, to over two hundred churches in the State.

C. Court Observer Program

Court watching projects have been conducted in cities across the nation. These projects reflect the recent growth in citizen concern regarding crime and the criminal justice system. Although varying in scope, focus and design, they all share a basic pattern: Citizen volunteers are given training as court observers and sent to local courtrooms with instructions to monitor various activities that affect the administration of justice. Collected data are used to identify inefficiencies and inequalities in the judicial system. Recommendations for reform are then submitted to the judiciary or to the legislature.

After several months of research, planning, and preparation, the Commission established a court observer program consisting of a number of sequential stages.

1. Pilot Phase.

a. Recruitment of Court Observers.

Volunteer court observers were recruited in several ways, including notices to civic organizations, high schools, and colleges, as well as by news releases in the daily newspapers and on the radio, and, in addition, by personal contact with officers and personnel of various organizations and community groups. A total of sixty-five observers were recruited.

The League of Women Voters was selected as the primary source of the volunteer court observers, providing approximately two-thirds of all court observers. There were several reasons for

such a choice: (1) the League had successfully coordinated a number of courtwatching programs on the Mainland; (2) coordination of volunteers would be facilitated when they shared a common affiliation; and (3) the League is a politically active but neutral volunteer organization. The 25 other court observers included members of the University of Hawaii Campus Club and volunteers who responded to newspaper and radio advertisements.

b. Contact with the Judiciary.

There was one meeting with Lester Cingcade, Administrative Director of the Courts, to acquaint him with the Court Observer Program. A follow-up letter to Mr. Cingcade also explained the objectives of the program and briefly described the observers who would be taking part and their training. There were also courtesy informational meetings with selected judges. Exposure of the program to the rest of the judiciary staff was handled by the Judiciary Administration.

Earl Yonehara, Administrator of the Volunteers in Public Service, also provided the program with assistance, materials, and information on the judiciary system and in volunteerism.

c. Training Seminar.

Seminars were purposely scheduled approximately one week before the court observers began their observation and data collection, the better to encourage their retention of the training information. Each of the three training sessions lasted three to four hours. Lecturers and instructors were

attorneys, experienced in criminal procedure in Hawaii's courts, including the Commission's staff attorneys and an assistant professor of law at the University of Hawaii.

Three training seminars were held: the first to prepare observers for the Pilot Phase; the second for the Court Observation Phase; and the third for the Court Observation Phase Extension. Each seminar consisted of approximately twelve hours of instruction over two days. The subjects of the instruction included: an overview of Hawaii's criminal justice system; pre-trial procedures; trial procedures; post-trial procedures, including appeals and sentencing; courtwatching; and an explanation of the forms and the mechanics of the data collection. There was discussion of concepts in criminal law such as the defendant's constitutional rights, probable cause, presumption of innocence, reasonable doubt, and evidentiary rules and procedures.

The training seminars enabled the volunteers to become familiar with the framework of the criminal justice system, and were aimed at procedural rather than substantive aspects of the law. The observers, it was believed, would understand the reasons for the proceeding even if they did not understand all the legal arguments during it.

d. Manual.

The Court Observer Handbook prepared by the Commission staff was the sole text for the training seminars. The handbook contained basic information such as an introduction to the Court

Observer Program, the structure and procedures of the Hawaii criminal justice system, and some principles of court observing. It also included a discussion of courtroom responsibility and decorum as well as a description of the data collection forms. This handbook was later revised, the "manual" portion deleted, and the substantive parts were edited as a textbook for college-level courses. Many classes in journalism, political science, police science, criminology, and sociology as well as the pre-law society, are now using the revised monograph called the Principles of the Hawaii Criminal Justice System.

e. Examination.

An examination was given to the volunteers to gauge their basic knowledge of the criminal justice system, court procedure and personnel, as well as the effectiveness of the training phase. The examination was also used to permit a review of the adequacy of training materials or, if necessary, allow disqualification of observers. It was believed that all observers should understand at least the elementary aspects of basic criminal procedure. No examination was given for the pilot phase of the training period but the volunteers were tested prior to the court observation period and the extension period.

f. Swearing-in and Assignment.

Observers were sworn in by the Crime Commission Chairman Nelson K. Doi and were then issued identification cards. Assignments to the various criminal courts were based on the days

and hours most convenient for each observer. The schedules of all the criminal courts, on both the district and circuit level, were divided into morning and afternoon sessions. At least one observer per session was assigned to each court for each day.

g. Two-Week Training Period.

The two week testing period before actual data collection was created to identify and correct any flaws and to let observers become familiar with courtrooms, personnel, and procedures. During this period observers attended court sessions and collected data as if it were a true program. The forms from this testing period were then evaluated for possible improvement. One month was set aside for evaluation and the correction of any defects.

2. Court Observation Period.

a. Duration.

The Court Observation Period was intended to be of two months duration, from January 15 through March 15, 1979. After about one month of observation, however, it was clear that the data were generally inaccurate and incomplete because of inadequate collection forms. The forms were therefore redesigned; the program was extended for one month; and the data already collected were disregarded. The amended forms were distributed on February 15 and observers were briefed on the changes.

b. Collection Forms.

Several data collection forms were used. During the

two weeks testing period, a single data form was used to record observations made in both district and circuit courts. As a result of the testing, observers suggested that separate forms be devised for district and circuit courts. They noted that district court proceedings moved so rapidly that case-by-case data collection was impossible. New forms were then drafted that incorporated the suggestions of the observers. These were used from January 15 to February 15, 1979, and were in turn amended for the period February 15 through April 15, 1979.

Three different forms were used to record data during the court observation period: a district court session sheet, a circuit court session sheet, and a circuit court case sheet. Session sheets were used to record data for specific periods of time (two hours, for example), whereas case sheets were used to record data for each particular case observed during the observer's session. Session sheets therefore reflected observations made for numbers of cases. For example, five cases might be observed and then recorded on one session sheet within a single one-hour session. Circuit court session sheets recorded the audibility of the participants (judges, defendants, attorneys, witnesses, court personnel) and the comprehensibility of the proceedings. The corresponding case sheet monitored continuances, recesses, and delays. The district court session sheet contained data for all five categories: audibility, comprehensibility, continuances, recesses and delays.

c. Courts Observed.

On the circuit level, the criminal courts of Judges Yoshimi Hayashi, Wendell K. Huddy, and Toshimi Sodehara were observed. On the district level, Courtroom 1 (preliminary hearings) and Courtroom 2 (trials) were observed. Only courts of the First Judicial Circuit were observed because of the cost and the difficulty in coordination that would have been encountered in observing courts of the other circuits.

3. Data Tabulation and Evaluation.

The data collected by observers were tabulated and cross-referenced by computer. Numerical comparisons linking audibility, comprehensibility, continuance, recess, and delay factors in the courts, judges presiding, and types of proceeding observed were also done by computer. The results were then used for the Commission's report on Aspects of Efficiency and Quality in the Courts.

This court observer program achieved the gathering of useful data for an analysis of certain aspects of the courts in their handling of criminal cases. The program also 1) educated a large number of laymen in the workings of the judicial system, 2) produced a textbook on the criminal justice system of Hawaii, and 3) gave birth to another court observer program for family court established by the League of Women Voters.

VI. CRIME COMMISSION: GENERAL DESCRIPTION

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VI. CRIME COMMISSION: GENERAL DESCRIPTION

A. The Commission

The Hawaii Crime Commission was created by Act 16 of the First Special Session, Ninth Legislature, 1977. The statute was substantially amended in 1978 by Act 219 which provides that the Commission be placed within the Office of the Lieutenant Governor for administrative purposes but that the Chairman of the Commission is the chief administrative officer, and is appointed by a two-thirds vote of the Legislature. The Commission is composed of twelve authorized members who, with the exception of the Chairman, are appointed by the Governor with the advice and consent of the Senate.

1. Members

On July 21, 1977, the Governor appointed eleven members to serve on the Commission. The Commissioners are all private citizens.

Nelson K. Doi, Chairman (resigned August 8, 1979)
Recent Lieutenant Governor of the State of Hawaii.
Formerly a County Attorney and Senior Judge of the
Third Circuit Court. Served as State Senator, in-
cluding Senate President and Floor Leader. Was
twice a delegate at Hawaii Constitutional Conven-
tions. Also served as delegate to Washington, D.C.
for Hawaii Statehood.

Rafael Acoba

Educated on Maui and at Honolulu Business College. Served for twenty years in the Maui Police Department and currently works as a real estate broker. Has been active in several church and community groups on Maui.

Gene Albano (Vice-Chairman from July 1977 to August 1978)

Born and educated in the Philippines. Holds degrees in business administration and law. Has been active in Filipino community organizations and other community groups such as the Chamber of Commerce. Was Assistant Vice President and Manager of a savings and loan institution.

John Beck (Resigned November 6, 1979)

Born and raised in China, holds a B.A. and M.A. in Sociology and an M.A. in Theology. Has taught in China and served as a minister in several countries. Until 1976 was a special counselor for the Department of Education in Hilo and has served as Chairman of the County Committee on Children and Youth. Currently Pastor Emeritus of the First United Protestant Church of Hilo.

Maggie Bunson

Holds a B.A. in English and an M.A. in Theology. Has served as a teacher, editor and writer. Published three books on Catholicism. Currently is Secretary to the Bishop of Honolulu.

A. Van Horn Diamond (Executive Board Member from July 1977 to August 1979)

Born and raised in Hawaii. Holds a B.A. from the University of Notre Dame. Active in politics and was twice a delegate to the National Democratic Convention. Has served on numerous State government committees and is active in community affairs. Served as Executive Secretary of the State AFL-CIO and Executive Vice President of the Musician's Union.

Alwyn Kakuda

Born on Kauai. Attended business college in Honolulu. Currently manages a family wholesale business and is an active member of the West Kauai Jaycees.

Neal Okabayashi (Appointed June 1979, Elected Vice-Chairman and Acting Chairman August 19, 1979; resigned both posts on motion of Commission, January 9, 1980)

Born in Honolulu. Presently a staff attorney for Bancorp Hawaii, Inc. Served as a researcher for the Hawaii Criminal Justice Standards and Goals Project and also worked in the Public Defender's office.

Thomas Oshiro (Elected Vice-Chairman and Acting Chairman, January 9, 1980)

Born and educated in Honolulu. Presently manages a family business. Has served as a member of the Kalihi-Palama Community Council, the Liliha-Palama Business Association, and Neighborhood Board No. 15. Served as treasurer to the Susannah Wesley Community Center.

Borick Peroff

Born on the island of Hawaii and educated on Maui. A former police officer. Currently is a security officer for Matson and President of ILWU Local 160, Security Section.

Napua Stevens Paire

Born on the island of Hawaii. Educated at Hilo High School. Has substantial experience and recognition as an entertainer, author and expert on the Hawaiian language. Has had numerous radio programs, taught hula, and for ten years had her own TV show.

Frank White, Jr. (Elected to Executive Committee on August 8, 1979)

Holds an M.A. in Physical Education and has experience as a teacher and coach. Formerly served as the president of a trucking company. Currently works as an executive in a leasing company. Is active in local sports activities and serves as director of the Hawaii Trucking Association.

2. Structure and Terms

The 1978 legislative session extended the terms of the Commissioners to June 30, 1980. Any vacancy on the Commission, except the chairmanship, is to be filled by the governor, with the advice and consent of the Senate. Act 219 also provides for the appointment of the chairman by a joint session of the House and Senate for a term from July 7, 1979 to June 30, 1980. If a new chairman is not named, the incumbent chairman remains in office. By two-thirds vote of each house in joint session, the Legislature may remove or suspend the chairman from office but only for neglect of duty, misconduct, or disability. The Legislature may fill any vacancy. The chairman has the power to vote only in the event of a tie vote.

The members of the Commission are not compensated for their services but are reimbursed for reasonable expenses necessary to the performance of their duties, including travel expenses. There is an executive committee of the Commission that consists of two persons elected by the Commission from among its members. Until August 1979 the two members were Gene Albano and A. Van Horn Diamond. They were succeeded by Neal Okabayashi as Vice-Chairman and Frank White as committee member. Mr. Okabayashi resigned both his positions on January 9, 1980, on motion of the Commission and was succeeded as Vice-Chairman and Acting Chairman by Thomas Oshiro.

The executive committee includes the chairman of the Commission and is empowered to develop and identify general areas for

Commission study and review, and generally direct the work and activities of the Commission.

B. Statutory Jurisdiction of the Commission

The duties and functions of the Hawaii Crime Commission, as stated in Act 219 supra, and Act 82, 1979 Haw. Sess. Laws, which are codified in Chapter 843, Hawaii Revised Statutes, are to:

- (1) Develop, recommend, and where appropriate, implement public education programs relating to educating the public as to the nature of crime;
- (2) Develop, recommend, and where appropriate, implement programs of public education to provide defensive living education to the public, and information regarding affirmative steps which may be taken to avoid occurrence of crime, eliminate the possibility of becoming a victim of crime and other information designed to defend against any aspect of crime;
- (3) Review and make recommendations regarding the operations of existing programs, agencies, and other projects relating to crime, including but not necessarily related to the courts, police, and prosecutorial agencies;
- (4) Review and make recommendations regarding existing substantive laws, procedures, and practices in relation to criminal matters or procedures, and the justice systems;

- (5) Study and make recommendations for facilitating the reduction and prevention of destruction of public property, school violence, business, and other white collar crimes and criminal activity;
- (6) Study, develop and make recommendations for the protection of the community, including name check systems for businesses, and other measures designed to protect individuals and the State from crime and direct and indirect criminal influence;
- (7) Report, to the legislature prior to the convening of each legislative session, on its activities of the preceding year and on a program of action for the coming year;
- (8) Investigate and collect evidence necessary to study criminal activity or the operation of the criminal justice system;
- (9) Hold public and closed hearings;
- (10) Receive, manage, and tender funds for reward for apprehension and conviction of criminals; and
- (11) Perform other functions and duties necessary to carry out the procedures established in Section 843-6.

Haw. Rev. Stat. § 843-6 gives to the Commission all powers conferred under Chapters 91 and 92 of the Hawaii Revised Statutes, which include the power to hold hearings, issue subpoenas, administer oaths and affirmations, and appoint a master or masters

to hold hearings.

In addition, the Commission may subpoena persons and documents in connection with a public or closed hearing, or in connection with the Commission's authority to investigate and collect evidence whether or not in connection with any hearing. Commission hearings may be closed when matters are to be considered which, if made public, may threaten the effectiveness of a study of criminal activity or of the criminal justice system.

Section 843-6 also requires all agencies of the state and county governments to cooperate with the Commission. In conjunction with the duty to investigate and collect evidence and the power to subpoena persons and documents, and take testimony under oath, the 1978 legislative session made the unauthorized disclosure of confidential information by any commission member, staff member, or employee a Class C felony, which is punishable by a maximum five years imprisonment and a \$5,000 fine.

C. Meetings

During 1979, the Crime Commission held six meetings. The Commission met on:

- (1) January 11 to hear testimony and approve the Commission's legislative recommendations on the laws of gambling, terroristic threatening, and extortion; to discuss recommendations made by the Sexual Assault Offense Task

Force; statutory changes on the Crime Commission; the Court Observer Program; and the Seminar for Potential Victims of Terrorism.

- (2) February 21 to discuss the amendments to the Commission's proposed extortion and sexual offenses statutes.
- (3) June 8, 1979, to discuss and approve amendments to the Commission's rules and regulations; to hear progress reports on various projects; and to learn the status of the Commission's proposed bills in the Legislature; and, in executive session, to discuss investigative matters.
- (4) August 8, 1979, to hear a report on the Commission-sponsored meeting on arson among church leaders; to elect a new executive committee and vice-chairman.
- (5) October 26, 1979, to hear reports on various Commission projects: violence and vandalism in the schools, court observer program, publication of Principles of the Hawaii Criminal Justice System, extortion, and sexual assault offenses; to discuss the rights of businesses to protect property; to discuss investigations and other matters.
- (6) November 30, 1979, to discuss the amendments to the rules and regulations of the Commission; to hear reports on self-defense provisions, mainland crime commissions, and investigative matters.

D. Staff

The Commission has employed staff members and employees whose backgrounds reflect the general approach of the Commission, namely to integrate academic, legal and investigative skills in its investigations and studies of crime and the criminal justice system.

Hikaru Kerns, Staff Director

A former Rhodes Scholar, Woodrow Wilson Fellow and a National Defense Fellow at Stanford University. Graduated with an advanced degree from Oxford University in defense policy and foreign affairs. Worked in journalism and in defense policy.

Richard S. Kawana, Staff Attorney and Legal Counsel

Graduated from Willamette University with honors and from Georgetown University Law Center. Served as Intelligence Officer, U.S. Air Force. Clerked for a U.S. District Court Judge and was a trial attorney for the Public Defender's office.

Shelton G.W. Jim On, Staff Attorney

Graduated from the University of Hawaii with honors and from the University of San Francisco School of Law. Formerly a trial attorney with the Public Defender's office. Qualified to take the C.P.A. exam in 1980.

Kathleen N. Kamo, Staff Attorney

Graduated Phi Beta Kappa and Summa Cum Laude from the University of California at Los Angeles and the University of San Francisco School of Law. Worked in the Lieutenant Governor's office and also in private law practice.

Yuriko J. Sugimura, Staff Attorney

Graduated from Rutgers University majoring in finance and business administration and also Rutgers University Law School. Worked for a State Senator and also in private law practice.

Rowena A.E. Adachi, Paralegal/Researcher

Graduated Phi Beta Kappa from the University of Hawaii. Also a graduate of the Legal Assistant Program at Kapiolani Community College.

Edward J. Hitchcock, Chief Investigator

Served as Assistant Chief of Police in the Honolulu Police Department. Also as Chief of Investigations for the Attorney General's office, and as Chief of Police, County of Maui.

David Kekumano, Investigator

Served as officer and detective with the Honolulu Police Department for 19 years; also as security investigator for the Attorney General's office.

Rex F. Hitchcock, Investigator

Former supervisor for the Burns International Security Agency; also worked as an investigator in the private sector. Served as a pilot in the U.S. Air Force (rank when left: Major) and was a flight training instructor for the Hawaii Air National Guard.

John L. Bassford, Analyst

A former teacher and participant at the East-West Center. Graduated from Yale University. Currently is a Ph.D. candidate in History at the University of Hawaii.

Gerald J. Reardon, Researcher

Graduated from State University of New York and the University of Hawaii. Candidate, Ph.D. in History at the University of Hawaii. Former teacher and East-West Center grantee.

Joan H. Otsu, Researcher

Graduated Phi Beta Kappa from the University of Hawaii; currently a candidate for the Master's degree in Social Work, University of Hawaii.

Patricia H. Higa, Administrative Secretary

Graduated from the University of Hawaii. Taught English as a Second Language in Japan for two years.

Amy K. Tatsuno, Clerk-typist

Currently a student in the Executive/Legal Secretarial Program at Cannon's Business College.

VII. BIBLIOGRAPHY OF CRIME COMMISSION PUBLICATIONS

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Annual Report of 1977 - A Report to the Hawaii State Legislature (HSL), January 1978.

A Survey of Crime & the Criminal Justice System - A Report to the HSL, January 1978.

Wiretapping - A Report to the HSL, January 1978.

Annual Report of 1978 - A Report to the HSL, January 1979.

Extortion - A Preliminary Report, February 1978.

Organized Crime in Hawaii, Vol. 1, A Report to the HSL, August 1978.

"Court Observer Manual," January 1979.

Principles of the Hawaii Criminal Justice System, Preliminary Publication, August 1979.

"Do's and Don'ts Against Vandalism and Arson," August 1979.

Annual Report of 1979 - A Report to the HSL.

Publications to be released by April 1980:

Extortion.

Principles of the Hawaii Criminal Justice System.

Violence and Vandalism in Schools.

Aspects of Efficiency and Quality in the Courts.

Rape: A Survey of Issues.

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