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Masaharu Hino

Director
United Nations
Asia and Far East Institute
for the
Prevention of Crime
and the
Treatment of Offenders
(UNAFEI)
1-26 Harumicho, Fuchu, Tokyo, Japan

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ANNUAL REPORT
FOR
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UNAFEI

I. Report of Main Activities and Events of the Year 1983

Introduction

During the year 1983, the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) conducted three regular international training courses or seminars (62nd-64th), in which a total of 81 government officials engaged in criminal justice administration from 23 countries in Asia and other regions participated. A breakdown of these participants by countries is shown in Appendix I.

Besides these regular courses and seminars, UNAFEI organized and conducted two important meetings, namely, a joint seminar on correctional administration which was held in Papua New Guinea in collaboration with the Government of Papua New Guinea, and an International Meeting of Experts on the Development of the United Nations Draft Standard Minimum Rules for the Administration of Juvenile Justice which was held at UNAFEI at the request of the United Nations Crime Prevention and Criminal Justice Branch as one of the preparatory efforts for the seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders. These meetings were organized in accordance with UNAFEI's continuing policy to make every effort to meet the specific needs of the governments in Asia and other regions and to function in close cooperation with the United Nations. It was along the same lines that UNAFEI during the same year began to take part in the preparation of a worldwide research project on "Management Issues on Ordinary Crime Prevention and Control—A Cross-Cities Study" (tentatively titled), which will be conducted under the auspices of the United Nations University in collaboration with researchers and institutes throughout the world. Beside these activities, UNAFEI served as a clearing house of information in related fields, and promoted cooperation with related institutes, organizations and UNAFEI alumni associations and former participants.

Regular Training Programmes

1. 62nd International Seminar (14 February-19 March 1983)
   —Promotion of Innovations for Effective, Efficient and Fair Administration of Criminal Justice

In many parts of the Asian region, the crime situation continues to worsen both in terms of overall number of crimes and viciousness in serious crimes. This situation seems to be exerting a greater strain on existing criminal justice systems which are already heavily burdened due partly to the inherent defects of imported foreign systems. In order to cope with these and other difficulties which hamper effective, efficient and fair administration of criminal justice, various innovations in the procedural methods and basic structures of criminal justice systems have been considered and tried in most of the countries of the region. Examples are to be found especially in the fields of investigation, prosecution and trial. Some have been successful, others have not, although in many cases it is still difficult to evaluate whether the proclaimed goals have been attained, or are likely to be. Some attempts may encounter considerable opposition which often

Table 1: Outline of the Programme (62nd Seminar)
Total: 118 Hours (5 weeks)

	Hours
Self-Introduction	2
Orientation for the Course	1
Experts' Lectures	22
Faculty's Lectures	6
Ad Hoc Lectures	6
Individual Presentation on the Main Theme of the Seminar	25
General Discussions and Report Back Sessions	14
Visits of Observation	6
Kansai Trip (Visit to Nara Juvenile Prison)	12
Trip to Lake Shirakaba (Visit to Suwa Branch, Nagano District Public Prosecutors Office)	4
Small Group Visits	4
Individual Interview	2
Closing Ceremony	1
Reference Reading and Others	13

makes it difficult for the proclaimed goals to be achieved. Thus an analysis of the problems encountered in both successful and unsuccessful attempts to introduce innovative methods will indicate the range and types of strategic ways necessary to overcome such opposition.

This Seminar therefore intended: (i) to review the innovations in the fields mentioned above, both attempted and achieved, and relevant experiences in the respective countries; (ii) to identify problem areas still in need of further innovations and reforms; (iii) to explore the direction and scope of future innovations and reforms; and (iv) to consider strategic ways in which innovations can be implemented with maximum support from and participation of relevant organs and individuals including the general public.

A total of twenty-five senior officials representing seventeen countries, *i.e.*, Bangladesh, the People's Republic of China (first participation), Costa Rica, Fiji, India (two participants), Iraq, the Republic of Korea, Malaysia (two participants), Morocco, Nepal, Pakistan, the Philippines, Singapore, Sri Lanka, Sudan, Thailand (two participants) and Japan (six participants) attended the Seminar. The list of the participants is reproduced in Appendix II-1.

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

Among the various programmes of the Seminar, special emphasis was placed upon presentations by each participant and subsequent general discussions with regard to the main theme, which invited active participation by the participants utilizing their knowledge and experience to the fullest extent. In the general discussion sessions the participants elected a chairman and a rapporteur from among themselves for each session and examined the following topics with the visiting experts and UNAFEI staff as advisors:

(a) Innovations and Reforms in Crime Prevention and Investigation

During this session it was revealed that in some countries the image of the police has not yet fully outgrown that of colonial days, during which the police served different purposes. It was agreed that in such countries it is an urgent task for the police to make an utmost effort to remove the stigma of being considered instruments of oppression or

suppression and, to this end, it was pointed out that something may be learned from countries where police officers are regarded not as the enemy of the public but the friend of the public. In this connection it was reported that Japanese police have a unique system of police boxes. A police box (*Kōban*) is a small office built in each community for one or a few police officers and is the base for the performance of their police duties. Whenever a citizen gets into trouble, he looks for a police box and there he can expect help from the police officer even if the trouble is not by law matter for the police. The police officer assigned to the police box not only works at the police box but also goes out for patrol in his area and, above all, visits every household in his area of patrol. Thus, he establishes a good relationship with the people in his area.

Then the participants discussed campaign activities and organization of the public for crime prevention activities. Campaigns at all levels of society, *e.g.* schools, communities, religious places etc., and also through the mass media are necessary and are very beneficial for the purpose of the prevention of crimes. In some countries, the police were successful in encouraging local communities to form organizations for crime prevention. For instance, it was reported that in Japan, Crime Prevention Associations (*Bōhan Kyōkai*) and Traffic Safety Associations (*Kōtsū Anzen Kyōkai*), which are all voluntary citizen organisations, have been established in every community throughout the country and are helpful in preventive activities. It was also reported that, in Malaysia, more powerful organisations have been established: Community Self-Reliance Scheme or Committees (*Rukun Tetangga*) in urban areas and People's Voluntary Units (*Rela*) in rural areas.

(b) Innovations and Reforms in Prosecution

It was found first that, in countries such as Fiji, India and Pakistan, where there is a dual system of prosecution by police prosecutors and public prosecutors, there has been a movement toward a unified system of prosecution in recent years. The major reason that police prosecutors engage in prosecution in lower courts in those countries seems to be because of a shortage of public prosecutors. It was observed that the police in those countries did not take prosecution as their own original function, and they were always willing to alienate their duty of prosecution so as to form a unified system of prosecution by public prosecutors. Besides, it was pointed out that since police prosecutors are often not trained in legal matters it is sometimes very difficult for them to carry out their duty of prosecution effectively and efficiently. With this background in mind, it was the consensus of the participants that a unified system of prosecution is more desirable for more effective and efficient prosecution.

Second, it was agreed by the participants that appropriate screening of cases for prosecution was essential for both the reduction of case-load at trial as well as the rehabilitation of offenders. It was found that in countries such as Bangladesh, India and Pakistan, the committal proceedings, which scrutinize serious cases before trial, has been abolished, and that in Fiji, Malaysia and Singapore the preliminary inquiry rarely dismisses cases. Some participants maintained that the evidential standard for prosecution, which is usually a *prima facie* case, should be raised in order to make the screening of cases for prosecution more effective. It was found that, in Japan, the public prosecutor may institute prosecution only when he deemed that there is sufficient evidence to prove guilt beyond a reasonable doubt.

It was also found that, in countries such as Korea, Singapore and Japan, discretionary prosecution was exercised to a fairly substantial extent. In the case of Japan,

about 25 percent of cases of non-traffic Penal Code offences have had prosecution suspended in recent years. It was pointed out that if discretionary prosecution was exercised appropriately, it was very helpful for the reduction of cases for trial and for the re-socialization of offenders with less social stigma. It was, however, pointed out by participants who are from those countries where the prosecutor had no discretionary power that since the discretionary prosecution was always subject to abuse, the effectiveness of the safeguard against abuse was most important. In this context, the systems of the inquest of prosecution and quasi-prosecution, both of which are obtained in Korea and Japan, and the private prosecution were discussed.

Third, it was maintained by many participants that the public prosecutor should be involved in the investigation to a certain extent in order that he could make an appropriate decision on whether to prosecute or not. There was, however, another view that there was a fear that the prosecution might be biased if the prosecutor was too deeply involved in the investigation.

(c) Innovations and Reforms in Trial

It was found that delay in trial is a matter of serious concern in most of the countries represented in the Seminar although the degree of seriousness varies from country to country. Such major causes of delay in trial as frequent adjournment of cases in court, increases in the number of criminal cases brought before the courts, a shortage of judicial officers, absence of the accused and witnesses on the date of trial, and ineffective recording system of the testimony were identified by the participants. It was, however, pointed out that the ideal of speedy trial could not be realized without concerted efforts on the part of the three branches of the criminal justice administration, *i.e.,* the police, prosecutors and the judiciary. If the investigating agency failed to gather evidence which withstood the scrutiny of the defence counsel and the judge during trial, the adjudication could not be rendered in a desirable short period of time. If prosecution was made without carefully screening the cases, courts would suffer from a heavy case-load. In this connection, the possibility of decriminalization of misconduct which is relatively minor or purely regulatory in nature was discussed as one possible solution for reducing the number of cases brought before the courts. Furthermore, the participants examined the roles of arbitration, reconciliation and mediation as means to reduce the number of cases which come before the courts. The use of written statements or depositions as evidence was also a topic of discussion. The discussion further went on to examine the appropriateness of guilty pleas which had been practiced in some countries.

Bail was another topic discussed in this session. The participants discussed such items as the current problems and issues related to bail, purposes of the bail system, recent innovations and reforms regarding the bail system and guidelines for the appropriate administration of the bail system. It was agreed unanimously that detention before final adjudication should not be utilized as a punishment and, therefore, that the primary consideration of granting bail is to ensure that the accused would appear before the court on the day of his trial. Most participants felt that granting bail was the rule and its denial was the exception. It was, however, revealed that there were two types of bail systems: in countries such as Bangladesh, India, Malaysia, Pakistan, Singapore and Sri Lanka, offences are classified as either bailable or non-bailable; in other countries there is no such classification of offences. It was found that in China they followed the principle regarding detention before final adjudication that no one could be denied freedom just because he was poor, or, no one could buy his freedom on account of his wealth.

(d) Innovations and Reforms in the Selection and Training of Police Officers, Public Prosecutors and Judges

The first item of discussion was the topic "selection and training of police officers". Generally speaking, recruitment is done at the lowest, middle and officer levels for which the educational qualifications generally are junior high school, senior high school, and university degree, respectively. All countries have their own basic training courses and in-service training courses as well as specialist courses for personnel who are transferred to specialist departments in the police.

The next topic of discussion was "selection and training of public prosecutors". There was general agreement on the point that all public prosecutors should be qualified in law, preferably with a law degree, and there should be no discrimination on the basis of religion, or sex in their selection. It was also agreed that the selection of public prosecutors should be made through an independent agency and the selection procedure should not be susceptible to outside influences. As the public prosecutor plays a pivotal role in the criminal justice system, the method of selection should be very strict and should be made to ensure that only the best candidates are selected. Concerning constitutinal and statutory guarantees for public prosecutors, the participants were of the view that inbuilt constitutional guarantees were essential to protect them from outside pressures and to ensure their impartiality, fairness and independence.

The discussion next moved to the topic "selection and training of judges". There was general agreement among the participants on the qualifications and standards for the appointment of subordinate judges. First, a legal qualification, preferably a law degree, is essential for such appointment. Second, sound mental and physical health is an important prerequisite for such appointments. Third, a thorough verification of the background of the candidates is also necessary to ensure a high standard of integrity, impartiality and fairness. Any social stigma or inclination towards overindulgence in social life should normally disqualify a candidate for such appointment. Fourth, the appointment procedure should include necessary psychological tests for assessing the aptitude and other basic requisites for appointment as a judge. A common criticism was brought out in the discussion that judges often live in their own concerns isolated from the realities of life and thus become oblivious to the difficulties and problems faced by the law enforcement agencies and public prosecutors. It was therefore unanimously recommended that joint seminars involving police, prosecutors and judges should be held for better cooperation and mutual understanding of their respective problems. The participants were also of the unanimous view that the Japanese system of in-service training of judges could be a model for designing similar programmes in other countries, suitably adapted to local conditions. This will keep them abreast of the changes and developments in the conditions around them.

For this seminar, UNAFEI invited five distinguished visiting experts, *viz.*, Dr. Abraham S. Goldstein, Sterling Professor of Law, Yale Law School, U.S.A.; Mr. Oemar Seno Adji, S.H., Professor of Law, University of Indonesia, Indonesia; Dr. Walter Rolland, Ministerialdirektor, Federal Ministry of Justice, Federal Republic of Germany; Tan Sri Mohamed Haniff bin Omar, Inspector-General, Royal Malaysia Police, Malaysia; and Dr. B.J. George Jr., Professor of Law, New York Law School, U.S.A. Professor Goldstein delivered four lectures on the American public prosecutor: (a) origins and basic themes; (b) prosecutorial discretion and changing judicial roles—charging and dismissals; (c) the judge, the prosecutor and the guilty plea; and (d) the role of the victim. Professor Oemar

Seno Adji lectured on innovation for effective, efficient and fair administration of justice in the Code of Criminal Procedure of Indonesia. Tan Sri Mohamed Haniff bin Omar gave two lectures on the topics of (a) strategic aspects of expansion and modernization of the police force; and (b) crime prevention planning in the context of national development. Dr. Rolland deliverd two lectures on (a) the legal position of the public prosecutor and defence counsel in criminal proceedings in the Federal Republic of Germany in comparison with the law of other European countries; and (b) the protection of the administration of criminal justice against public or private influence. Professor George lectured on diversion and mediation in the United States. Three *ad hoc* lectures: Mr. Shigeki Ito, Deputy Prosecutor-General, Supreme Public Prosecutors Office; Mr. Takeshi Okino, Judge, Chief Instructor, First Department, Legal Training and Research Institute, Supreme Court; and Mr. Yoshinori Shibata, Deputy Superintendent-General, Tokyo Metropolitan Police Department, discussed various topics related to the main theme of this seminar. In addition, the Director, Deputy Director and other faculty members of UNAFEI lectured on related topics. The list of lecturers and their topics and the list of reference materials distributed are reproduced in Appendices II-2 and II-3.

The participants visited the following agencies and institutions, sometimes in small groups, to observe activities and obtain practical knowledge about the administration of the criminal justice system in Japan: Suwa Branch, Nagano District Public Prosecutors Office; Metropolitan Police Department; Ministry of Justice; Nara Juvenile Prison; Supreme Court; Yotsuya Police Station; Tokyo District Public Prosecutors Office; Tokyo District Court; Tokyo Family Court; and Tokyo Colloquium on Diversion and Mediation (XIII Congress of the AIDP).

As summarized earlier, a number of innovations and reforms for effective, efficient and fair administration of criminal justice were introduced and reviewed, most of which were developed to cope with common problems which the participating countries faced. The participants came to understand that criminal justice and its administration should not remain static, but should be ready to respond to the changing crime situation so that it can function in an effective, efficient and fair manner.

2. 63rd International Training Course (19 April–9 July 1983) – Community-Based Corrections

An increasing variety of community-based correctional measures have recently been introduced in a growing number of countries. Research regarding programme diversity, inherent problems, expected advantages, and evaluation in terms of success of reconviction rates of those who receive such sentences is still, however, extremely limited. Indeed, it seems that community-based correctional programmes are at least as "successfull" as others, and usually more so. They are also much less costly, in comparison to formal institutionalized means, for a given number of offenders. Finally, the humanitarian aspects of such an approach are quite clear; it does the least harm of all sanctions to social bonds and roots, links with the family, and friends of the offender. Rather than sever these crucial ties, they are maintained.

To date, the prevalence and development of community-based corrections in Asia and the Pacific region have not been implemented extensively, despite the fact that the costs, problems and difficulties of imprisonment amongst countries of the region are well known, and would presumably diminish if programme effectiveness was enhanced. Thus

Table 2: Outline of the Programme (63rd Course)
Total: 250 Hours (12 weeks)

	Hours
Self-Introduction and Orientation for the Course	2
Experts' Lectures	18
Faculty's Lectures	17
Ad Hoc Lectures	32
Individual Presentation on the Main Theme of the Course	26
General Discussion and Report Back Sessions	12
Group Workshops	16
Report Back Sessions for Group Workshops	8
Field Work	8
Case Study	2
Visits of Observation	34
Nikko Trip (Visit to Kurobane Prison, Kitsuregawa Branch)	8
Kansai-Hiroshima Trip (Visit to Hiroshima Probation Office, Hiroshima Prison and Nara Juvenile Prison)	16
Evaluation Session	2
Individual Interview	2
Closing Ceremony	2
Reference Reading and Others	45

this Course was designed to examine in detail, the fundamental concepts, various practical applications, and existing barriers to the further expansion of community-based corrections (probation with or without suspended sentence, parole, halfway houses and other residential facilities in the community, and other types of community-based corrections such as community service order, etc.)

Twenty-six participants representing fourteen countries, *i.e.*, Fiji, Hong Kong (two participants), Indonesia, Iraq, Jamaica, the Republic of Korea, Malaysia, Nepal, Papua New Guinea, the Philippines, Singapore (two participants), Sri Lanka, Thailand (two participants) and Japan (ten participants) attended the Course. A list of the participants is reproduced in Appendix III-1.

An outline of the course programme is shown in Table 2.

As in other courses, an emphasis was placed upon participant-centred activities such as Comparative Study, Group Workshops, and other programmes in which the participants were required to take part in collective discussions, actively and constructively utilizing their knowledge and experience to the utmost extent. Comparative study sessions were organized to discuss topics related to the main theme. In the individual presentation sessions each participant presented his or her country paper. In the general discussion sessions which followed the individual presentations, the participants elected a chairman and a rapporteur from among themselves for each session and discussed important issues raised during the individual presentations with the attendance of the visiting experts and the staff of UNAFEI as advisors. The following are summaries of the discussions.

(a) Pretrial Diversion and Probation

Community-based correctional programmes are desirable in view of the fact that imprisonment does not necessarily deter nor reform offenders. Furthermore, the use of

community-based corrections contributes to improving overcrowded prison conditions and results in the reduction of maintenance costs. It was found that pretrial diversion and suspended prosecution as alternatives to incarceration are being actively utilized by many participating countries. Of significant interest were the established pretrial diversion schemes in the form of the *barangay* courts of the Philippines, the village *panchayat* system of Nepal and the former conciliation boards of Sri Lanka. Non-formal traditional means of settling disputes among villagers were also reported on by the participants from Indonesia and Papua New Guinea. Suspended prosecution as another means of avoiding the stigma of conviction and the debilitating effects of incarceration is also being practiced by several of the participating countries.

It was then observed that the pre-sentence investigation report as a diagnostic tool in arriving at the judicious selection of offenders for probation is being utilized by most of the participating countries both for juveniles and adult offenders, with preference and priority given to juveniles. Iraq, Jamaica, Malaysia, Singapore, Sri Lanka, Thailand and Japan utilize the pre-sentence investigation report primarily for juveniles. The Philippines was singled out as the only participating country which uses the post-sentence investigation report. Jamaica, however, also uses the post-sentence investigation reports in addition to the pre-sentence investigation reports that are required by the courts. It was reported that the selective probation report adopted by Singapore was developed in order to conserve valuable time and resources spent in report writing and is inteded to complement the normal probation report without displacing it.

It was pointed out that selecting the right type of offender for probation supervision is not an easy task for either the probation officer or the court. Although probation should be given more attention in the choice of sentencing alternatives, it was also pointed out that the availability of probation services as well as the public feeling on the crime committed should be taken into account. As for the conditions which should be imposed upon probationers, it was revealed that there were slightly different views of their significance, perhaps reflecting different cultural backgrounds among the participants. However, it was agreed that the conditions should be realistic and enforceable so that probationers could observe them. Early discharge from probation would give offenders a feeling of achievement and this would exert a favourable influence upon offenders' future. Finally it was discussed that in order to minimize, if not totally avoid, the possibility of revocation, successful supervision should lean heavily on the creativity and resourcefulness of the probation officer.

(b) Extramural Treatment of Institutionalized Offenders

The participants recognized the merits of extramural treatment as a transition from the highly controlled life in a prison and from any physical or mental strain in this kind of setting. The extent of the use of these kinds of community-based corrections varies from country to country. Most countries reported the availability of open institutions in their penal systems. Although the risk of escaping is high in open insitutions, nevertheless it was agreed that offenders released from a highly controlled environment pose a greater risk to repeat crimes in view of their difficulties in adjusting to their new circumstances. There should be careful screening of offenders for admission to open institutions.

Work release or day release was reported by some countries. Types of work done vary from country to country depending on the mainstay of the economy of the country. The participants generally agreed that though work release was a relatively new concept,

it should nevertheless be given much thought in view of its advantages. It was the consensus of the participants that home leave was an effective way of restoring family ties. The ability of inmates to adapt to life in the free community is also enhanced through periodic use of home leave.

(c) Parole, Aftercare, Remission and Pardon

It was observed that in different countries different methods of applying for parole are used. At this point various views were exchanged as to what method would be most suitable. In regard to the quality of reports from institutions, the discussion indicted the acute shortage of psychiatrists and psychologists in correctional settings in most of the countries represented. The third point for discussion was on how and to what extent parole supervision should be conducted. It was revealed that almost all the participating countries had similar parole supervision systems. In the discussion it was pointed out that parolees were more handicapped than probationers and therefore they should be given the priorities in supervision and one major problem faced by parole supervision officers was the inadequacy of the supervision period.

Aftercare service was the fourth point at issue. In most of the countries juvenile aftercare seems to be considerably developed. As for adult aftercare, an organized system of aftercare should be explored with specific attention to the duration of supervision, methods of application, eligibility and range of assistance. Finally, the participants discussed remission and pardon in the respective countries. The system of remission is applied in most countries in the region except Japan and some other countries. Except for Fiji, all the other participating countries have a pardon system.

(d) Public Participation and Other Related Matters

The roles and responsibilities of volunteer workers differ from one country to another. In some countries, volunteer workers assist the professional staff in the treatment of offenders, but in others, the volunteers directly conduct supervision and guidance of probationers and parolees assigned to them. While it was unanimously agreed that community-based corrections function best in communities which not only understand and accept its objectives, principles and methods, but also become actively involved in it, many participants simultaneously pointed out the difficulties of motivating capable citizens to join in the rehabilitation service. Utilization of the mass media, publication and exhibition of materials pertinent to the successful treatment of offenders and the essential role of volunteers in the service were discussed.

Community-based corrections can not be effectively implemented unless qualified people are recruited to work in the field. It was also observed that in-service training programmes at different stages of the staff's career were of vital importance. Both refresher and staff development courses will equip the staff with innovative methods and skills currently practised in the field of community-based treatment to help them cope better with the challenges of their daily tasks. Since the present situation of staff training is not very satisfactory in many of the countries represented, the need to strengthen and improve the existing personnel training programmes was greatly emphasized. In order to ensure effective community-based treatment programmes, there is a need to coordinate the policies and activities of all the key component agencies in the criminal justice system to enhance mutual understanding, thus filling up any loopholes where no service is provided and avoiding any duplication of services.

Research and statistics are vitally important in the criminal justice system as they

provide useful sources of information for evaluation of existing policies and for rational decision-making relating to national planning and law reforms. However, with the exception of Japan and a few other countries, research in the area of criminal justice administration is comparatively recent and is still in the developing stage.

Group workshop sessions were designed for the participants to discuss issues and problems which faced them in their daily work and were in need of urgent solutions. The participants were divided into four groups according to the similarity of topics they selected. Each group elected a chairman and rapporteur. The results of each workshop were subsequently reported at a plenary session by the rapporteurs and further discussion was made by all the participants. The contents of discussion are summarized as follows:

Group I – Social Enquiry; Treatment of Young Offenders

This group discussed several important issues related to the pre-sentence investigation and social enquiry report, and the treatment of young offenders, which includes, *inter alia,* the role of probation and parole service for child offenders, juvenile justice system, disposition of juvenile cases, supervision of young offenders, and practice of the family court probation officer in Japan.

Group II – Community-Based Treatment for Juvenile and Females

This group primarily discussed problems related to juveniles and females in the field of community-based corrections. Discussions concerning the problems in Hong Kong, Singapore, Thailand and Japan were held and several measures to solve them were presented.

Group III – Probation; Prosecution

This group mainly discussed, *inter alia,* such matters as problems in the administration of probation and corrections, treatment of mentally disturbed persons and prosecution systems.

Group IV – Administration of Correctional Institutes

This group mainly discussed some issues related to prison administration which included, *inter alia,* problems relating to classification systems, recruitment and training of prison personnel, and drug rehabilitation programmes in prisons.

UNAFEI invited two distinguished visiting experts: Dr. Kenneth F. Schoen, Director, Justice Programme, the Edna McConnel Clark Foundation, New York, U.S.A.; and Mr. K.V. Veloo, Director, Development Division, Ministry of Social Affairs, Singapore. Dr. Schoen delivered four lectures on such topics as an overview of American corrections, a summary of research offering hope for community corrections, responding to probation's loss of credibility, the evolution of a comprehensive community corrections act, a community services sentencing programme and a programme offering sentencing plans to the judge. Mr. Veloo gave four lectures on (a) understanding the role and functions of the probation officer—the pre-sentence report, (b) understanding the role of the probation officer—supervision, (c) the prison welfare officer in the prison system—direct services, and (d) drug abuse in Singapore—demand reduction and rehabilitation strategy. Fifteen *ad hoc* lectures, *viz.*, Dr. Pedro R. David, Interregional Advisor in Crime Prevention and Criminal Justice, United Nations; Mr. Kazunori Kikuchi, Deputy Chief Family

Court Probation Officer, Tokyo Family Court; Mr. Junichi Yoshida, Director General, Rehabilitation Bureau, Ministry of Justice; Mr. Shoichiro Suzuki, Director, Investigation and Liaison Division, Rehabilitation Bureau, Ministry of Justice; Mr. Keisuke Iwai, Director, Supervision Division, Rehabilitation Bureau, Ministry of Justice; Mr. Katsumasa Inoue, Chairman, Kanto Regional Parole Board; Mrs. Mitsuko Sato, Vice President, Japan Federation of BBS; Dr. Miguel Urrutia, Vice-Rector, the United Nations University; Professor Kyoko Kubota, Metropolitan University; Mr. Yoshio Suzuki, Director-General, Corrections Bureau, Ministry of Justice; Professor Kihei Koizumi, Dean, Faculty of Foreign Languages, Reitaku University; Professor Hiroaki Iwai, Dean, Faculty of Sociology, Toyo University; Professor Haruo Tsuru, International Christian University; Professor Yoshiya Soeda, Faculty of Social Sciences, University of Tsukuba; and Mr. Kanehiro Hoshino, Chief, Environment Section, National Research Institute of Police Science, were also invited. They delivered lectures on various important topics related to the main theme of the Course. The Director, Deputy Director and other faculty members of UNAFEI also gave lectures on relevant topics. A list of these lecturers and their topics is reproduced in Appendix III-2.

A list of reference materials distributed to the participants is reproduced in Appendix III-3.

The participants visited various agencies, institutions and other places to observe their operation and to discuss practical problems with the officials present. They included Tokyo Juvenile Classification Home, Ministry of Justice, Kofu Prison, Kitsuregawa Branch of Kurobane Prison, Kanto Regional Parole Board, Tokyo Probation Office, Rehabilitation Aid Hostel "Shisuien", Kanagawa Medical Juvenile Training School, Hiroshima Probation Office, Hiroshima Prison, Nara Juvenile Prison, Tokyo Metropolitan Police Department, Tokyo Family Court, Supreme Court, Sunshine City, Kawagoe Juvenile Prison, Komatsu International MFG. Co., Ltd., Toshiba Electric Corporation, Nippon Electric Co., Ltd., Suntory Co., Ltd., and Fuchu Prison. The participants also visited institutions and offices including the following for two-day field work in small groups: Ichihara Prison, Akagi Juvenile Training School, Rehabilitation Aid Hostel "Hakko-sha," Hachioji Medical Prison, Juvenile Training and Education Home "Musashino Gakuin", and Urawa Probation Office.

Community-based treatment is one of the areas which have been regarded effective for facilitating the reintegration and resocialization of offenders, but it faces many obstacles to perfect realization in countries in the region. This Course provided the participants with an opportunity to explore ways and means of improving community-based treatment in their respective countries through exchange of views and experiences among themselves, visiting experts, *ad hoc* lectures and the staff of UNAFEI.

3. 64th International Training Course (13 September–3 December 1983)
—The Quest for a Better System and Administration of Juvenile Justice

Juvenile maladjustment has evoked serious social concern in most of the countries in Asia and other regions. Although this social phenomenon is attributable to many causes depending upon situations in individual countries, it seems to have been spurred on by such socio-cultural changes as a weakening of the traditional informal control by the family and local community, urbanization and ensuing youth migration to large cities, an increased opportunity to commit crimes, a diversified value system, and others

Table 3: Outline of the Programme (64th Course)
Total: 246 Hours (12 weeks)

	Hours
Self-Introduction and Orientation for the Course	2
Experts' Lectures	22
Faculty's Lectures	15
Ad Hoc Lectures	22
Individual Presentation on the Main Theme of the Course	30
General Discussion and Report Back Sessions	15
Group Workshops	14
Report Back Sessions for Group Workshops	10
Discussion on the United Nations Draft Standard Minimum Rules for Juvenile Justice Administration	14
Visits of Observation	30
Nikko Trip (Visit to Kitsuregawa Juvenile Training School)	8
Kansai–Hiroshima Trip (Visits to Hiroshima Juvenile Classification Home, etc.)	16
Individual Interview	2
Closing Ceremony	2
Reference Reading and Others	44

all of which have been accelerated by the rapid economic transition which most of the countries in the region have been experiencing.

The juvenile justice system, given the above situation which is more or less common among the countries in the region, has been expected to function more effectively and efficiently than ever as an essential component of the overall framework for the sound upbringing of youth. Therefore, this Course was convened in order to identify problems which may be hampering the effective and efficient administration of juvenile justice and to find their solutions through sharing the experiences of various countries. Accordingly, the following items were discussed and studied: (a) outline of the existing juvenile justice system; (b) general trends in juvenile delinquency and contributing factors; (c) specific problems of the juvenile justice system and its administration; and (d) problems related to the prevention of juvenile delinquency including the role of citizens and coordination among agencies inside and outside of the juvenile justice system.

During the Course special attention was given to Resolution 4 of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders which emphasized the importance of developing standard minimum rules for the administration of juvenile justice and care of juveniles which can serve as a model for Member States. In-depth discussions were made on this matter and they contributed very much to the formulation of the United Nations draft standard minimum rules.

Thirty participants from eighteen countries, *i.e.*, Burma (two participants), China, Costa Rica, Fiji, Hong Kong, India, Indonesia, the Republic of Korea, Malaysia, Morocco, Nepal, Pakistan, Peru, the Philippines, Singapore, Sri Lanka (two participants), Thailand and Japan (eleven participants), as well as one observer from Japan, attended the Course. A list of the participants is reproduced in Appendix IV-1.

An outline of the course programme is shown in Table 3.

As in other courses the participants conducted active and constructive discussions on

matters related to the main theme during the comparative study sessions and group workshop sessions. Comparative study sessions consisted of individual presentations by each participant and general discussions on the issues raised during the presentations. The participants elected a chairman and a rapporteur from among themselves for each general discussion session, which the visiting experts and the staff of UNAFEI attended as advisors. The following are excerpted from summaries of the discussions.

(a) Investigation and Prosecution of Juvenile Delinquency

It was generally agreed that arrest and pretrial detention of a juvenile should be the last resort and be done in such a way as to do the least harm possible. Concerning the rights of juveniles, it was the view of many participants that juvenile offenders should be granted the right to counsel at all stages of the investigation and prosecution, and to have his parents or guardian present at the proceedings. It was also found that juvenile records should be kept confidential as far as possible. Second, the principles of disposition of juvenile cases were discussed. It was observed that a good use of diversion is preferable in many countries, but participants' views differed which agency should be given the power for diversion. Some stated that the police and the prosecution should not be given discretionary power. Others said that the police should have the legal power to divert juvenile cases, because formal court proceedings for the juvenile should be avoided as far as possible. Third, it was generally agreed that the training and professionalization of the police agencies which are in charge of handling juveniles should receive the highest priority that funding can allow.

(b) Adjudication of Juvenile Delinquency

First, on the item of the juvenile court, it was generally agreed that having a separate system of juvenile justice was desirable because the basic philosophy of juvenile justice was recognized to be the need to deal with juveniles kindly, with compassion, together with a measure of firmness, which was basically different from that for adults. Participants discussed in this regard another approach, namely, establishing administrative boards or tribunals to deal with juveniles either in conflict with the law or in need of care and protection. Although the advantage of such boards or tribunals was noted by the participants, the dominant view seemed to be that it would not be opportune to take any steps in that direction. In relation to this question the problem of "status" offenders was discussed especially in terms of the jurisdiction of competent authorities over such juveniles. It was observed that most countries represented by the participants have already established juvenile or family courts, although in most cases they are only in certain towns or areas and in other towns and areas ordinary criminal courts are given jurisdiction of juvenile courts to try juveniles concurrently.

The definitions of such terms as delinquent juvenile, law breaking or law violating juvenile, pre-delinquent juvenile, children in need of care and protection, etc., associated with the issue of the jurisdiction of the juvenile court, were then discussed in depth. A majority of participants showed no disapproval of the suggestion that delinquent juveniles be dealt with by juvenile courts and neglected children be dealt with outside the juvenile justice system. The manner of dealing with pre-delinquents, however, remained a vexing question. The qualification and training of personnel serving with the juvenile court were the next subjects of discussion. It was agreed that proper training of judges and the support staff working in the juvenile court was indispensable to the proper administration of juvenile justice, thus ultimately to the rehabilitation of the delinquent

juveniles.

As for the principles of hearing procedure, the participants expressed their views as follows, to which there were few objections: Proceedings in juvenile courts should be informal; An awe inspiring atmosphere should be avoided; Excluding the public is advantageous; News items which tend to identify the juvenile should be prohibited; The records of the juvenile cases should basically be kept confidential; Various procedural rights should be guaranteed as far as practicable; The judge should be assisted in disposing of juvenile cases by properly qualified and trained supporting staff within and outside of the juvenile courts; etc.

Principles of disposition was the last item to be discussed. It was agreed that the basic philosophy of the juvenile justice system was treatment and rehabilitation of juveniles and that these depend to a great extent on the information available to the judge at the time of making the disposition. Most of the countries of the region have all or some of the following forms of disposition: warning, care, guidance and supervision orders, community orders, restitution and victim compensation orders, fines, treatment orders, group counselling, determinate and indeterminate imprisonment, and corporal punishment besides other dispositions. Many participants were of the view that corporal punishment and capital punishment should not be inflicted on juveniles and that where such forms of punishment were available steps should be taken to remove them from the statutory punishment. It was further generally agreed that community-based treatment should first be utilized to the fullest extent and institutionalization should be the last resort for the juvenile.

(c) Institutional Treatment of Juvenile Delinquents

First, the participants observed that in many cases the juvenile delinquent is himself a victim who comes from an unstable home and intolerant community. Therefore, instead of treating these juveniles as criminals, they should be treated like patients. In addition to maintaining custody and segregating them from community, the institutions should have full-time care of the delinquents, and must provide them with facilities such as housing, food, education, recreation, medical care and religious services. It is also the objective of the institutions to try to change the delinquents' attitudes and habits, so that when they leave the institutions, they will not get into further trouble, and be equipped with better balanced personalities and constructive attitudes.

Second, it was agreed that proper classification is essential in the treatment and rehabilitation of juvenile delinquents.

Third, participants expressed their views on education. Many participants suggested that delinquents who had no chance of completing their education should be provided with facilities for the completion of basic studies.

Fourth, all the participants disclosed their views on vocational training. They stated that the training schools should have some specific vocational training that is oriented towards the time of release. The objective should not be to turn out skilled craftsmen, but to give some introduction to occupational trades.

Fifth, participants laid particular importance on exercise, sports and games. It was generally accepted by all the participants that participation in sports and other forms of recreational activities helps in building the character of delinquents.

Sixth, participants agreed that institutions should be made comfortable, but escape proof. All the participants agreed that providing single rooms accommodation of the institute is neither good in hot countries, nor economically feasible.

Seventh, participants stated that juveniles are the future generations and if they become physically handicapped, it will be a great loss to the nation. Therefore, juveniles must be provided with all basic facilities in accordance with standard procedures. Sufficient calories should be provided to the inmates. Uniforms should be avoided as far as possible, for they give a sense of regimentation and stigmatization. The participants in some countries explained that the inmates use different uniforms inside the institution from that for outdoor use.

(d) Non-Institutional Treatment of Juvenile Delinquents

It was revealed that community-based treatment for selected juvenile delinquents is a device for rehabilitation within the family and community achieving many social advantages. It was stressed that community-based treatment measures could be considered as desirable modes of judicial as well as non-judicial disposition. However, it was pointed out that there are a number of obstacles which make it difficult to introduce or expand probation services in many participating countries. One of them is strong public feeling in favour of custodial treatment of offenders, considering probation to be too lenient. Another is the shortage of necessary funds and professional personnel in the probation service.

The services rendered by voluntary organizations in the community are of vital importance for the success of community-based correctional programmes. Hence, active participation and the involvement of members of voluntary organizations should be obtained by authorities to ensure success. Utilization of volunteers and mobilization of community resources are essential in the treatment and rehabilitation of juvenile delinquents in an uncontrolled environment like a community. However, definite guidelines and regulations governing qualifications, recruitment and training and areas of role performance should be properly demarcated in the event of obtaining the direct services of volunteers for programmes for juvenile delinquents.

It was noted that parole and aftercare services are community-based treatment methods used for the primary purpose of providing the continuing help necessary for readjustment of the juvenile to normal life in the community. Some of the participating countries have not adopted the parole system while others have considerably developed it to help their offenders. It was also revealed that the parole granting agency varies from country to country, *e.g.*, the Minister of Justice, a special panel, an independent parole board, etc. In addition to or in place of the parole system, there are many types of aftercare services for discharged offenders such as supervision and guidance on a voluntary basis, aid in the form of money or materials, provision of temporary residence, job placement, and reference to pertinent agencies for other assistance. In some countries, there exist halfway houses and aftercare centres such as discharged prisoners aid societies, rehabilitation aid hostels and so on. It was reported that most of these facilities are operated on a voluntary basis and voluntary organizations are playing significant roles in the reintegration of offenders into society.

(e) Standard Minimum Rules, Prevention of Juvenile Delinquency, Coordination among the Juvenile Justice Agencies, and Others

This concluding session was devoted to discussions concerning general provisions of the standard minimum rules for the administration of juvenile justice, preventive policies against juvenile delinquency and coordination between related sectors thereto.

With regard to the minimum age for criminal responsibility, it was the feeling of the

participants that it would be a difficult task to lay down a uniform rule concerning the minimum age, but at the same time it was pointed out that a minimum age might be suggested taking into account the divergent regional, cultural and social backgrounds that exist among all countries. There was much discussion as to the definitions of juvenile delinquency. There was an argument that an open-end notion of delinquency including acts which are not criminal *per se* should not be adopted. On the other hand, recognizing that juvenile justice systems must be concerned with preventing future delinquency, it was argued that the systems must deal not only with juveniles who have committed a criminal offence but also with those who are in delinquency-prone environment. In this regard, the participants were of the view that it was absolutely necessary to clarify the definition of pre-delinquency.

It was a consensus of the participants that preventive policies should be devised which reflect society's reassertion of its faith in the family as the basic agent in the prevention of juvenile delinquency. It was also pointed out that much could be done through school and organized recreation and that a police presence in neighbourhood would be of much help in preventing juvenile delinquency. Finally, it was emphasized that coordination and collaboration not only among government agencies but also between them, associations, organizations and the public are indispensable for this purpose.

Group workshop sessions were held to discuss issues and problems which face participants in their daily work. The participants were divided into five groups according to the similarity of topics they selected. Each group elected a chairman and rapporteur. The results of each workshop were subsequently reported at a plenary session by the rapporteurs and further discussion involved all the participants. The topics discussed in each group were as follows:

Group I—Role of the Police in Dealing with Juvenile Delinquency

This group focussed its discussions on the current trends of juvenile delinquency in the participants' respective countries and on the role of the police in dealing with juvenile delinquency, in particular, the responsibility of the police in the quest for a better system and administration of the juvenile justice system in Burma, the Fight Crime Campaign in 1983/1984 in Hong Kong, reflexions on the adequate means to prevent juvenile delinquency in developing countries, the role of police in controlling juvenile delinquency in India, the prevention of crime in relation to juvenile delinquency and comprehensive countermeasure against hot-rodders (*Bosozoku*) in Japan.

Group II—Issues Related to Prosecution

This group mainly discussed several important issues related to the functions of prosecution including the role of prosecutors in the juvenile justice system, the discretionary power of prosecutors, the recommendation of punishment made by prosecutor and suspension of indictment in juvenile cases.

Group III—Court System and Proceedings of Juvenile Cases

This group discussed several topics mainly related to adjudication of juvenile delinquency such as "special treatment in juvenile session and the problem of juvenile delinquency and the handling thereof in Indonesia", "some countermeasures to enforce the effective disposal of juvenile cases in a family court", "the judicial system in Nepal", "suggestions for improving the juvenile justice system in Pakistan", "defence of children's

rights as a way to prevent delinquency" and "legal representation of juveniles with special reference to Sri Lanka".

Group IV—Treatment of Juvenile Delinquents

This group discussed a wide range of issues and problems, *e.g.*, causes of juvenile delinquency from the view point of environmental factors, community-based treatment of juvenile offenders, and the roles, recruitment and training of the professional staff engaged in these fields.

Group V—Juvenile Delinquency in General

This group discussed several important issues related to juvenile delinquency including the treatment of juvenile delinquents, the causes of delinquency, the crime situation and the training of personnel.

UNAFEI invited five distinguished visiting experts: Mr. John C. Freeman, J.P., Barrister-at-Law, Senior Lecturer-in-Laws, King's College, University of London, United Kingdom; Dr. Ted Palmer, Research Manager, California Youth Authority, California, U.S.A.; Professor Günther Kaiser, Director, Max-Planck Institute für Ausländishes und Internationales Strafrecht, Federal Republic of Germany; Professor Dr. Horst Schüler-Springorum, Professor of Criminal Law and Criminology, Munich University, Munich, Federal Republic of Germany; and Mr. Minoru Shikita, Chief, Crime Prevention and Criminal Justice Branch, United Nations, Vienna, Austria. Eleven *ad hoc* lecturers, *viz.*, Mr. Yoshiya Soeda, Professor, Faculty of Social Sciences, University of Tsukuba; Mr. Tsuyoshi Yoneda, Deputy Director, Juvenile Division, Safety Department, National Police Agency; Mr. William Clifford, Director, Australian Institute of Criminology, Australia; Mr. Shinichiro Inose, Director-General, Family Affairs Bureau, General Secretariat, Supreme Court; Mr. Yoshio Suzuki, Director-General, Corrections Bureau, Ministry of Justice; Mr. Junichi Yoshida, Director-General, Rehabilitation Bureau, Ministry of Justice; Mr. Atsushi Nagashima, Dean, Faculty of Law, Toyo University; Mr. Hiromitsu Takizawa, Under Director-General, Youth Development Headquarters, Prime Minister's Office; Mr. Clas Amilon, Head of Department, Swedish Prison and Probation Administration, Sweden; Mr. Graham W. Smith, Chief Probation Officer, Inner London Probation and Aftercare Service, United Kingdom; and Mr. Hiroshi Maeda, Director-General, Criminal Affairs Bureau, Ministry of Justice, were also invited. They delivered lectures on various important topics related to the main theme of the Course. The Director, Deputy Director and other faculty members of UNAFEI also gave lectures on relevant topics. A list of these lecturers and their topics is reproduced in Appendix IV-2.

A list of reference materials distributed to the participants is reproduced in Appendix IV-3.

The participants visited the following criminal and juvenile justice or related agencies, institutions and other places: Tokyo Juvenile Classification Home, Ministry of Justice, Kitsuregawa Juvenile Training School, Supreme Court, Tokyo Metropolitan Police Department, Kofu Prison, Hiroshima Juvenile Classification Home, Toyo Kogyo Co., Ltd., Tokyo Family Court, Sunshine City, Kanagawa Medical Juvenile Training School, and Hachioji Medical Prison. They also visited the following places in small groups: Tokyo District Court, Tokyo District Public Prosecutors Office, Legal Research and Training Institute, Shinjuku Police Station, Shinjuku Juvenile Guidance Centre, Tama Juvenile

Training School, Kanto Regional Parole Board, Tokyo Probation Office, Halfway house "Seimei Gakuen", Shibuya Police Station, Honda Motor Co., Ltd., Japan Broadcasting Corporation, Riccar Museum and National Modern Museum, Nippon Electric Co., Ltd., and Suntory Co., Ltd.

Utilizing the opportunity of having at UNAFEI participants who were experts in the administration of juvenile justice, the International Meeting of Experts on the Development of the United Nations Draft Standard Minimum Rules for the Administration of Juvenile Justice was held at UNAFEI in collaboration with the United Nations from 14 to 19 November 1983. Details of this Meeting will be given later in this report. There is no doubt that the Course contributed very much to the improvement of the juvenile justice system and its administration in the respective participating countries in various aspects, and to the global effort to develop and elaborate upon draft standard minimum rules for the administration of juvenile justice.

Overseas Joint Seminar

UNAFEI, jointly with the Government of Papua New Guinea, represented by the Headquarters of Corrective Institutions Service (C.I.S.), organized a seminar entitled "Correctional Administration", held 10-18 March 1983 in Papua New Guinea. The seminar was held to explore methods of obtaining well-coordinated and better integrated policies among the various agencies concerned with corrections.

The seminar was held at the Correctional Officers' College at Bomana, in the suberbs of Port Moresby, with 31 Papua New Guinean participants and three UNAFEI faculty members, lodged in accommodations at C.I.S. Headquarters. The participants included the Commissioner of C.I.S., Assistant Commissioner of Institutions, Assistant Commissioner of Training, Assistant Commissioner of Planning and Finance, Superintendent of Southern Region, Superintendent of Northern Region, Superintendent of Highland, the Superintendents of Major Central Corrective Institutions at Bomana, Buimo and Raisu, Superintendent of Central Corrective Institution at Bihute, Superintendent of Major Area Corrective Institution at Bundaira, Deputy Chief Justice, Chief Magistrate, Chief Public Prosecutor, Senior Magistrate, Ombudsman Commission Representatives, Director of Child Welfare, Prison Fellowship Representatives, and many other dignitaries.

The experts from UNAFEI made presentations on such themes as "Crime Trends and Crime Prevention Strategies in Japan and Other Countries", "An Integrated Approach to Effective Administration of Criminal Justice", "The Impact of Adjudication and Pre-adjudication Process on Prison Administration", "The United Nations Standard Minimum Rules for the Treatment of Prisoners and Its Implimentation in Asia and the Pacific Region", "Improvement of Institutional Treatment of Offenders", "Correctional Administration and Maintenance of Security and Discipline", and "Personnel Management and Training of Prison Personnel".

After each session, the participants discussed in great detail various aspects of criminal justice administration. In these workshops, many people from not only corrections but also various agencies related to correctional administration came to appreciate the need for an integrated and cooperative approach in this field. This seminar was the fourth overseas joint seminar after those in Sri Lanka, Malaysia and the Philippines, respectively, which had been held in 1981.

International Meeting of Experts on the Development of the United Nations Draft Standard Minimum Rules for the Administration of Juvenile Justice

During the 64th International Training Course, UNAFEI convened the above-mentioned International Meeting of Experts, from 14 to 19 November, at the request of the United Nations Crime Prevention and Criminal Justice Branch, for the purpose of further elaborating the Standard Minimum Rules for the Administration of Juvenile Justice and the handling of juvenile offenders. The rules drafted will be presented to the Committee on Crime Prevention and Control at its Eighth Meeting in Vienna, Austria, in March, 1984, for its consideration and onward transmission to the Interregional Preparatory Meeting on Topic 4 of the Seventh United Nations Congress in China in May, 1984. Participants at the Meeting included Chief Adedokun A. Adeyemi, Nigeria, member of the United Nations Committee on Crime Prevention and Control (UNCCPC), Professor, Faculty of Law, University of Lagos; Mr. Wu Han, China, member of UNCCPC, Head, Teaching and Research Section on Crime Detection, East China Institute of Political Science and Law; Mr. Yoshio Suzuki, Japan, member of UNCCPC, Director-General, Corrections Bureau, Ministry of Justice; Mr. Horst Schüler-Springorum, visiting expert for the 64th Course, UN consultant for the project, Professor, Penal Law and Criminology, Munich University; Mr. Minoru Shikita, visiting expert, Executive Secretary, Seventh UN Congress; Mrs. Amelia D. Felizmena, the Philippines, Director, Bureau of Youth Welfare, Ministry of Social Services and Development; Mr. Christopher Theodore Jansz, Sri Lanka, Deputy Commissioner of Prisons, Department of Prisons, Ministry of Justice; Mr. Peter Rogers, Malaysia, Deputy Superintendent, Prisons Department; and experts from Japan including Mr. Atsushi Nagashima, Dean, Faculty of Law, Toyo University; Mr. Koichi Miyazawa, Professor, Faculty of Law, Keio Gijuku University; Mr. Atsushi Yamaguchi, Assistant Professor, Faculty of Law, Tokyo University; Mr. Norio Sakka, Deputy Director, Juvenile Division, Safety Department, Criminal Investigation Bureau, National Police Agency; Mr. Keiji Yonezawa, Director, Juvenile Division, Criminal Affairs Bureau, Ministry of Justice; Mr. Shoichi Kobayashi, Judge, Tokyo Family Court; Mr. Kazunori Kikuchi, Deputy Chief Family Court Probation Officer, Tokyo Family Court; Mr. Kazuo Sato, Director, Education Division, Corrections Bureau, Ministry of Justice; and Mr. Kazuhisa Suzuki, Counsellor, Rehabilitation Bureau, Ministry of Justice. All the overseas participants of the 64th Course participated in the Meeting in the capacity of individual experts, as part of Course programme, at the request of UNAFEI.

The Meeting elected Mr. Nagashima as Chairman, Mr. Wu Han and Miss Tria Tirona as Vice-Chairmen, and Chief Adeyemi as Rapporteur. The deliberations were devoted to the further development of the United Nations draft standard minimum rules for the administration of juvenile justice, and finally adopted the report by the rapporteur. There is no doubt that the Meeting contributed very much to the continuous global effort to develop and elaborate upon these rules before their eventual submission to the Seventh UN Congress for its consideration.

The report by the rapporteur, the Standard Minimum Rules for the Administration of Juvenile Justice proposed by the Seminar, and the Draft Commentaries to the above Standard Minimum Rules prepared by Professor Horst Schüler-Springorum will be included in UNAFEI Resource Material Series No. 25 which will be published in the first half of 1984.

Other Activities and Events

1. Research Activities

It was expected in the UNAFEI Annual Report for 1982 that the "Criminal Justice System in the Asian Region", which had been tentatively edited by UNAFEI, would be reissued before long. However, UNAFEI has accumulated fresh information, and is presently revising and updating this work. UNAFEI admitted two visiting research scholars in 1983, *viz.*, Mr. Peter Rogers, Deputy Superintendent of Prisons, Kuala Lumpur, Malaysia, and Mr. Jefferey Lawrence Dunoff, Candidate for J.D. Degree, New York University School of Law, New York, N.Y., U.S.A. Mr. Rogers completed his research in the same year on various subjects including the crime trends in Asia and the Pacific Regions and the crime prevention strategies therein. Mr. Dunoff is expected to continue his research at UNAFEI until the end of April, 1984.

It was almost finalized that UNAFEI would organize during 1984 an international experts' meeting on crime trends and its prevention, in collaboration with the United Nations University in Tokyo, which aims at, *inter alia*, providing an opportunity for the participants to examine and comment on the tentative research project titled "Management Issues on Ordinary Crime Prevention and Control—A Cross-Cities Study", which will be conducted under the auspices of the United Nations University. UNAFEI was engaged during 1983 in the preparation of the meeting in close consultation with the United Nations University, and is determined to make every effort to make the meeting as fruitful as possible to both the participants and the United Nations University for their successful performance of the planned research project.

2. Information Services

During the year 1983, UNAFEI published Resource Material Series No. 23, which consists of articles and reports presented in the 61st International Training Course and its Annual Report for 1982, and Resource Material Series No. 24 which contains articles and reports presented in the 62nd International Seminar and the 63rd International Training Course. Three Newsletters (Nos. 49-51) summarized the contents and results of the 62nd International seminar, and the 63rd and 64th International Training Courses. As in previous years, UNAFEI endeavoured to collect statistics, books and other materials on crime conditions, and criminal and juvenile justice administration mainly in Asian countries, and to respond to requests for information from many agencies and individuals.

3. Cooperation with Related Institutes, Organizations and Alumni Associations

(1) *Ad Hoc* Meeting of the Representatives of UNAFEI Alumni Associations — UNAFEI convened the first *Ad Hoc* Meeting of the Representatives of UNAFEI Alumni Associations (UAAs) on 24 February 1983 at UNAFEI. Professor Oemar Seno Adji, S.H., Honorary Chairman, UAA of Indonesia, Justice Corazon Juliano Agrava, President, UAA of the Philippines, Mr. Vichitr Thongkam, Chairman, UAA of Thailand, Mr. Shinichi Tsuchiya, Chief Secretary, UAA of Japan, Director Hiroshi Ishikawa, and Deputy Director Masaharu Hino attended the Meeting. After making an opening address, the Director asked the participants to present a report on the history, current activities, and future perspectives of the UAAs in their respective countries. Following each presentation, they made a number of suggestions regarding the programmes and activities of UNAFEI. They also discussed various aspects of cooperation between the UAAs and UNAFEI including such items as the research activities, joint seminars, recommendations

for visiting experts, etc. The report of the meeting, which was drafted by the staff of UNAFEI, was adopted by the Meeting.

(2) Director Hiroshi Ishikawa attended the International Experts Meeting on "Crime Prevention and Criminal Justice in the Context of Development" which was held on 10-14 January 1983 at the International Institute of Higher Studies in Criminal Science, in Siracusa, Italy. On his way to Siracusa, he visited the United Nations Social Defence Research Institute (UNSDRI) in Rome, and on his way back to Japan, he visited the Crime Prevention and Criminal Justice Branch of the Centre for the Social Development, United Nations in Vienna, Austria, the Arab Centre for Security Studies and Training in Riyadh, Saudi Arabia, and the UNAFEI Alumni Association of India in Delhi, India.

(3) Deputy Director Masaharu Hino, Professors Keizo Hagihara and Hachitaro Ikeda visited Papua New Guinea from 9 to 20 March 1983 to attend the joint seminar, which has been described earlier in this Report.

(4) Deputy Director Masaharu Hino attended the Regional Preparatory Meeting for the 7th United Nations Congress on the Prevention of Crime and the Treatment of Offenders which was held in Bangkok, Thailand, from 4 to 8 July. After the Meeting, he visited Malaysia and Singapore. He met Alumni members to share views regarding the activities of the UNAFEI Alumni Associations in these three countries.

(5) Mr. Yasuo Hagiwara, Professor of UNAFEI, attended the International Conference on Juvenile Social Maladjustment which was held at United Nations Social Defence Research Institute in Rome, Italy, from 5 to 9 September 1983. After the Conference he visited the United Nations Crime Prevention and Criminal Justice Branch in Vienna, Austria.

(6) Mr. Shu Sugita, Professor of UNAFEI, attended the Constituent Meeting of the Lawasia Standing Committee on Law and Drugs which was held in Singapore from 5 to 7 September 1983, and the 8th Lawasia Conference held in the Philippines from 9 to 13 September 1983.

(7) Mr. Toshihiko Tanaka, Professor of UNAFEI, attended the Expert Group Meeting on the Forfeiture of the Proceeds of Drug Crimes which was organized by the Division on Narcotic Drugs of the United Nations and held on 24-28 October 1983 at Vienna International Centre, Austria.

4. UNAFEI Staff

During 1983, there were some changes in the staff of UNAFEI. The list of the main staff of UNAFEI as of 31 December 1983 is shown in Appendix V.

5. Activities of the Asia Crime Prevention Foundation

The Asia Crime Prevention Foundation, which was introduced in the UNAFEI Annual Report for 1982, performed various activities during 1983, including the following events:

(1) The participants of the 62nd International Seminar as well as 63rd and 64th International Training Courses were given receptions by the Foundation; (2) Professor Abraham S. Goldstein, Yale Law School, visiting expert for the 62nd Seminar, gave a public lecture under the joint auspices of the Foundation and UNAFEI on the subject of "the Insanity Defence in the United States: Recent Developments"; (3) the First *Ad Hoc* Meeting of the Representatives of UNAFEI Alumni Associations with the Directors of the Foundation was held at the Lawyers' Club in Tokyo on 26 February 1983; (4) Training Courses for Volunteer Probation Officers were organized and conducted utilizing the

occasion of the 63rd International Training Course, sponsored jointly by the Foundation and UNAFEI; (5) overseas participants of the 63rd International Training Course were invited to dinner by members of Japanese Alumni Association of UNAFEI assisted by the Foundation; and (6) the "Journal of Asia Crime Prevention" (Vol. 1 and Vol. 2) and the "ACPF Newsletter" (No.1 and No. 2) were published by the Foundation.

II. Prospects for the Year 1984

Fundamental policies of UNAFEI in performing its responsibilities entrusted by the United Nations and the Governments in the region will continue in 1984. Much emphasis will be placed upon organizing and conducting beneficial regular international training courses and seminars for public officials engaged in criminal justice administration in Asia and other regions. UNAFEI has been making every effort to meet the needs of these Governments and the expectation of international societies in the selection of themes and planning of programmes for these courses and seminars. The programmes have been characterized by participant-centred and self-learning activities such as collective discussions in the comparative study sessions and group workshops so that the knowledge and experience of participants could be utilized to the utmost extent. These emphases and characteristics will not change in the coming year.

The 65th International Seminar will be held from 14 February to 17 March 1984, the main theme of which will be "International Cooperation in Criminal Justice Administration". The Seminar is designed for policy-making-level officials whose duties are closely related to the main theme. The discussion will be centred on such topics as international exchange of information, international assistance in investigation and adjudication, extradition, exchange of prisoners, etc. The Seminar will have the participation of several visiting experts including Mr. Ronald L. Gainer, Deputy Associate Attorney General, Office of Legal Policy, U.S. Department of Justice, Mr. Wilhelm Schneider, M.D., Ministerialdirektor, Abteilung II, Strafrecht, Ministry of Justice, Federal Republic of Germany, Mr. Artemio G. Tuquero, Chief State Prosecutor, Ministry of Justice, the Philippines, and Mr. Robert G. Clark, Litigation Branch Chief, Fraud Section, Criminal Division, U.S. Department of Justice.

The 66th International Training Course will be held from 17 April to 7 July 1984 with the main theme: "The Promotion of Innovation in the Effective Treatment of Prisoners in Correctional Institutions". This Course is for relatively senior officials whose duties are closely related to the main theme. The Course will provide an opportunity, *inter alia,* to survey the innovations in the field of institutional treatment, both attempted and achieved, to examine the conditions necessary for the fulfilment of these innovations and reforms, to consider the appropriateness of the transportation of these innovations from one country to another and how these correctional innovations may be realized. UNAFEI will invite several visiting experts including Mr. J.P. Delgoda, Commissioner of Prisons, Sri Lanka, Mr. Francis A. Allen, Edson R. Sunderland Professor of Law, Law School, University of Michigan, U.S.A., and Mr. Albert J. Reiss, Jr., Professor of Sociology and Lecturer in Law, Department of Sociology, Yale University, U.S.A.

UNAFEI also plans to organize overseas joint seminars jointly with Governments in the region, where the staff of UNAFEI will be dispatched to conduct the seminar. This type of programme is regarded as one of the most effective ways to supplement the regular training courses and seminars which are held at this Institute. It has already been

determined that UNAFEI will organize a joint seminar on the theme of "the Prevention of Crime and the Treatment of Offenders" from 9 to 21 January 1984 in Indonesia, jointly with the Government of the Republic of Indonesia, represented by the National Law Development Centre of the Ministry of Justice. His Excellency Soeharto, the President of the Republic of Indonesia, is expected to attend the opening ceremony of the seminar and officially open it by delivering the opening speech. UNAFEI also intends to organize another joint seminar in the same year.

As in the previous years, UNAFEI will continue research activities, most of which will be utilitarian and comparative in nature. To be noted in this regard is UNAFEI's contribution to the planned research project of the United Nations University, which was described earlier in this report.

III. Conclusion

It was with a great pleasure that UNAFEI, in its Annual Report for 1982, designated the year 1982 as the year of new cornerstones: the now UNAFEI building equipped with excellent facilities was completed; the Meeting of the *Ad Hoc* Advisory Committee of Experts on UNAFEI's Work Programme and Directions provided UNAFEI with precious suggestions; and the Asia Crime Prevention Foundation was established to, *inter alia,* promote and sponsor various activities of UNAFEI. Owing to these cornerstones and continued cooperation and assistance given by the United Nations, the Government of Japan, Japan International Cooperation Agency, governments in and out of the region, visiting experts, *ad hoc* lecturers, other agncies, organizations and individuals related to the work of UNAFEI, the year 1983 proved to be one of the most successful years that UNAFEI has ever seen in terms of its various programmes and projects as well as the reception extended to the participants. UNAFEI wishes for their further cooperation and assistance so that it can meet the challenge of the complex and diversified crime situation more effectively. The total number of officials who have participated in UNAFEI training courses and seminars stands at 1,440 at the end of 1983 as the list of the distribution of participants by professional backgrounds and countries is shown in Appendix VI.

This report is respectfully submitted to the United Nations and the Government of Japan in compliance with Section 1 (a) of the letter exchanged between the United Nations and the Government of Japan in March 1970.

31 January 1984

Hiroshi Ishikawa

Hiroshi Ishikawa
Director
UNAFEI

Appendix I

Distribution of Participants by Countries (62nd-64th)

Countries	62nd Seminar	63rd Course	64th Course	Total
Bangladesh	1			1
Burma			2	2
China	1		1	2
Costa Rica	1		1	2
Fiji	1	1	1	3
Hong Kong		2	1	3
India	2		1	3
Indonesia		1	1	2
Iraq	1	1		2
Jamaica		1		1
Korea	1	1	1	3
Malaysia	2	1	1	4
Morocco	1		1	2
Nepal	1	1	1	3
Pakistan	1		1	2
Papua New Guinea		1		1
Peru			1	1
Philippines	1	1	1	3
Singapore	1	2	1	4
Sri Lanka	1	1	2	4
Sudan	1			1
Thailand	2	2	1	5
Japan	6	10	11	27
Total	25	26	30	81

Appendix II-1

List of Participants in the 62nd International Seminar

Md. Humayun Kabir
Additional District Magistrate
Bangladesh

Mao Baigen
Judicial Administrator
Shanghai Municipal Bureau of Justice
China

Jose Maria Tijerino Pacheco
Public Prosecutor
Oficinas Centrales del Ministerio
Publico, Edificio Plaza de la Justicia
Costa Rica

Suresh Chandra Maharaj
Principal Legal Officer
Director of Public Prosecutions Office
Fiji

Brahm Swarup Nehra
District and Sessions Judge
India

C.G. Saldanha
Special Inspector General of Police
(Administration)
Office of the D.G. of Police
India

APPENDIX

Yacoub Yousif Al Jaddou
Judge
Criminal Court, Risafa
Iraq

Rhee Tai Chang
Chief of Prosecutors' Training Division
Korea

Ismail Bin Idris
Superintendent of Police
Royal Malaysia Police
Contingent Police Headquarters
Malaysia

Mohd Ali Bin Hj Baharom
Superintendent of Police
Royal Malaysia Police Headquarters
Criminal Investigation Department
Malaysia

El Aammouri Mohammed
Commissaire Principal de Police
Chief of Police Judiciaire
Service Regional de Police Judiciaire
Morocco

Achyut Krishna Kharel
Deputy Superintendent of Police
District Police Office
Nepal

Arbab Mukhtar Ahmed
Director General
Bureau of Police Research and
Development
Ministry of Interior
Pakistan

Guillermo G. Purganan
Asst. City Fiscal
Civil Security Division Agent
Ministry of Justice
Philippines

Lawrence Ang Boon Kong
Deputy Public Prosecutor
Attorney-General's Chambers
Singapore

Atukoralalage Somawansa Wijetunga
Secretary
Judicial Service Commission
Sri Lanka

Ibrahim Hassan Saad
Police Colonel
Deputy Commissioner of Police
Sudan

Sathitya Lengthaisong
Justice
The Court of Appeals
Thailand

Prachuksinlapa Subarnabhesuj
Deputy Superintendent
Central Investigation Bureau
Royal Thai Police Department
Thailand

Akio Harada
Counsellor (Public Prosecutor)
Criminal Affairs Bureau
Ministry of Justice
Japan

Yuki Kawachi
Senior Researcher (Public Prosecutor)
Research and Training Institute
Ministry of Justice
Japan

Yoshihisa Mizukami
Director, Security and Industry
Division, Nakano Prison
Japan

Tsutomu Oishi
Deputy Director
Tokyo Probation Office
Japan

Toshio Sato
Judge
Tokyo District Court
Japan

Katsuhisa Segawa
Deputy Director
Security Research Division
National Police Agency
Japan

Appendix II-2

List of Lecturers and Their Topics

Visiting Experts

1) *Professor Abraham S. Goldstein* – the American Public Prosecutor: a) "Origins and Basic Themes," b) "Prosecutorial Discretion and Changing Judicial Roles: Charging and Dismissals," c) The Judge, the Prosecutor and the Guilty Plea," and d) "The Role of the Victim"
2) *Professor Oemar Seno Adji, S.H.* – a) and b) "Innovation for Effective, Efficient and Fair Administration of Justice in the Code of Criminal Procedure"
3) *Tan Sri Mohamed Haniff bin Omar* -- a) "Strategical Aspects in Expansion and Modernisation of the Police Force," and b) "Crime Prevention Planning in the Context of National Development"
4) *Dr. Walter Rolland* – a) "The Legal Position of the Public Prosecutor and Defence Counsel in Criminal Proceedings in the Federal Republic of Germany in Comparison with the Law of Other European Countries," b) "The Protection of the Administration of Criminal Justice against Public or Private Influence"
5) *Professor B.J. George, Jr.* – "Diversion and Mediation in the United States"

Ad Hoc Lecturers

1) *Mr. Shigeki Ito*, Deputy Prosecutor-General, Supreme Public Prosecutors Office – "Characteristics and Roles of Japanese Public Prosecutor"
2) *Mr. Takeshi Okino*, Judge, Chief Instructor, First Department, Legal Training and Research Institute, Supreme Court – "Appointment, Education and Training of Judges in Japan"
3) *Mr. Yoshinori Shibata*, Deputy Superintendent-General, Tokyo Metropolitan Police Department – "Crime Trends and Crime Prevention Strategies in Tokyo"

Faculty

1) *Mr. Hiroshi Ishikawa* (Director) – "Characteristic Aspects of Japanese Criminal Justice System"
2) *Mr. Masaharu Hino* (Deputy Director) – "Crime Trends in Japan"
3) *Mr. Hidetsugu Kato* – "Criminal Justice System in Japan (II)"
4) *Mr. Keizo Hagihara* – "Criminal Justice System in Japan (III)"
5) *Mr. Toichi Fujiwara* – "Criminal Justice System in Japan (I)"

Appendix II-3

List of Reference Materials Distributed

1) The Constitution of Japan
2) Criminal Statutes I and II
3) Court Organization Law and Public Prosecutors Office Law
4) Crime Victims Benefit Payment Law and Cabinet Order for Crime Victims Benefit Payment Law
5) Law Concerning Extradition and International Assistance in Criminal Matters

6) Criminal Justice in Japan
7) Correctional Institutions in Japan
8) Community-Based Treatment of Offenders in Japan
9) Summary of the White Paper on Crime, 1981
10) The 1982 Police White Paper—Summary
11) National Statement of Japan for the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders
12) Bulletin of the Criminological Research Department, 1982
13) Resource Material Series Nos. 20, 21
14) UNAFEI Newsletter Nos. 46, 47, 48
15) Criminal Justice in Asia—The Quest for an Integrated Approach
16) Recent Activities of United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders

Appendix III-1

List of Participants in the 63rd International Training Course

Salima Qiolevu Ragogo
Commandant
Staff Training Centre
Prison Headquarters
Fiji

Lau Ching-Ming
Chief Officer (Acting)
Correctional Services Department
Headquarters
Hong Kong

Luk Yiu-Cheung
Social Work Officer
Central and Western Probation Office
Social Welfare Department
Hong Kong

Tony Aziz
Senior Official at the Directorate
General of Corrections
Ministry of Justice
Indonesia

Muthana Saeed Wasfi
District Public Prosecutor
Karada Court-Public Prosecutor Office
Iraq

Morris Webb Afflick
Director, Correctional Services
Ministry of Justice
Jamaica

Jin Yang Seop
Assistant Supervisor
Incheon Juvenile Correctional
Institution
Korea

Cheah Kwai Sang
Deputy Superintendent
Seremban Special Prison
(Drug Rehabilitation)
Malaysia

Upendra Man Amatya
Section Officer
Police and Prison Section
Ministry of Home Affairs
Nepal

Jimmy Posi Gulu
Staff Development Officer
Correctional Services Headquarters
Papua New Guinea

Nenalyn Palma Defensor
Chief, Case Management and Records Division and in-charge, Research Staff
Probation Administration
Ministry of Justice
Philippines

Cheong Soh Har
Warden
Bukit Batok Boy's Hostel
Singapore

Asbdul Razak bin Hassan Maricar
Volunteer Programme Co-ordinator
Probation and Aftercare Service
Ministry of Social Affairs
Singapore

Ariyadasa Wijetunga
Deputy Commissioner
Department of Probation and Child Care Services
Sri Lanka

Wilai Jiwangkura
Probation Officer
Central Probation Office
Office of the Judicial Affairs
Ministry of Justice
Thailand

Sukanya Onnuam
Psychologist
Medical Division
Central Juvenile Court
Ministry of Justice
Thailand

Kayo Konagai
Probation Officer
Yokohama Probation Office
Japan

Yoshihiro Masuda
Family Court Probation Officer
Saijo Branch Office
Matsuyama Family Court
Japan

Itsuo Nishimura
Public Prosecutor
Himeji Branch of Kobe District Public Prosecutors Office
Japan

Norio Nishimura
Assistant Judge
Kobe District Court
Japan

Kenji Sasaki
Probation Officer
Obihiro Sub-Branch Office
Kushiro Probation Office
Japan

Yutaka Sawata
Psychologist
Tokyo Detention House
Japan

Tetsuo Suzuki
Parole Investigation Officer
Chubu Regional Parole Board
Japan

Hideo Tokuno
Deputy Director
Equipment Division
National Police Agency
Japan

Masakazu Yasuki
Instructor
Training Institute for Correctional Personnel
Japan

Hiromi Yoshida
Public Prosecutor
Tokyo District Public Prosecutors Office
Japan

Appendix III-2

List of Lecturers and Their Topics

Visiting Experts

1) *Dr. Kenneth F. Schoen* – a) "An Overview of American Corrections—Its Problem and Hopes," b) "A Summary of Research Offering Hope for Community Corrections," c) "Responding to Probation's Loss of Credibility—A Proposal Offering 'Limited Risk Control,'" d) "The Evolution of a Comprehensive Community Corrections Act," e) "A Community Services Sentencing Programme" f) "A Programme Offering Sentencing Plans to the Judge," and g) "A Work Programme to Bridge to Gap between Prison and Community—Film"
2) *Mr. K.V. Veloo* – a) "Understanding the Role and Functions of the Probation Officer—The Pre-Sentence Report," b) "Understanding the Role and Functions of the Probation Officer—Supervision," c) "The Prison Welfare Officer in the Prison System—Direct Services," and d) "Drug Abuse in Singapore—Demand Reduction and Rehabilitation Strategy"

Ad Hoc Lecturers

1) *Dr. Pedro R. David*, Interregional Advisor in Crime Prevention and Criminal Justice, United Nations—"Crime Prevention and Criminal Justice in the Context of Development"
2) *Mr. Kazunori Kikuchi*, Deputy Chief Family Court Probation Officer, Tokyo Family Court—"Community-Based Treatment in Family Court Procedure"
3) *Mr. Junichi Yoshida*, Director General, Rehabilitation Bureau, Ministry of Justice —"Rehabilitation of Offenders in Japan—Prospect and Retrospect"
4) *Mr. Shoichiro Suzuki*, Director, Investigation and Liaison Division, Rehabilitation Bureau, Ministry of Justice—"Civilians' Involvement in Rehabilitation of Offenders"
5) *Mr. Keisuke Iwai*, Director, Supervision Division, Rehabilitation Bureau, Ministry of Justice—"Probation and Parole Supervision in Japan"
6) *Mr. Katsumasa Inoue*, Chairman, Kanto Regional Parole Board—"Parole System in Japan—Present Practice and Its Problem Area"
7) *Mrs. Mitsuko Sato*, Vice President, Japan Federation of BBS—"BBS Movement in Japan"
8) *Dr. Miguel Urrutia*, Vice-Rector, United Nations University—"Interactions between Economic Development and Crime"
9) *Professor Kyoko Kubota*; Metropolitan University—a) "Methods of Social Work (1)—Principles and Processes," and b) "Methods of Social Work (2)—Discussion on the Social Work with Delinquent Youth and Their Families"
10) *Mr. Yoshio Suzuki*, Director-General, Corrections Bureau, Ministry of Justice— "Some Aspects of Correctional Administration in Japan"
11) *Professor Kihei Koizumi*, Dean, Faculty of Foreign Languages, Reitaku University —"Modernization of Education in Japan and Its Current Problems"
12) *Professor Hiroaki Iwai*, Dean, Faculty of Sociology, Toyo University—"*'Yakuza'* (Gangster in Japan)"
13) *Professor Haruo Tsuru*, International Christian University—"Counselling and Psychotherapy"

14) *Professor Yoshiya Soeda*, Faculty of Social Sciences, University of Tsukuba—"Youth and Juvenile Problems"
15) *Mr. Kanehiro Hoshino*, Chief, Environment Section, National Research Institute of Police Science—"Community Organization for Preventing Juvenile Delinquency"

Faculty

1) *Mr. Hiroshi Ishikawa* (Director)—"Characteristic Aspects of the Japanese Criminal Justice System"
2) *Mr. Masaharu Hino* (Deputy Director) — "Prevention of Crime in the Context of National Development"
3) *Mr. Hidetsugu Kato* — "Criminal Justice System in Japan (II)"
4) *Mr. Masakane Suzuki* — "Criminal Justice System in Japan (III)"
5) *Mr. Hachitaro Ikeda* — "Open Treatment of Prisoners in an Institutional Setting"
6) *Mr. Seiji Kurata* — "Criminal Justice System in Japan (I)"
7) *Mr. Shu Sugita* — "Some Features of the American Corrections"
8) *Mr. Yasuo Hagiwara* — "Juvenile Problems in Developing Countries"
9) *Mr. Yoshio Noda* — a) "Public Participation in the Treatment of Offenders in Asia," and b) "Criminal Justice System in Japan (IV)"

Appendix III-3

List of Reference Materials Distributed

1)-11) The same materials with those 1)-3), 6)-8), 10)-12), 15) and 16) in Appendix II-3
12) Law for Correction and Rehabilitation of Offenders
13) Summary of the White Paper on Crime, 1982
14) Resource Material Series Nos. 21, 22
15) UNAFEI Newsletter Nos. 47, 48, 49
16) Alternatives to Imprisonment in Asia
17) Public Administration in Japan

Appendix IV-1

List of Participants in the 64th International Training Course

U Kyaw Myint
Deputy Director of Police
Rangoon Division
Burma

U Tin Aung
Law Officer Grade II
Legal Opinion Department
Central Law Office
Burma

Wu Yan Shi
Officer
Foreign Affairs Department
Ministry of Justice
China

Carl Wilhelm Jensen Pennington
Public Prosecutor
Corte Suprema de Justicia
Costa Rica

APPENDIX

Etuate V. Tavai
Legal Officer/Crown Counsel
Office of the Director of Public Prosecutions
Fiji

Wong Kwai Lan, Verena
Woman Chief Inspector of Police
Royal Hong Kong Police Force
Hong Kong

Mohan Lall Kalia I.P.S., V.S.M.
Additional Inspector General of Police
India

Andi Djawiah Amiruddin SH.
Public Prosecutor Attached as Special Assistant to the Deputy Attorney General
Intelligence Department
Attorney General's Office
Indonesia

Kim, Jin Gwan
5th Section of Criminal Part in Seoul District Prosecutors Office
Korea

Yahaya Bin Isa
Officer-in-Charge of Criminal Investigation (O.C.C.I.)
Malaysia

Seddiki Ahmed
Commissioner of Police Principal
Service Regional de Police Judiciaire
Surete Regional
Morocco

Ramji Prasad Tripathi
District Judge
Chitawan District Court
Nepal

Nasrullah Khan Chattha
City Magistrate
Markaz F-8
District Court
Pakistan

Elena Esther Salguero Fernandez de Guzman
Judge of the Fourth Juvenile Judgeship
Peru

Perlita J. Tria Tirona
2nd Assistant City Fiscal and Chief
Investigation Division
City Fiscal Office of Manila
Philippines

Ng Bie Hah @ Ng Bee Har
Welfare Officer
Grade X
Ministry of Social Affairs
Singapore

Ranjit Bandara Ranaraja
District Judge
District Court
Gampaha
Sri Lanka

Hewaussaramba Tilakawardena
Probation Officer
Grade I
Department of Probation and Child Care Service
Sri Lanka

Pongsakon Chantarasapt
Senior Public Prosecutor
The Public Prosecution Department
Thailand

Sachimi Annomae
Senior Psychologist
Nagoya Juvenile Classification Home
Japan

Toshihisa Asao
Public Prosecutor
Osaka District Public Prosecutors Office
Japan

Shiro Hirohata
Assistant Director (Police Superintendent) of Criminal Research and Statistics Division
Criminal Investigation Bureau
National Police Agency
Japan

Hiroyuki Ito
Probation Officer
Yokohama Probation Office
Japan

Naoya Konishi
Officer, Investigation and Liaison Division
Rehabilitation Bureau
Ministry of Justice
Japan

Akira Nakata
Public Prosecutor
Tokyo District Public Prosecutors Office
Japan

Masao Obata
Chief, The Guidance Section
Musashino Gakuin National Child Education and Training Home
Japan

Minoru Okamura
Judge
Osaka District Court
Japan

Toshiho Sawai
Family Court Probation Officer
Gifu Family Court
Japan

Hajime Tada
Senior Psychologist
Tokyo Juvenile Classification Home
Japan

Susumu Yamashita
Professor
Training Institute for Correctional Personnel
Ministry of Justice
Japan

(Observer)
Toshio Omata
Family Court Probation Officer
Hachioji Branch
Tokyo Family Court
Japan

Appendix IV-2

List of Lecturers and Their Topics

Visiting Experts

1) *Mr. John C. Freeman, J.P.* – a) "Juvenile Offenders in the 1980's," b) "Justice for Juveniles," c) "Alternatives to Custody for Juvenile Offenders," and d) "Grave and Persistent Juvenile Offenders"
2) *Dr. Ted Palmer* – a) "Treatment and Its Effectiveness," b) "California's Community Treatment Project," c) "Matching in Corrections," and d) "Dealing with Complexity in Juvenile Diversion"
3) *Professor Günther Kaiser* – a) "Trends and Related Factors of Juvenile Delinquency in Europe," and b) "Strategies of Diversion in European Juvenile Justice Systems"
4) *Mr. Minoru Shikita* – "Contemporary Problems in Criminal Justice Administration and United Nations"

Ad Hoc Lecturers

1) *Mr. Yoshiya Soeda,* Professor, Faculty of Social Sciences, University of Tsukuba – "Juvenile and Youth Problems–A Frame of Reference for Their Analysis"

2) *Mr. Tsuyoshi Yoneda,* Deputy Director, Juvenile Division, Safety Department, National Police Agency—"Some Aspects of Juvenile Delinquency in Japan"
3) *Mr. William Clifford,* Director, Australian Institute of Criminology, Australia—"Asian and Pacific Contribution to Criminal Policy"
4) *Mr. Shinichiro Inose,* Director-General, Family Affairs Bureau, General Secretariat, Supreme Court—"Present Situation and Problems of Juvenile Justice in Japan"
5) *Mr. Yoshio Suzuki,* Director-General, Corrections Bureau, Ministry of Justice—"Institutional Treatment of Juvenile Delinquents in Japan"
6) *Mr. Junichi Yoshida,* Director-General, Rehabilitation Bureau, Ministry of Justice—"Community-Based Treatment of Juvenile Offenders in Japan"
7) *Mr. Atsushi Nagashima,* Dean, Faculty of Law, Toyo University—"Juvenile Justice"
8) *Mr. Hiromitsu Takizawa,* Under Director-General, Youth Development Headquarters, Prime Minister's Office—"Present Situation of Juvenile Delinquency and Its Countermeasures in Japan"
9) *Mr. Clas Amilon,* Head of Department, Swedish Prison and Probation Administration, Sweden—"Corrections and the Society; The Swedish Model"
10) *Mr. Graham W. Smith,* Chief Probation Officer, Inner London Probation and Aftercare Service, United Kingdom—"The Future Direction of the Probation Service within the Criminal Justice System"
11) *Mr. Hiroshi Maeda,* Director-General, Criminal Affairs Bureau, Ministry of Justice—"Characteristic Features of the Prosecution System of Japan and the Role of the Public Prosecutor in the Handling of Juvenile Cases"

Faculty

1) *Mr. Hiroshi Ishikawa* (Director) – "Characteristic Aspects of the Japanese Criminal Justice System"
2) *Mr. Masaharu Hino* (Deputy Director) – "Juvenile Justice Administration in Asia and the Pacific"
3) *Mr. Hidetsugu Kato* – "Criminal Justice System in Japan (II)"
4) *Mr. Hachitaro Ikeda* – "Criminal Justice System in Japan (III)"
5) *Mr. Masakane Suzuki* – "Classification system in Japan"
6) *Mr. Toshihiko Tanaka* – a) "Criminal Justice System in Japan (I)," and b) "Control of Drug Offences and Forfeiture Problems—Discussions at the UN Expert Group Meeting on the Forfeiture of the Proceeds of Drug Crimes"
7) *Mr. Yasuo Hagiwara* – "Juvenile Problems in Developing Countries"
8) *Mr. Yoshio Noda* – "Criminal Justice System in Japan (IV)"

Appendix IV-3

List of Reference Materials Distributed

1)-10) The same materials with those 1)-3), 6), 8), 10)-12), 15) and 16) in Appendix II-3
11) Law for Correction and Rehabilitation of Offenders
12) Summary of the White Paper on Crime, 1982
13) Resource Material Series Nos. 22, 23

14) UNAFEI Newsletter Nos. 48, 49, 50
15) Regional Paper presented at Asia and the Pacific Regional Preparatory Meeting for the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders
16) Alternatives to Imprisonment in Asia
17) Proposed Guidelines for the Formulation of the Standard Minimum Rules for Juvenile Justice Administration: A draft prepared by UNAFEI on the basis of the report of the study groups at the 58th International Training Course
18) Basic Matters of Juvenile Justice System in Selected Countries—Tentative
19) Administration of Juvenile Justice and the Treatment of Juvenile Offenders in Nigeria—by *Chief Adedokun A. Adeyemi*, Member of the UN Committee on Crime Prevention and Control, Professor of Faculty of Law, University of Lagos, Nigeria
20) The Major Principles of Juvenile Justice Administration in China, and Our Experience—by *Mr. Wu Han*, Member of the UN Committee on Crime Prevention and Control, Head of Teaching and Research Section on Crime Detection, East China Institute of Political Science and Law, Shanghai, China
21) Increasing Coordination Efforts to Improve Juvenile Justice Administration—The Philippine Experience—by *Mrs. Amelia D. Felizmena*, Director, Bureau of Youth Welfare, Ministry of Social Services and Development, the Philippines
22) Standard Minimum Rules for the Administration of Juvenile Justice; A Contribution to Topic 4: Youth, Crime and Justice—by ILANUD (Instituto Latinoamericano de las Naciones Unidas Para la Prevencion del Delito y Tratamiento del Delincuente)
23) Rutgers Draft
24) Public Administration in Japan (overseas participants only)

Appendix V

Main Staff of UNAFEI
(as of 31 December 1983)

Director	*Mr. Hiroshi Ishikawa*
Deputy Director	*Mr. Masaharu Hino*
Chief of Training Division	*Mr. Hidetsugu Kato*
Chief of Research Division	*Mr. Masakane Suzuki*
Chief of Information and Library Service	*Mr. Hachitaro Ikeda*
Chief of Secretariat and Manager of Hostel	*Mr. Yoshimasa Suzuki*
Professor	*Mr. Toshihiko Tanaka*
Professor	*Mr. Shu Sugita*
Professor	*Mr. Yasuo Hagiwara*
Professor	*Mr. Yoshio Noda*

Appendix VI

Distribution of Participants by Professional Backgrounds and Countries
(1st-64th Courses, 2 U.N. Human Rights Courses and 1 Special Course)

(1962 - December 1983)

	Country	Judicial and Other Administrators	Judge	Public Prosecutors	Police Officials	Correctional Officials (Adult)	Correctional Officials (Juvenile)	Probation, Parole Officers	Family Court Investigation Officers	Child Welfare Officers	Social Welfare Officers	Training and Research Officers	Others	Total
Asia (Total 780)	Afghanistan	7	8	5	3									23
	Bangladesh	11	6		4	4		3			4			32
	Brunei	1												1
	Burma	3			1									4
	China	2												2
	Hong Kong	10			1	8	3	8		1	3			34
	India	11	9		16	6	1	1			2	5	1	52
	Indonesia	10	13	4	18	6		3			4		1	59
	Iran	5	11	8	8	6						2	1	41
	Iraq	4	3	2	5	4	3					1		22
	Khmer		2	1	2	1								6
	Korea	9	3	24	5	7	4					3		55
	Laos	3	4	3	9									19
	Malaysia	10		2	15	18	6	3		1	5	3		63
	Nepal	14	8	3	17								2	44
	Pakistan	9	4	2	8	5	1	2				2		33
	Philippines	11	5	14	12	6	3	3	3		2		4	63
	Singapore	10	9	3	9	8	2	7			3	1		52
	Sri Lanka	18	9	4	3	10		9			2			55
	Taiwan	12	4	2	2	1								21
	Thailand	12	12	8	7	10	7	6	1		7	4	1	75
	Turkey	1												1
	United Arab Emirates	1												1
	Viet Nam	10	5	2	1						4			22
Africa (Total 17)	Egypt											1		1
	Ethiopia	2												2
	Ghana				2									2
	Guinea				1									1
	Kenya	1												1
	Mauritius		1											1
	Morocco				3									3
	Sudan	1		1	2									4
	Tanzania	1												1
	Zambia		1											1
The Pacific (Total 33)	Australia			1				1			1			3
	Fiji	1		3	4	1								9
	Ponape, Micronesia							1						1
	New Zealand	1			1									2
	Papua New Guinea	4		1							1		1	7
	Tonga	2			3	2						1		8
	Western Samoa	1			1								1	3
North & South America (Total 22)	Brazil			1	3					1				5
	Chile	1				1								2
	Costa Rica	1		2									1	4
	Ecuador						1							1
	Jamaica	3												3
	Panama												1	1
	Paraguay				1									1
	Peru	2	2											4
	U.S.A. (Hawaii)								1					1
Japan		72	60	116	52	40	33	94	43	36	2	31	9	588
	Total	277	179	212	219	144	64	141	48	39	40	54	23	1,440

RESOURCE MATERIAL SERIES

No. 25

UNAFEI

Introductory Note

The Editor is pleased to present No. 25 of the Resource Material Series including materials from the 64th International Training Course and documents produced during the International Meeting of Experts on the Development of the United Nations Draft Standard Minimum Rules for the Administration of Juvenile Justice.

Part I contains materials produced during the 64th International Training Course on the Quest for a Better System and Administration of Juvenile Justice which began on 13 September and ended on 3 December 1983.

Section 1 consists of papers contributed by three visiting experts.

Mr. John C. Freeman, J.P., Director of Criminological Studies, University of London King's College, United Kingdom, in his paper entitled "The Quest for a Better System and Administration of Juvenile Justice", discusses such matters as juvenile offenders in the 1980s, justice for juveniles, alternatives to custody for juvenile offenders, and grave and persistent juvenile offenders.

Professor Günther Kaiser, Director, Max-Planck-Institute für Ausländishes und Internationales Strafrecht, Federal Republic of Germany, describes existing diversion strategies and their problems in certain European countries in his paper entitled: "Strategies of Diversion in European Juvenile System".

Dr. Ted Palmer, in his paper: "The Nature and Effectiveness of Positive Treatment Programs", reviews general considerations regarding treatment and introduces an experiment conducted by the California Youth Authority.

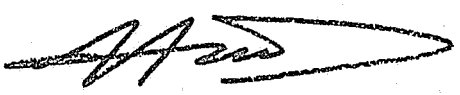
Section 2 carries papers written by the Course participants, Section 3 presents the Report of the Group Workshops, and Section 4 consists of the Report of the Course.

Part II presents documents produced during the International Meeting of Experts on the Development of the United Nations Draft Standard Minimum Rules for the Administration of Juvenile Justice which was held at UNAFEI from 14 to 19 November 1983, including the Report of the Meeting by the Rapporteur, Draft Standard Minimum Rules for the Administration of Juvenile Justice, and Draft Commentaries to the Standard Minimum Rules for the Administration of Juvenile Justice. The background of the Meeting and significance of these documents are summarized in UNAFEI Annual Report for 1983 which is included in this issue.

The Editor deeply regrets that lack of sufficient space precluded publication of all the papers submitted by the participants in both events. The Editor would like to add that due to time constraints, necessary editorial changes had to be made without referring the manuscripts back to their authors.

In concluding the Introductory Note, the Editor would like to express his gratitude to those who so willingly assisted in the publication of this volume by attending to the typing, printing and proofreading, and by helping in various other ways.

April 1984



Masaharu Hino
The Editor
Director of UNAFEI

PART I

Material Produced during the 64th International Training Course on the Quest for a Better System and Administration of Juvenile Justice

SECTION 1: EXPERTS' PAPERS

The Quest for a Better System and Administration of Juvenile Justice

*by John C. Freeman, J.P.**

Juvenile Offenders in the 1980's

The starting-point of this quest in the present paper is an Anglo-Saxon jurisprudence based upon an adversarial system of justice and an understanding of law and measures for dealing with juveniles which tends to stem from that background.

At the same time there are similarities between young people and their development in all our societies. Contemporary problems of urbanisation, rapidly changing mores and family patterns, industrialisation, alienation and so on are shared by all communities in the Global Village to a greater or lesser extent.

It has been said by many lawyers in England that it is most difficult, if not impossible, to define a crime.[1] Professor Kenny's own attempted definition was that crimes are "wrongs whose sanction is punitive and is in no way remissable by any private person, but is remissable by the Crown alone, if remissable at all."[2] This definition like all others has its imperfections. What then is meant by delinquency? Is it any more than a euphemism for crime itself? It is a term commonly employed to designate behaviour by young people which would clearly be regarded as criminal if they were older. It is also perhaps, sometimes used more widely to embrace truancy or other forms of misbehaviour which are not criminal. Sociologists, and those of other disciplines have developed their own view of it and definitions. The idea of social deviance becomes relevant. Some tend to use the words offence, crime and delinquency rather interchangeably, though common parlance tends to link delinquency with juveniles. Yet some of this anti-social behaviour is grave in its consequences and to describe it as delinquency tends only to minimize it in much the same way as the words "scrumping" or "shoplifting" seem genteel terms for what is theft and may in England theoretically be punished in the case of an adult by imprisonment for up to 10 years.

We have also to recognise that juvenile delinquency merges almost imperceptibly with unfavourable conduct which does not contravene the law and that "it is probably a minority of children who grow up without ever misbehaving in ways which may be contrary to law."[3]

No doubt the definition of a juvenile is a matter which similarly means different things to different people in different places. In England the age of criminal responsibility is 10 years, although children under 14 may not be prosecuted unless they can be proved to have had a "mischievous discretion," that is, they knew that what they were doing was wrong. The jurisdiction of the Juvenile Courts in England in criminal cases thus concerns youngsters who are between 10 and 17 years of age. In other countries their cut off points may be very different. The fact that a legal system adopts a relatively high age of criminal responsibility need not mean that no powers exist to deal with juvenile misbehaviour but it can be the case that the powers employed are designated civil instead of criminal although they may be even more severe, involving loss of liberty, supervision or whatever.

* Director of Criminological Studies, University of London King's College, United Kingdom. Help in the preparation of this text has been generously given by Miss D.M. Yach, Queen Mary College, London.

In the "quest for a better system and administration of juvenile justice" we may be prompted to ask what is wrong with the systems we have already. In summary it might be ventured that present arrangements often do not take sufficient account of what being a child embraces. The status of childhood is unfortunately not allowed for sufficiently. Children's lack of maturity, intellectual development, wisdom and experience mean that provisions which have been devised primarily for adults may operate very unfairly in respect of them. They are vulnerable to injustice. Those whom the law should protect can be most at risk. On the other hand, it is obvious that some young offenders are highly experienced with regard to systems which impinge upon them. "Street-wise" may be the vogue term to apply to them. It is a truism that some young offenders already have all the indicia of hardened and mature criminality in their teenage years whilst sometimes those who are chronologically old enough to undergo adult legal processes in fact show the mental age or maturity levels of children. Devising systems of law and administration which are sufficiently flexible and sensitive is a difficult task which has to be constantly under review in times of rapid social change. Arrangements which were seen as entirely satisfactory yesterday will not do for tomorrow. In fact they may even be unjust today.

Prior to the 9th Congress of the International Association of Youth Magistrates in 1974 a world-wide inquiry was launched into, inter alia, which forms of social maladjustment were new. The Rapporteur, Judge Herman Litsky, of Canada concluded "with respect to new forms of maladjustment, a common theme was detected in that there are not many new forms, but those already in existence are becoming more prevalent through continuous occurrence."[4]

This appears still to be the case, although the differences of legal definition, of the ages of criminal responsibility and the ways in which statistics are kept and so on, make it very hazardous, as everyone knows, to compare the phenomena internationally. The limitations of the "official" statistics in England and Wales are becoming more pronounced as the British Crime Survey being conducted by the Home Office gets under way. This victim survey of some 15,000 households is already yielding interesting data.[5]

But many questions remain unanswered. Have gang offences here increased among the young, for example? It partly depends, obviously, upon how one defines "gang."[6] There seems little evidence in England to support any increase in "gangs proper" i.e. groups with leadership, continuity and persistence in time, codes and rules, hierarchies, headquarters and so on. Large numbers of offences are carried out by two or three youngsters acting in concert and there have been incidents of misbehaviour and disorder by large somewhat amorphous mobs, but it is difficult to say whether or not gang offences, or even group offences are, as such, increasing. Groups of children often very young and sometimes very charming in appearance and said to be of gypsy origin are complained of as roaming the metro system in Paris. Boys in twos and threes operate in the West End of London "dipping" into shopping baskets and handbags. This sort of street crime perpetrated by children in concert is not really something new. It is hard to be sure that it is increasing.

According to the *Criminal Statistics—England and Wales,* 1981 (which are the latest available) the decade 1971 to 1981 has seen the rate of male offending in respect of indictable crimes increase similarly for the three age ranges 14–17, 17–21 and 21 and over. That increase has been about 2 or 3 per cent each year. The rate of offending by males aged 10–14 has not increased at all.[7]

So far as girls are concerned, the subjective impression is that there have been noteworthy developments. It seems that more girls are coming to notice as offenders and that they are being convicted of more serious crimes and that where they were involved in serious criminality

their role is more central to the action and no longer so much that of aiding and abetting or acting merely in some subordinate capacity.

The statistics show the rate of female offending to be rising in all age groups. This increase is greatest in respect of those aged 14-17. The rate of increase in female criminality is put at about 4 per cent per annum for those under the age of 21 and at about 3 per cent for those above it. But the increase of criminality amongst girls is still small compared with that of boys. Thus in 1981, of males under 21 years of age, about 6,000 per 100,000 population were convicted of or cautioned for indictable offences, whereas the matching figure for girls was a mere 800. The peak age of offending in the case for males is 15 and for females 14. Before the compulsory school-leaving age was raised from 15-16 in 1972 the peak age of offending was 14 years for both boys and girls.[8]

If one continues to try to examine recent trends of significance it would be right to mention delinquency which seems to be a product of the development and stress of urban life. For example, many countries have seen an increase in street violence, of fighting between groups and mobs of youngsters. At times these manifestations have been labelled riots. Certainly they have at times been quite grave involving hundreds of young people (mainly male) and (in England) millions of pounds worth of damage. There have been substantial personal injuries and even loss of life. The action at football matches is no longer confined to those legitimately on the field. Marauding and rampaging mobs of youths have created problems in England and in Europe as well. The supply of alcohol sometimes seems to be a related factor.[9] Whilst that misconduct is not at the gravest end of criminality, it is expensive, unpleasant and can be dangerous. Urbanisation seems to be related to apparent increases in burglary, robbery and motor vehicle offences as well.

Amongst the more recent phenomena (and one understands this to be of special concern in Japan) there is an evident increase in criminality associated with school life. In many countries children are having to stay at school longer. To what extent this factor generates delinquent behaviour as against merely providing the setting for such behaviour to take place which would otherwise take place elsewhere one does not know. But the criminality takes the form of violence between children, which is not so new and also violence by children against their teachers which is. Theft, vandalism, burglary of schools and truancy are rife. There is a decline in respect for authority and there are incidents relating to the availability of alcohol, drugs and solvents for sniffing.

Teenage rebellion against authority is not anything new, nor does it seem to have become more manifest recently. Not only is this apparent in schools, but also on the streets when baiting the police has become something of a pastime with some groups in some areas. This was especially evident in urban disturbances in various English cities two or three years ago. It may, in turn, sometimes be seen as a vigorous, youthful response to poor police practice and training.

It is also necessary to recognise teenage criminality which has racial foundations. One would not wish to exaggerate the prevalence of incidents of this kind, but they are certainly part of the recent trends in some countries. Homosexuals and other obvious minorities may be attacked and beaten.

No one needs reminding that offences of violence have always been associated with the strong aggressive young. So far as indictable violence against the person is concerned in England of those found guilty or cautioned in 1981 29% were aged 17-21, 16% were 14-17 and 3% were 10-14 years old. Homicide by juveniles is most uncommon. It seems usually to be the inadvertent result of excessive violence used in the course of an attack. Deliberate murder is very rare.

The juvenile participation in burglary is increasing and alarming. 70 per cent of those convicted or cautioned for this crime

were under the age of 21. No less than 13 per cent were aged between 10 and 14 years. The British Crime Survey already referred to disclosed that there were twice as many burglaries as were officially recorded and that it was by far the most worrying of all crimes so far as respondents were concerned. At the same time according to the survey damage exceeded £50 in only 8 per cent of cases and theft cases were more than £100 in only 13 per cent of cases. Nonetheless, burglary of domestic premises is an offence taken very seriously by the courts, reflecting public outrage and anxiety.

Offences involving vehicles are a continuing problem so far as teenagers are concerned. Apart from annoyance and police time taken over these matters, unauthorised and unqualified drivers are clearly a danger to themselves and to the public. The number of vehicle offences committed by juveniles is clearly related to the number of cars and motorbikes at risk and lack of preventive measures taken by means of steering locks and other devices. It is an area in which the rigorous implementation of the criminal law seems to have its limitations and other forms of administrative and social control might be more efficacious in the long run.

At least in England juvenile participation in sexual offences does not seem to be increasing greatly and whilst there are special offences of having sexual intercourse with girls of young age, many juvenile offences of this sort do not come to official notice, or are not prosecuted if they do.

I find that anxiety exists with regard to the apparent growth of robbery and in some places it seems to have reached epidemic proportions. Certainly, though not unexpectedly, the offenders are often young. In England the official statistics show that 34 per cent of those convicted or cautioned were aged 17 to 21, 20 per cent were aged 14-17 and 6 per cent were under the age of 14. Girls seem to be more active in this way than previously. Street attacks to gain handbags, jewellery and trinkets have been prevalent. The elderly are vulnerable and threats have been made to babies in prams so that their mothers yield their property. Sometimes the circumstances or the force employed (for example to snatch and wrench a flimsy necklace from a passerby) is not what is required for robbery and the case is recorded as theft, but it remains part of the syndrome of very frightening and cruel teenage delinquency. At the other extreme one is sometimes seeing in English courts teenagers prosecuted for extorting very small sums of money or objects from playmates at school. It is questionable whether any worthwhile social purpose is served by prosecuting and convicting these miscreants of the very grave and stigmatizing crime of robbery. Such matters are best resolved by teachers and parents wherever possible.

Theft itself remains far too prevalent. Statistics for convictions and cautions respecting stealing and handling stolen property show 21 per cent of offenders to be aged 17-21, 22 per cent to be between 14 and 17 and 14 per cent to be under 14. These are worrying statistics as in many jurisdictions children are perhaps unlikely to be prosecuted for a minor first offence. The crimes range from small spontaneous takings to planned thefts of property of considerable value where numbers of young people may be involved in a concerted enterprise.

A good deal of the less serious offending takes place in shops and supermarkets where stores with poor security and service fall easy prey to light-fingered teenagers. No doubt the stores pass on the losses eventually in the form of increased prices to their paying customers. In some urban areas a great deal of court time may be taken up with prosecutions of teenage shoplifters. It could be useful if some alternative strategy for dealing with offenders could be devised to save police and court time and to avoid the stigma of criminality for some cases where youngsters have yielded to temptation. In England shops are often required to undertake the conduct of their own prosecutions before the courts. More radical proposals

have received active consideration in the Scandinavian countries.[10]

Criminal damage remains predominantly an offence of the young. 29 per cent of those cautioned or found guilty in England are aged between 17-21, 21 per cent are 14-17 and 15 per cent are under 14. All the evidence shows the offence to be grossly under-reported.[11] The damage ranges from unsightly graffiti to the immobilisation of public telephones, lifts in high-rise buildings and other public utilities which can have grave consequences. The motivations for this delinquency vary enormously.[12] There is a lot of evidence linking vandalism with dislike of school, poor school performance and low achievement generally.[13] Once again the use of criminal law as a weapon against this behaviour has its limitations and experience shows there to be more gains from better design, better supervision and education and target-hardening.[14] It seems to be the case that vandalism is less of a problem with those countries where young people live very socially controlled and structured lives and where family and neighbourhood supervision is more rigorous.

Finally, this catalogue of current trends, one might mention that, predictably the juvenile involvement in fraud and forgery is very small. Only 7 per cent of the cautions or convictions for these crimes in England are of those under the age of 17 and the most common forms seem to be the theft and presentation of other people's cheques and money orders.

Of course all that one knows about official statistics and their limitations has to be kept in mind in considering the data such as the foregoing. One must be especially careful where juveniles are concerned. It might be that their preponderance in the figures of recorded crime is in part due to the fact that they present an easier target for the police. They are easier to catch, easier to obtain admissions from and easier to convict. They are likely to be less experienced not only of life in general but of the whole juvenile process in particular. They might not have the benefit of lawyers to the same extent or be able to manipulate their defences as well as adults.

It would not be right to conclude any survey of recent developments without reference to three related matters which are of considerable import in many places. Firstly, there is the growing problem of alcohol abuse amongst the young.

Secondly there is the misuse of other drugs. The taking of cannabis is now widespread in some places and in some instances has either been decriminalised or else made the subject of minimum police attention and penalties. Serious offences of trafficking remain, but these do not usually involve juveniles. The 1980's have seen an increase in the misuse of hard drugs and this whole matter is the subject of on-going scrutiny.

The third related matter which is that of solvent abuse. The increase in this activity amongst teenagers has caused much anxiety in recent years.[15] The aetiology and prognosis of the behaviour is the subject of much debate; so too are measures for its control. As the substances are everyday household materials ranging from gas-lighter fluids and felt pens, but most commonly glue, it is very difficult to control the activity by law. An Act of Parliament for Scotland has been passed this year which attempts to do so.[16] It provides that where a child has misused a volatile substance by deliberately inhaling, other than for medicinal purposes, that substance's vapour he may be regarded as being in need of compulsory measures of care. The Act was brought into effect on 13th July 1983 and there will be keen interest focused upon its efficacy.

When it comes to theorising about the aetiology of delinquency, the theories seem to group into two main areas, those which tend to centre upon individuals and their personalities as approached from different points of view and those other theories of a more sociological kind which attempt to account for the phenomena in wider social terms.

The published Government White Paper statement of policy upon which the

English Children and Young Persons Act was based in 1969 says as follows, "Juvenile delinquency has no single cause, manifestation or cure.... A child's behaviour is influenced by genetic, emotional and intellectual factors, his maturity, and his family, school, neighbourhood and wider social setting."[17] Considerable problems for jurisprudence are raised by this kind of statement which borders upon a deterministic account of delinquency. Granted those premises, how can punishment be either just or effective? This is no doubt why much of the purpose of the Act of 1969 was to replace a philosophy of punishment with a philosophy of care. That is all very well, but as the White Paper itself recognises there has to be linked to caring, some notion of protection of the community from those who are a nuisance or a danger to it. Much of our present debate in the Quest for a Better System of Juvenile Justice has this conundrum at its core.

In the pathetic parade of delinquent children who pass through a London juvenile court in the course of a morning, many do show classical features of maladjustment. Family problems, one way and another, loom large. Many children are the product not only of broken homes, but of homes which have been fragmented again and again and again. They are starved of love. Perhaps too much is said in some places about the delinquent act as a 'cry for help' but cases which seem to illustrate this very well do sometimes come to notice.

Serious mental illnesses amongst juvenile delinquents seem relatively uncommon, though florid cases of those who are grossly disturbed do occasionally occur. In extreme cases, fitness for trial would become an issue. More commonly children are described in reports made about them as having personality disorders, maladjusted personalities or in other terms so general or vague as not to be very helpful. On the other hand other diagnoses and classifications can be little more than labelling and very stigmatic. For example, psychopathic personality should never be used in respect of juvenile delinquents since a certain amount of egocentric, antisocial behaviour, failure to learn from experience and so on is part of the ordinary state of immaturity of adolescence. The label "psychopath" is one which is rapidly fortunately falling into disuse anyway and this is especially desirable so far as the young are concerned.[18]

In Australia a few years ago the Children's Court Clinic in Melbourne developed a practical triaxial system of classification for their juveniles. The three axes accepted were the mental, the anti-social and the social family axes. The first considered the personality variables, the second the delinquent manifestation itself and the third the social and family factors. In essence the Melbourne appraisal of the socio-family axis incorporated what Western criminologists concerned with juveniles seem to have been saying for many years.

We have to add to these factors other social malaises of the 1980s which are of a more general kind. Some, like unemployment, affect some countries more than the rest. Others, like changing family patterns and the discontinuities brought about by increasing urbanisation are more general.

The nuclear family is becoming the norm in Western countries and often these days it is a one-parent family at that. The full effect of some of these more radical changes have yet to be felt and studied as the new generation grows up. But it is obviously clear that in many countries where strong, cohesive family life with codes of behaviour, structure and firm discipline to mark behavioural parameters has been the norm until now, the 1980s are bringing changes. Young people are asserting themselves and it is not likely that there will be any return to times that are past. It seems quite essential to come to terms with what has happened and not to indulge in purposeless conflict and struggle to reassert the status quo ante.

As the young have shown pressure towards emancipation, so have females in many countries. Girls are being educated in the same way as boys, their roles are less clearly differentiated than once upon

a time and their expectations and place in life is very different from what it would have been even ten years ago. This is said to be related to an increase in delinquency so far as girls are concerned. Clearly it is a development which cannot be resisted. The 1980s present an intermingling of cultures through T.V., radio, the press and foreign travel, especially for young people and it will be necessary for societies to adapt to the new generation and its needs as much as vice versa.

Quite obviously, even in developed and rich countries, providing the amenities for rapidly developing city life is beyond not only purse but also instrumentalities for planning and coordination. In some societies which chronologically are a little bit further ahead the process seems to have been complicated by a movement into reverse, with the evacuation of central city areas by their formerly resident populations, leaving with a consequence of urban blight and decay on a very large scale. Such circumstances are criminogenic in a high degree.

Some nations have had to contend with political and social upheaval on a much more dramatic scale. Many countries have had in greater or smaller proportion the influx of immigrant populations and consequential stresses and tensions have to be absorbed. The sociologists have developed numerous theories embracing the various phenomena and trying to account for them and to interpret them and to guide social policy. It would not be surprising if sometimes we all felt overwhelmed and powerless in the face of the growing burden of all these many problems and of juvenile delinquency in the 1980s. Yet Lady Wootton observed once that considering the extreme stress and tension of societal existence nowadays we should perhaps consider ourselves fortunate that we do not have to suffer very much more crime than we do.

The present introduction needs to be re-appraised in context. Ours is not after all the first generation to have to contend with the problem of juvenile crime. "Children today love luxury. They have bad manners, a contempt for authority, a disregard for their elders and they like to talk instead of work. They contradict their parents, chatter before company, gobble up the best at table and tyrannise over their teachers."[19] This lament is attributed to Socrates.

Even 2000BC a discouraged Egyptian priest is said to have declaimed, "Youth is disintegrating. The youngsters have a disrespect for their elders and a contempt for authority in every form. Vandalism is rife, and crime of all kinds is rampant among our young people. The nation is in peril!"[20]

Justice for Juveniles

One way of setting out on a quest for a better system and administration of criminal justice is to take a critical look at what we already have in order to identify problems and areas of concern. The first step in the criminal justice process for most young offenders comes when their delinquency brings them to the attention of a policeman. The response of the police at that critical moment is crucial in setting the course for what follows. In some cases the incident will be referred to a court. Being in a juvenile court is not at all like being in any other court. This stems not only from procedural differences, but from differences in the philosophy of approach. Yet in many jurisdictions that philosophy is not fully worked out, or consistent, or properly concordant with other demands of the socio-legal situation. The English courts illustrate some of the difficulties which have arisen. It seems appropriate to refer to some antinomes in the present arrangements and also to take into account what some are saying about the matter of children's rights. The system of juvenile courts with which we may be most familiar are not the only models. Alternatives might exist, some of which could be quite radical.

Separate courts for juveniles are a relatively new appendage to the legal administration of most countries dating back to at most the beginning of the present cen-

tury. 1st July, 1899 is the date associated with the Juvenile Court of Cook County, Illinois[21]; Special Courts were established for hearing juvenile cases in Adelaide, South Australia, in 1890.[22] In England statutory recognition was given to juvenile courts by the Children Act 1908 and twenty-five years later the modern foundations were laid and special justices appointed by the Children and Young Persons Act 1933.[23]

In those days the principal effort was to keep juveniles away from the adult courts. Nowadays much of our energy is going into ways of keeping juveniles out of court altogether. Amongst those who might be described in modern parlance as the 'gate-keepers,' the police play a leading part. Perhaps the public's expectation of its police these days has moved from the idealistic to the unrealistic. Today's police have responsibilities and functions so many and so great that they are in danger of performing none of them fully and well. Citizens are ambivalent as to whether they want a police force or a police service. This dichotomy between force and service introduces inevitably a sense of role conflict into modern police work.

Traditionally in England the primary purpose of the police was the prevention of crime. If unsuccessful in that objective, they turned to their second which was the apprehension of offenders. Now there are new terms in vogue, "preventive policing," "pro-active policing," "fire-brigade policing" and so on as language makes an effort to keep pace with changes in fashion and demand so far as the principal work of the police is concerned. But there is more and in the case of juveniles, much more. Thus 98 per cent of criminal cases in England are dealt with by Magistrates' Courts and almost all of the prosecuting in these courts is undertaken by the police. It is difficult to say that this must not inevitably give the police a new interest in the outcome of cases. They are going beyond their original function of preventing crime and bringing offenders to justice; they are now actually acting as advocates in court with surely an inevitable interest in the result. Their power with respect to the working of the criminal justice system either formally, or informally, goes a great deal further still. They can determine who is charged, what they are charged with, how many charges there will be, when the trial will take place, whether the accused will be tried together or separately, whether they will be granted bail or remanded in custody and they may be amenable to plea bargaining. It is not to say, of course, that the police have an unbridled discretion in all of these matters, but they certainly have considerable influence especially where juvenile offenders are concerned. Perhaps this is the place to mention training, so far as the police are concerned. So many reports and enquiries have emphasised its need. Whatever function the police are to be called upon to fulfill they will have training adequate to the purpose. If they are to do much of the work of lawyers in the prosecution of juveniles, for example, they should have the skills to work efficiently and fairly in the interests of justice.

But a policeman's involvement with juveniles will begin much earlier. In most situations it will start with some kind of discretion to take no notice of what he sees, or to administer some sort of informal caution or fatherly warning in respect of it. In Australia:

> "An officer on patrol may warn a child on the spot, make no record and take the matter no further. In some instances the police may take the child home. The next stage—and one which marks the beginning of a child's penetration into the official system—occurs when a child comes to police notice and the officer concerned makes a report. A decision will be made whether an official warning administered by a senior officer at the police station, will suffice. Questions are often raised as to whether the police keep records of these warnings, and, if so, as to the use made of them."[24]

In England, too, the exercise of discretion rests initially with the individual

officer.[25] After that, the next stage in England comes when the officer decides to report the offence. Certain officers in each of the 46 police forces are chosen to constitute juvenile bureaux for their forces and if an officer decides to report an offence, usually it will go to the juvenile bureau of his force. The bureau will then enter into consultation with the local social work agency, the education authority and parents and decide whether or not to prosecute or to administer a formal caution instead. In general, the following criteria must be satisfied:

(1) The child must admit the offence. (This aspect itself causes quite a few problems.)

(2) It is usually a first offence, although sometimes a child might be cautioned on more than one occasion.

(3) The parent, the child and usually the victim must agree.

(4) The bureau, the social workers and the school must all agree that it is in the best interests of the child for a formal caution to take place. This is then administered by a senior police officer in uniform at the police station with the parents present. It is recorded and may be cited as part of a child's criminal record in subsequent proceedings. In Scotland there is a system of police warnings.

There are considerable variations in police policy in different parts of England as the proportion of children cautioned as against the number prosecuted varies enormously from one area to another. This lack of consistency by the police can be criticised. But overall since 1976, 45 per cent of boys and 70 per cent of girls have been cautioned. Such studies as have been done show formal cautioning to be very successful in terms of children keeping out of subsequent trouble with the law.[26] However, there is a residual doubt in the minds of some people that this could in part be linked to a net-widening effect; that is, that children are sometimes being cautioned for offences so trivial that they would have been dealt with informally and unofficially if the formal caution procedure did not exist. The danger here is that children are in fact being introduced into the criminal justice system (albeit at the "shallow end") when the whole purpose of the exercise is to keep more children out.[27]

The system described has its counterparts, no doubt, with some variations, in many different countries. It is entirely desirable to keep juvenile cases out of court wherever this is possible, but as soon as this becomes a matter calling for the exercise of discretion problems can arise. Simha Landau has shown that the official criteria for the exercise of discretion by the police seem to be distorted by additional factors including ethnicity.[28] Research in the United States seems to show the same.[29] Wherever discretion is left in the hands of individuals the situation will be open to criticisms; training, professional integrity and procedures for impartial review are safeguards. In some countries discretion concerning prosecution rests much more with a public prosecutor, duly qualified.[30] Most legal systems embody special protection for children undergoing interrogation by the police and childrens' rights are receiving increasing recognition.

Other principal gate-keepers can be the educational authorities and the probation officers and social workers. Reports and decisions taken by these workers can help in large measure to decide whether or not a juvenile is brought to court or dealt with in another way. Training and integrity in the face of conflicting pressures are, once again, vital. For example, social workers might feel constrained to bring juveniles to court and even to press for a conviction for a criminal offence or certain kind of court order because a government has made available an allocation of money for projects or aid for juveniles which is only available once they have been taken before a court and an adjudication made. It might be that the benefits are not available unless the juvenile is convicted and although an alternative less stigmatizing process might have been available the social workers follow the court route in order to get their

young clients access to the valuable resources at the end. This is akin to the problem of 'providing goodies for baddies' to which reference is made later.

A considerable influence may be exerted by the gate-keepers before trial and afterwards through their reports made whether orally or in writing. Written reports and recommendations may be very persuasive. The whole editorial function with regard to reports will have an enormous effect on the way in which the content is perceived. 'Coded' phrases and clauses may be used which are fully capable of bearing special meanings to the magistrates and decision-makers.[31] In the quest for a better system and administration of juvenile justice just as much positive, critical thought must be applied to the functioning of the gate-keepers as to the working of the courts themselves.

Consider now the juvenile courts and the part they play. They, like other courts dealing with criminal matters, would appear to have two main functions. The first is to adjudicate fairly on the issue of guilty or not guilty, *i.e.* whether the case is properly proved and the second is to pass some kind of sentence or order upon those deemed guilty, either because they have pleaded guilty (which is more than 90 per cent of defendants) or because they have been found guilty after trial. The very notion of guilt itself has implications of responsibility and blameworthiness, but this concept is easier to manage in an adult court, although even there are difficulties.

There are difficulties regarding responsibility in the adult court, for example, where the accused's mental fitness is in issue and there a number of defences which turn on the presence or absence to a greater or lesser extent of mens rea, such as mistake, intoxication, duress and so on. It used to be the law in England that persons who were found so mentally ill as to lack mens rea were found "guilty, but insane." The implicit inconsistency of this verdict is now recognised and the modern finding would be one of "not guilty by reason of insanity". Such a verdict amounts to an acquittal, but, none the less, somebody found not guilty by reason of insanity is quite likely to be compulsorily deprived of his liberty for a very long time by being incacerated in a hospital designated by the Home Secretary. The social policy behind this is obvious in cases where the need to protect the public is paramount. Although there may be theoretical or jurisprudential arguments of some weight and complexity in favour of the individual, the interests of the wider community prevail. The issue could be further complicated if it were sought to restrict an offender's liberty for his own protection.

It is often said that the purpose of the criminal courts is to punish the guilty. In speaking about criminal justice and punishment it is possible to talk as Nils Christie does about a "pain delivery system". Stewart Asquith has recently written of punishment as an "intended unpleasantness to the subject."[32] It is not easy to disentangle a clear notion of punishment from other concomitants which are all part of the pronouncement which constitutes the courts sentence or order. These are commonly taken to include deterrence (both general and specific), retribution, denunciation, reformation, prevention and so on. In many ways punishment is irrelevant in respect of somebody lacking in mens rea. J.D.W. Pearce puts the matter appositely in discussing a case of shoplifting which occurred during an accused person's hysterical fugue. He said, "Such cases are few and far between... but they are of great medical and ethical interest, as, not being responsible for their conduct, punishment would not only be futile but it would be unjust."[33] One cannot be deterred or reformed in respect to behaviour which one was unaware of committing. Denunciation in that kind of case serves no purpose and retribution would, as Pearce observes, be plainly contrary to justice. At the same time it would be very aggravating to stall-holders and shopkeepers if they were continually at the mercy of passing plunderers whether those unhappy individuals were in states of fugue or not. And so at some point jurisprudential niceties have to yield to practicality

and the need to protect the wider community may become paramount. Obviously it is prevention which is uppermost when compulsory hospitalisation is ordered in respect of some violent individual who has been found not guilty by reason of insanity.

This point is thrown into sharper focus if one tries to separate the criminal law from morality. Instead of regarding criminal law as a tool for the enforcement of public morality, where culpability and blameworthiness are going to be central issues, it is possible to regard criminal law as a means of coercing the socially deviant. In that case one will be primarily concerned with protecting the public. Baroness Wootton has discussed the matter as follows:

> "The line between sickness and sin for the ordinary person in situations of personal distress and in many moral situations has thus become practically obliterated; treatability is his criterion. But as the law now stands for an offender this cannot be so, because an offender must be distinguished in law not by the criterion of treatability, but by that of culpability. . . when we know that a person has committed a violent criminal act, we should ask ourselves what is the best way of curing him, what is the best way of seeing that this does not happen again, and that the public are protected, without going into minutiae as to whether he could, or could not, have helped what he did, whether his responsibility is absent, full, or somewhat impaired, or whether he is suffering from any, and if so which, of the types of mental disorder recognised by the Mental Health Act. I think we should say: 'Now we are faced with a situation like a natural catastrophe—like a flood—what do we want to do to see how we can prevent this from happening again?' "[34]

This statement appears to have regard to two matters amongst others. On the one hand it gives paramountcy to the question of prevention and on the other it is couched in the language of treatment, which was the way in which we tended to discuss these matters when Lady Wootton was speaking in 1962. Even Dr. Pearce, cited above with regard to the hysterical person in a state of fugue, said in his psychiatric report to the court in that case, "Further psychological treatment of an analytical type while temporarily resident in a suitable school was recommended."[35]

Of course, in the case being described by Dr. Pearce there was a specific mental illness which had been diagnosed and which the psychiatrist believed might be amenable to treatment in the strict sense of that word. Even so, if the recommendation were adopted by the court it would mean a period of loss of liberty in a hospital though Pearce himself had urged that punishment would be unjust.

The sense in which Lady Wootton is using the word "treatment" appears to be wider and not as applied in a strictly clinical manner. As everybody recognises the so-called "treatment philosophy" is entirely out of vogue at the present time. There are various reasons for this which would include a disillusionment with existing diagnostic and classificatory systems and with the efficacy of the procedures to which they led.

As we survey the administration of justice in 1983 three influences seem to be coinciding. First, there has been a growing disenchantment with what treatment and kindred practices have been able to achieve, especially where the principal criterion of success is the prevention of crime and recidivism. Second, there is in many parts of the world at the present day a distinct move towards the right in penal matters. Sentences should be harsher, tougher and punishment should mean what it says. One is brought back to Asquith's definition of punishment as "intended unpleasantness to the subject." At the same time there is, thirdly, a vigorous counter-struggle in favour of human rights and dignity and of rights for prisoners in particular. It is said that if people transgress the laws of their society it is their right to receive a just punishment and not to be coerced into therapy to change their personalities, nor to be forced into reformative programmes

nor to be obliged to undergo anything else which might happen to serve or be called treatment. This approach to dealing with offenders has, as we know, been variously called the "justice model of corrections", the "neo-classical model", the "jsut desserts model" and so on.[36]

In considering Rule 1 of the Prison Rules 1964 which says that "The purpose of the training and treatment of convicted prisoners shall be to encourage and assist them to lead a good and useful life", a recent Government enquiry observed,

> "However, confidence in the treatment model, as it is usually called, has now been waning throughout the Western world for some years. The drive behind the original borstal ideas has fallen away and there is now no belief that longer sentences may be justified because they make actual reformative treatment more possible."[37]

If this is the attitude which is to be adopted towards adults passing through the criminal justice system then are not juveniles who are in a weaker and more vulnerable position entitled to have their rights protected also? Are they not entitled to a just measure of punishment and not to treatment?

This brings one back to the most vexed conundrum with respect to juvenile courts, that is the balance between the justice model and the welfare model so far as they are concerned. It is a conflict in modes of approach about which many people have written, but few have been able to suggest a resolution. There is an abundance of literature in many countries.

There was a great effort made by a reforming Government in England a few years ago to take juvenile cases out of the courts in order that juveniles should be spared the stigma of criminality and to avoid decisions as to treatment being made in the form of court orders. Family councils were to be set up comprised largely of social workers acting in consultation with parents.[38] A number of powerful pressure groups were opposed to the replacement of the juvenile courts in this way and drastically modified proposals emerged in a further White Paper, in 1968.[39] The legislation which was eventually passed was very much a compromise measure based upon the philosophical premises of that discussion paper. In a shallow way the argument could have been regarded as a struggle for power between the executive and the judiciary or between the social workers and the lawyers. But it seems most important to remember that whenever there is a court exercising jurisdiction over criminal cases it is there, not only to administer punishment, but also to protect the liberty of the subject. In other words, it might not be right for decisions to be taken about the placement and disposition of children (or indeed of adults) in conferences and councils behind closed doors where the person being discussed might have neither a right of audience, nor of representation nor of appeal, nor any of the protections afforded by a court of justice. It might not be right for those decisions to be taken away from the protection of the courts even under the guise of welfare or treatment.

The Children and Young Persons Act, 1969 which contains the compromise I referred to, took away the right which juvenile courts had had to make what were called "approved school orders", which had the effect of placing children compulsorily in residential schools. Instead the courts now have power to make what are called care orders. The consequence of making a care order is that the Local Authority assumes the rights of the parents and is empowered to make all the future decisions about education, residence and so on. The Local Authority exercises its powers through case conferences of social workers and other experts with knowledge of the child and an appropriate placement is decided upon. The child might be sent home to live with its parents, or sent to live with a relative or it might be sent to a community home (the institutions which replaced the approved schools) and could be forced to remain there for several years. In many respects the care order represented the limit of the powers of the juvenile courts. But once the order was made the control over the situation and the child

passed to the Local Authority. Courts were often frustrated to find that a particularly persistent and difficult offender whom they expected and hoped would be placed in an institution had been allowed home and was committing further offences. But there was also the risk that a child would be placed in a community home for a very long period, even for years, allegedly in the interests of the child's training, treatment or welfare, but where, had the offender been an adult the sentence would have been much less severe. It has happened (and it did in a court recently) that a child with a first conviction of shoplifting was dealt with more severely than an adult would have been. The adult would normally receive a modest fine according to a notional tariff, but the child came off worse because the court dealt with the matter on a basis of "welfare".

On the other hand it is obviously difficult and perhaps inappropriate to apply the justice model strictly to children, as punishment—at least that part of punishment which connotes retribution—involves responsibility. The White Paper, *Children in Trouble* as the source document for the 1969 Act goes very close to positting a deterministic theory of criminality based on a combination of heredity and environment over neither of which the child has any control. It is this largely no doubt, which led the Government of the day to base its legislation on a philosophy of care rather than one of punishment. Punishment as it is being debated in many places (for example by Stewart Asquith, to whom I have already referred) is being discussed in narrow terms of retribution. Asquith argues that children are entitled to justice in the formal sense of equality before the law and all the other benefits and protections which are available in adult courts. He reports that in Finland consideration is being given to lowering the age of criminal responsibility to give children the judicial protections of adults and that retribution is becoming the basis of the sentence. The age of criminal responsibility does vary widely from one country to another but, bearing in mind the factors relating to the onset of delinquency it is only one factor affecting responsibility amongst many over which the child has no influence.

According to Asquith children also deserve justice in the material sense. In the case of adults retribution is morally acceptable because all men are considered rational and autonomous beings participating equally and fully in the social system in which they have a share in control. He concludes by saying, "Providing justice for children will not be possible without analysing the way in which life opportunities and experiences are socially distributed. This is essentially a political exercise."[40]

Yet surely to see all sentencing in terms of punishment as meaning retribution alone is far too narrow and that elements such as deterrence, prevention, reformation and so on must be weighed with retribution in coming to a final sentence. So far as English Courts are concerned guidance was given as long ago as in the Children's and Young Persons' Act 1933, where s.44 states:

> "Every court in dealing with a child or young person who is brought before it, either as an offender or otherwise, shall have regard to the welfare of the child or young person and shall in a proper case take steps for removing him from undesirable surroundings, and for securing that proper provision is made for his education and training."

But legislation which became effective in May, 1983 added the following:

> "... a court shall not make a care order... unless it is of the opinion that a care order is appropriate because of the seriousness of the offence and that the child or young person is in need of care or control which he is unlikely to receive unless the court makes an order."[41]

Whilst in sentencing in a juvenile court one must have regard to the welfare of the child that is far from being the only consideration. As the White Paper, *Children in Trouble* put it:

> "It has become increasingly clear that social control of harmful behaviour by

the young, and social measures to help and protect the young, are not distinct and separate processes. The aims of protecting society from juvenile delinquency and of helping children in trouble to grow up into mature and law-abiding persons, are complementary and not contradictory."[42]

Before and after the passing of the Children's and Young Persons' Act of 1969 in England there has been considerable dissatisfaction in some quarters with the existing system of juvenile courts and the ways in which they are run. Basically they are part of the system of Magistrates' Courts, i.e. the lowest rung of the criminal justice system but with some civil jurisdiction as well. Magistrates' Courts are generally conducted by benches of lay magistrates, that is to say ordinary men and women drawn from a cross-section of the community who give their time to this work completely voluntarily. For a number of socio-economic reasons it is difficult to recruit magistrates who are truly representative. Most are drawn from the upper middle classes, whereas the clients, the children who appear before the courts week by week are very much drawn from the opposite end of the social scale.

Despite short training courses, it is not expected that magistrates will have any particular knowledge of the law and most of them do not. So far as legal issues are concerned the magistrates are given advice by their court clerk who should be legally trained. It is for the magistrates to determine the sentence in each case, although once again, their clerk may advise them on any legal provisions involved.

The juvenile courts are constituted by a bench of three justices and both sexes must be represented. Juvenile courts must be held in a completely different building from an adult magistrates court, or, if the same building is used, there must be a break of an hour between any adult proceedings and the constitution of a juvenile court. The juveniles may be represented by lawyers and will be in cases of the slightest complexity or gravity. Because most of them come from poor families the defence will normally be at the expense of the state. The courts are closed to all but those directly and legitimately involved in the proceedings and there are heavy restrictions on publicity by the press or similar agencies. The courts are normally furnished like any other magistrates' court, although sometimes the arrangements are slightly less formal. However an appearance in court is supposed to be a serious and salutory experience and although the proceedings are relaxed to some extent for children most find it daunting. Many children, of course, have been in such a state of bewilderment during the proceedings that they do not always understand what has been said to them and real communication proves as much of a problem in the juvenile courts as it does elsewhere in the criminal justice system. The procedure is adversarial as is the case in all courts in England.

The range of offences tried by the lay justices in juvenile courts is very wide. Most young offenders, like most adults, plead guilty. Some offences are offences which only a juvenile can commit as they are concerned with certain forms of conduct under age, for example, behaviour involving drink, sex, driving and so on and there are other reasons for bringing a child to court (for example, truancy) which would not apply to an adult. These offences are those which Americans call "status offences" and most American jurisdictions are adopting legislation to keep such matters out of the courts.

The discussion about children's rights in the sense of rights as meaning obligations which are legally enforceable by those bearing them is relatively new so far as juveniles are concerned. Even that greatest exponent of liberty, John Stuart Mill, seems to exclude children and young persons under an age fixed by law. Perhaps it is because children in society are not recognised as having many duties or responsibilities. However, children's rights are important. Practical matters like fingerprinting and interrogation and the availability of a lawyer at trial have already been mentioned. These days children are seen

to need all the rights that adults have so far as justice is concerned with some additional protections.

In a recent article Michael Freeman adopts two main orientations of rights: nurturance and self-determination. The former embrace the provision by society of the child's basic needs, services, experience and activities of a beneficial kind. The rights forming part of self-determination cover those areas where a child may make his own decisions about his environment and life. Michael Freeman takes rather a sour view of the juvenile court and juveniles' rights:

> "One of the most unsatisfactory features of juvenile justice is that in reality there is very little justice. Neither pretrial procedures nor the court processes themselves observe the sort of elementary natural justice requirements that are taken for granted in a court dealing with adult offenders. In part the problem is the product of a confusion of purposes: welfare versus control; assessment of needs or adversary trial."[43]

The matter of rights is a very important one in the debate between the supporters of the justice model and the welfare model. According to Michael Freeman the welfare model fails because it is a denial of rights.

> "Children have the right to claim that they should be treated like adult offenders. Concessions made to protect them have been revealed for what they are: measures which undermine their rights... Those who do wrong have the right to expect punishment; the right not to be treated. Children expect dispositions to be based on the offence committed and tariff criteria."[44]

A number of alternative forms of adjudication have been tried as means of curbing delinquency whilst avoiding the stigma of a trial. Some pre-adjudication schemes have been discussed by Tappan who finds in them a short-fall of justice.[45] Much has been written about the so-called children's hearings in Scotland.[46]

Opinions are much divided about the efficacy of the Scottish system. Michael Freeman regards them as reducing some of the ambiguities, dilemmas and inconsistencies inherent in the English system, but they remain.[47] Allison Morris concludes,

> "... once children reached the hearings, the level of interventions was greater than in the juvenile courts—more children were removed from their parents' homes in 1973 than in 1969 and more were placed under the supervision of a social worker... In other words, children are controlled and punished in the guise of 'care' or 'treatment'; and because action is disguised as 'treatment' the number of children subject to such measures increases"[48]

How should the juvenile court system itself be judged? No doubt there is great scope for raising nice social and jurisprudential questions about justice, welfare and other issues. Important as these are the ordinary community is most likely to judge these tribunals according to how successful they appear to be in controlling crime and recidivism.

Whatever we think of the advantages and disadvantages of juvenile systems known to us, one sad and salutory fact remains that contact with the juvenile court does not, in fact reduce the offenders' delinquent behaviour, the opposite is true. Conviction by the court increases the risk of re-offending.[49] What can be learned from that?

Alternatives to Custody for Juvenile Offenders

Theoretically the sentencing of juvenile offenders seems relatively easy. One considers the crime and its circumstances and the offender and his antecedents. One keeps in mind the objectives to be attained and chooses form amongst the sentencing alternatives just what is needed to meet the individual case. This is what might be called positive sentencing. One weighs up the objectives to be achieved and chooses what is just and apposite to those ends. There is an immediate difficulty because, as discussed already, what is just is not necessarily apposite and vice versa. But,

equally as bad, it is likely to prove the case that for a variety or inescapable practical reasons none of the sentences which seemed so appropriate is able to be passed. One cannot make use of a particular project because it does not exist in the area of this actual court, one cannot impose supervision because the relevant service have indicated an unwillingness to be involved, one cannot select a compulsory activity because it is crowded out with other offenders and there are no vacancies for the next six months. For some sentences the offender will be too old, for others too young. Some will be inadvisable because he has been through those already and so, maybe one is thrown back on the imposition of a fine, there being really no other viable alternative. The wonderful range of options provided by the law all in the end have come to nothing. One has to make use of the only remaining possibility. This is negative sentencing. One hopes that it never happens that custodial sentences are passed only because the defendant is too poor to pay a fine; such an outcome would never, of course, result in one's own court, but perhaps it might in somebody else's.

If one were being cynical one might say, well so far as reconviction is concerned it makes precious little difference anyway. A very great deal is taught and argued about the merits of one type of judicial reaction as against another, but in the end it might be said that ". . . longer sentences are no more effective than short ones, that different types of institutions work about equally well, that probationers on the whole do no better than if they were sent to prison, and that rehabilitative programmes—whether involving psychiatric treatment, counselling, casework or intensive contact and special attention, in custodial or non-custodial settings—have no predictably beneficial effects."[50] Another Home Office publication refers to a uniformity of findings in the United States as well as in England and several other countries which fail to show (a) that longer sentences are more effective than shorter ones, (b) ". . . that any of the institutional alternatives provided for young offenders—detention centres, borstal or prison—is the more effective.", (c) that special institutional programmes are any more effective in reducing overall reconviction rates than traditional methods of institutional custody, (d) that probation offers a better chance of reform than a period of time in custody (although fines and discharges appear to be connected with less recidivism than either probation or custody) and (e) that it is unlikely that intensity of supervision on probation will have much effect on reconviction.[51] As Stephen Brody has said, "To the researcher the subject is by no means closed."[52] But in the meantime it has given impetus to the movement away from the treatment ideology. And, as the Home Office says, "Even if different sentences are little more effective than each other in preventing recidivism, some are cheaper and more efficient."[53]

There is recent evidence that the general public is less vindictive towards offenders than had been thought. In the British Crime Survey only half desired their offenders to be brought before a court at all and only 10 per cent favoured a sentence of prison or borstal. A quarter of the victims preferred a fine, 20 per cent wanted a formal caution or some other reprimand from the police and 15 per cent favoured some sort of reparation, compensation or community service. Although it will take time and the confirmation of further research these kinds of attitudes are likely to have an eventual impact on the sentencing policy of the courts.

A custodial sentence has for a long time seemed right and, indeed, often almost automatic as the punishment to expect for a serious offence. This is an expectation which is gradually changing. Perhaps a little surprisingly many people seem inclined to overlook the completely different scale of time which is possessed by children. By the time that one is talking of the loss of liberty for months and even years the whole of the child's world must undergo a complete shift. One almost needs a different vocabulary to discuss the custody

of children from that which is appropriate in the case of those grow-up.

Cases in which a custodial sentence was passed on a juvenile and the offender concerned underwent a radical and positive change and left the institution much improved a long time later and continued to thrive and to live in subsequent prosperity happily ever afterwards are very rare. Most children who suffer custodial punishment are made worse and not improved by it.

There are many obvious reasons why this should be so. Plainly the teenage years are years of crisis and difficulty for many children struggling to make the passage to adulthood. The best chance of normal progression occurs in the open community and not in the artificial setting of an institution where the only relationships he can make are with his anti-social and maladjusted peers and those are of the same sex. The chances for developing in the understanding and the company of the opposite sex are usually very limited. It is a truism that the young need attention and affection, not to say love.

Even despite praiseworthy attempts to recreate a "family" structure most children's institutions merely serve to disrupt and destroy the tenuous bonds of the child's own family life outside. The rate of relapses into delinquency of juvenile offenders sent to institutions in England is round about 70 per cent. Incaceration may mollify the outraged feelings of a community, but it does the offenders no good. Their risk of re-offending is increased so that in the end it does the community little good either. The gain of a short breathing-space of a few weeks or months in the depredations of a chronic offender are about all that can be achieved and it is bought at a high price.

After all, much child rearing is inculcating internalised standards of behaviour and appropriate restraints. Is there any benefit in teaching controls achieved by external force? Where does that lead? As Sir Alexander Paterson once asked, "How can one train people to live in freedom in conditions of security?" The effect of incacerating children is simply to accelerate their becoming phased into the adult penal system.[54]

The weight of these arguments are becoming more generally appreciated. The stigmatizing experience is being recognised for what it is. But there are other cogent reasons why the search for alternative modes of dealing with juveniles is accelerating. Many of the institutions are full. There is a shortage of residential facilities and a shortage of staff. The costs of building more and more places is unacceptably high and the expense of running those which we have is becoming known to the public and is equally intolerable. The cost of keeping some children in some residential provision now exceeds £1,000 per inmate per week (*i.e.*, about £380,000). They could be sent to elite private schools at less expense.

Those experienced in the field can find other reasons why the search for further alternatives must be a necessary part of any quest for a better system and administration of juvenile justice. From the sentencer's point of view an increased range of alternatives gives him more possibilities to work amongst. Secondly, by continuing to find new alternatives to custodial sentences we are inserting further steps into the ladder leading to incaceration. The hierarchy of penalties becomes extended. Moreover, observers of the penal system notice one happy tendency and that is that experiments tend to work. Just why this is so is uncertain. It is not entirely frivolous to think of change and variety of options in the system as being in this sense beneficial in their own right.

Most governments support the essential search for alternatives to custody. In England the relevant Minister, the Home Secretary recently stated, "The Government is committed to seeing all offenders of whatever age, dealt with in the community wherever possible... because we believe that no-one should be deprived of his liberty unless that is absolutely unavoidable."[55]

Statements of intention are all very well; their fulfilment is another matter. A few years ago a new pressure group was

formed in England calling itself Radical Alternatives to Prison. For a short time it made a great noise and fuss about the need to close prisons, but it is now very little heard of because when it really got down to work it quickly ran out of new ideas with regard to the radical alternatives. Some of the most popular alternatives are not really radical, but have a place in our repertoire which is well-established. Take for example the fine. With fines, of course, one has thrown into relief that question as to whether it is the offence or the offender which is being dealt with. There is the opportunity to stick fairly rigidly to a tariff system, or to adjust the quantum according to the individual's means and all the other circumstances which might be personal to him. Surely it is much better to impose an order for compensation to the victim of a crime where this is possible rather than simply to fine an offender. This kind of reparation should be quite central in our thinking about sentencing for juveniles, as for adults, and the victimology movement must take credit for emphasising this aspect.

The Criminal Justice Act 1982 gives power to the English courts to pass an order for compensation as a sentence in its own right without having to make it additional to some other penalty as was formerly the case.

Another change in the matter of fines so far as juveniles are concerned was also made in the same statute. The court is now obliged to order the fine or compensation order to be paid by the offenders' parents or guardians unless it would be unreasonable to do so. The courts have for a long time had the power to order the parents to pay where it seemed reasonable, but this is an inversion of that provision. Many countries concerned with the growth of juvenile delinquency are anxious to reinforce the exercise of parental responsibility and the present Government in England is clearly much of that mind. On the other hand there is much to be said for bringing home even to young offenders that it is they who have broken the law; they who must accept responsibility and they who must bear the punishment without expecting their parents to step in and pay the fines and meet their children's obligation.

Many countires seem to have some kind of power for releasing children from the court without any further penalty so long as they behave themselves in the future. This is a useful and effective measure in many cases. The whole experience of prosecution is enough to frighten and deter without the need of additional sanctions. In England one of the principal ways of achieving this result is by means of the conditional discharge, which is a release without any punishment so long as the offender is able to keep out of trouble for a stated period which can be no longer than three years. About a third of boys and girls under the age of 14 sentenced for indictable crime are dealt with in that way. Almost as many girls aged 14–17 are dealt with in the same way, but the proportion of boys drops to 18 per cent. This apparent discrimination against males and in favour of females is evident at many points of the English system. It is partly the case that males have longer criminal records and commit more serious offences, but this is not a completely satisfactory answer for what is in the end a fairly clear difference in treatment.

What seems to be a very simple, but useful power came into our law through the Criminal Justice Act 1972. It is the power to defer sentence. It is not at all the same as an adjournment or a conditional discharge or anything else. It is an order made by the court after a finding of guilt, but without making any further decision at that time as to sentence. Sentence may be deferred for any period not longer than six months. The measure is almost one of last resort to see if an offender really can pull himself together and keep out of crime without the need for further, more serious, action. It is intended as a very positive and specific (and probably a last) chance for a difficult case to demonstrate that he is changing his ways for the better. Some offenders do behave as though they had merely escaped punish-

ment and get into trouble again, but many do improve, sometimes dramatically.

It is part of everybody's observation of offenders, including juvenile delinquents, that they very often tend to have a very low self-image. They have a built-in sense of failure and of under-achieving which many sentences only serve to reinforce. One is looking for some kind of positive fulfilment which offers an offender some kind of esteem and recognition, something upon which he might be able to build later on. It was partly this which the Advisory Council on the Penal System had in mind when it suggested Community Service as an alternative to custody some years ago.[56] The idea was that offenders should be given the chance to do unpaid work for the community often side-by-side with ordinary, unconvicted citizens on voluntary or charitable projects. The community was rather sceptical about such a measure which might well have led to good youth being corrupted by the bad sent to work amongst them by the courts and it was thought that work would be taken from others who might have the right to expect a wage for doing it. But, in the end, community service was passed into law by the Criminal Justice Act 1972 s.15, which provided that the courts could order an offender to give up between 40 and 240 hours of his time to undertake unpaid work so long as the Probation Service deemed the individual to be suitable and appropriate arrangements could be made. The measure was made applicable only to those age 17 and over, but it has been so successful that the Criminal Justice Act of 1982 has made it available for people as young as 16, although the maximum number of hours they may receive is 120. Quite a bit has been written about C.S.O.s as they have come to be known and it is clear that they have not been an unqualified success. It is worth expanding on these reservations a little as in a way they typify the problems inherent in trying to introduce alternatives to custody. In the first place, as with the other alternatives, the courts tend to regard the provisions as just other possibilities and not principally as there to be used only when custody seems inevitable. Secondly there are problems of finding suitable work, especially when there is great unemployment in general. Thirdly, the candidates to be placed on community service have to be fairly carefully chosen. Some types of offences obviously need to be excluded. Youngish people tend to get on better than those who are older. A background of alcohol abuse appears to be a contraindication and so on. Problems of sustaining motivation can arise. Like other sentences of this kind there can be problems of supervision and enforcement.

But the merits of the scheme have been sufficient to not only encourage its continuation and have it made available for the older juveniles as well as adults but it has also been introduced in various forms in other countries too. It is much more constructive and cheaper than custody and to some extent it can fulfil people's belief that punishment should fit the crime. Very importantly it emphasises the need for reparation albeit to the community at large in this way rather than to individual victims and it also brings offenders into some contact and understanding of those in the community who need help and support, since a lot of the work which is done is in the form of activities undertaken on the part of disabled or elderly people or others in special need.

Many different countries retain a high regard for some form of supervision of offenders, despite the despairing findings of the Cambridge-Somerville Youth Study and similar work.[57]

In England the use of supervision has been declining slightly but in 1981, 21 per cent of boys under 14 and 26 per cent of girls were placed under supervision in respect of indictable offences. In many countries both social workers and probation officers are expected to carry the burden of operating the various new alternatives to custody as they become established and they are not always given resources to match their added responsibilities. At the same time workers are sometimes criticised for apparently col-

luding with offenders, being themselves anti-authority and in opposition to the function of the court. No progress is going to be made in our efforts to work with delinquent youth unless we share our responsibilities and make collaborative effort across professional frontiers. Too often a failure of liaison between the police, the education authorities, the social workers, the judiciary, the lawyers and the probation service have a negative effect upon the work being attempted with the children and the outcome as a whole. Of course each agency has a different professional task but rivalries and jealousies, demarcation disputes and non-co-operation have a totally negative effect.

It could be that orders are often made for too long a duration. The maximum period in England is of three years and orders are commonly made for one year or two. These are very long periods in the time-perception of children and even of some social workers. Sometimes it does seem to be necessary to be seen to be standing by with long-term help and support for some family in special need, but often one asks what is being done over such a long time? What is the goal and what is being achieved? Might it not be better to define problems, draw up contracts about them and work very intensively with offenders over a short period. Can impetus and relevance be sustained for more than a few months?

In most countries it seems possible to insert various conditions into supervision orders, but once again it is unwise to insert terms which may be practically impossible of enforcement. In England the power to insert conditions was enhanced and made more specific by the Criminal Justice Act 1982. In addition and after considerable debate Parliament decided to give the courts power to make night restriction orders which amount to a curfew upon the delinquent between the hours of 6 p.m. and 6 a.m.

The 1969 Children and Young Persons Act had already given power to insert conditions which have become known as intermediate treatment and it might be worth while to consider these briefly. The Government policy document *Children in Trouble* recognised that many delinquents exhibit a need for more structure and control in their lives than they at present receive from their families.[58] The notion of "intermediate treatment" implies an intervention mid-way between doing nothing and completely taking over the rights of the parents and also mid-way between leaving the child at home and placing him in an institution. It also reflects that some delinquents need motivation, special development. They might lack friends, be unduly withdrawn, lacking ideas as to how to occupy their leisure, need social skills or special training in some areas. Supervision with a condition of intermediate treatment is intended to fulfil these needs.

Over the years many schemes in many countries have attracted favourable publicity for their efforts regarding delinquent youth. Some, like the Provo Experiment in Utah remain land-marks.[59] In England most of the best-known schemes form part of the nation-wide network of Intermediate Treatment projects approved and coordinated by Regional Planning Committees throughout the country. In all cases projects of this kind owe much to the enthusiasm and dedication of their leaders and staff. The range of provision is so wide and varied that it is hardly possible to instance any particular scheme as typical.

It is a matter for debate as to how appropriate it is to use volunteers in this kind of work, or for that matter ex-offenders. There are some precedents for both. In looking at new trends in the treatment of young offenders a few years ago the Council of Europe noticed the emergence of helping organisations which were themselves part of the "alternative society" or provided "mediators" with strong links to it. ". . . they bring to the task an immense amount of youthful enthusiasm and dedication and often great depths of understanding. Organisations of this kind are not always easy for the conventional helping agencies to work with."[60]

In England the limit of the powers of the juvenile court are reached when it

makes a care order. Eight per cent of boys and of girls under the age of 14 were dealt with in this way together with 3 per cent of boys and 6 per cent of girls aged 14–17. The effect of this order is to place the powers of the parents in the hands of the local authority. The local authority might use the power to place the child in a community home or away from its parent. Otherwise the order simply strengthens the hand of the social services with regard to any action which they might have in mind. Some potential is seen in special fostering schemes. Until the early 1970's it had never been thought desirable to place very disturbed children with foster parents. Now, however, schemes of "professional" foster-parents have begun with considerable success. Families, often where one of the parents has some training in social work or a similar profession, take in one or two of these very difficult youngsters and are paid quite large weekly fees and allowances. The Kent Family project is one of the best known. It began in 1975 and takes children aged 14 to 17 who are in care and must have shown severe problems, either in their own homes or in residential establishments in which they have been placed. The Project's 4th Report, published in 1980, claimed that of the first 156 teenagers to be fostered, 75 per cent had shown improvement. In the efforts that they make to find substitute families as an alternative to institutional care, these fostering projects must be part of a better system and administration of juvenile justice. Such schemes have already worked well in places like France, Germany and the Netherlands for some time.

Besides well-known sentences, such as disqualifications from driving for serious traffic offenders, confiscation of property used in crime and so on there is one further English penalty which deserves consideration because it involves the only instance in this country of the police being used directly in what may be called corrections. The court may order an offender to attend a local centre in a neighbourhood hall, or wherever it might be, for a number of hours on Saturday afternoons. The orders are very much in favour with the present Government which has increased the total number of hours which may be served and generally encouraged the use of the penalty. Few girls go to attendance centres as few centres exist for them but 19 per cent of boys under 14 and 16 per cent of those aged 14 to 17 received such a sentence. No doubt it has a certain nuisance value so far as the delinquent is concerned and keeps him off the streets and away from his mates or the football terraces where he might be getting into trouble. The centres are staffed by the police in a voluntary capacity. Each session is usually of two hours with the first consisting perhaps of brisk physical training and the second some socially useful activity such as a class in first-aid, or the presentation of a police film on safe driving.

The legislative mind should always be open to new thought with regard to alternatives to custodial sentences for juveniles and there is every incentive to intensify the search.

Grave and Persistent Juvenile Offenders

It is said that in some cases resort to other parts of the criminal justice system must be inevitable because of the gravity or persistence of the criminality, or because of the particular needs of the delinquent and his failure to make a satisfactory response to other alternatives which have already been tried.

The growing concern in many countries over the apparent increase in serious criminality by the young has led to an extension of power to deal with juveniles as adults and where those powers exist, to use them more widely. For example in many states of the United States it is possible for a juvenile court to "waive jurisdiction" so that a juvenile will be transferred to an adult court with greater powers of sentencing.[61] The requirements vary a little from place to place. Typically it might be necessary to show that the delinquent is, say, over 15 years old, that most other types of treatment have failed so far as he is concerned in the past and

that he is now charged with a serious offence. Rutherford observes, "Recent legislative activity in several states has made waiver more likely to occur, usually by lowering the age at which it is possible."[62]

Canada has recently passed the Young Offenders Act, 1982 which establishes new Youth Courts and raises the age of criminal responsibility from seven years of age to twelve. At the same time the legislative policy is marked by a determined move away from the parens patriae doctrine and towards responsibility and justice. This Act too contains the possibility that cases may be removed from the Youth Court and dealt with in the Adult Court.

> "The new Act is expected to be effective in nearly all cases. However, there will be the rare occasion where the gravity of the offence, the circumstances in which it was committed, the needs of the young person and the protection of society require that the case be dealt with in the adult court. Such a case might include serious indictable offences like rape, manslaughter or armed robbery."[63]

In England, although the Juvenile Court has jurisdiction to deal with all cases except homicide, it is possible where a defendant is over the age of 14 and he is charged with an offence which (if committed by an adult) could be dealt with by imprisonment for the trial to be moved to the Crown Court to be dealt with by judge and jury. Where a juvenile is sentenced by the Crown Court under Section 53 of the Children's and Young Persons' Act 1933 for such a grave crime he may be placed in custody for as long as the court pleases, even for life (which has the effect of being an indeterminate sentence).[64] Very few cases are dealt with pursuant to s.53 but the number is increasing steeply. It rose from 6 cases in 1966 to 80 cases in 1979. Between 1972 and 1975, 134 young people were dealt with under Section 53. Twenty were held on indeterminate sentences, 72 were being detained for up to 4 years, 39 were being kept from 4 to 10 years and three were to be held for more than 10 years.[65] There is room for anxiety that procedures which are designed to deal with wholly exceptional cases can be abused by being over-used for cases of lesser gravity.

England is, of course, a common law country which means that the law grows from cases decided by the higher courts and these courts have been endeavouring to elucidate principles and guidelines relating to sentencing. One group of young offenders thought rightly to be dealt with under s.53 are those where there is considered by the judges to be a danger to the public. Thus the sentence will be in that case primarily a preventive measure. Sentences of 20 years on a boy aged 16 and of 10 years on each of his companions of 15 and 14 were upheld by the Appeal Court after a particularly callous and brutal robbery.[66] The Appeal Court had in mind that it would be possible for the Home Secretary to release the offenders on licence at an earlier point, acting on the advice of skilled staff looking after them. This principle, that is to say the principle of dangerousness, seems to be one of the most vexed and perplexing in the whole of criminal jurisprudence at the present time and there is not space to consider the matter fully here. Every progressive country in the world is striving to reduce the number of people of all ages being held in custody, but there is general agreement that some containment must continue for those that are deemed to be dangerous. Whether the individuals are those found not guilty of grave crime on the ground of insanity, whether they are children, whoever they are, some legal provisions will be found to keep them in custody if they are considered a danger. There is a great difficulty in defining dangerousness and then there is an equal difficulty of diagnosis and classification as to whether given individuals may properly be regarded as dangerous or not. Moreover, there are great problems of justice and jurisprudence concerning the detention and discharge of inmates by agencies other than the courts. It is all very well for the courts to choose dangerousness as the basis of very long

sentences on boys of 16, 15 and 14 and then to wash their hands of the matter (as in England they have to) and to leave it to a Minister to release the inmates, acting upon staff advice. Of course, it is easy enough to point to the problems in these kind of procedures, it is another matter to be able to suggest remedies in our search for a better system and administration of juvenile justice.[67]

The other principal line of cases in which the courts have been prepared to use Section 53 is where deterrence or punishment of greater weight than that otherwise available is required because of the gravity of the crime. Some countries employ different methods and some that are simple in application and more economical, too. For example, the Nigerian National Paper for the Sixth United Nations Congress on Crime Prevention and the Treatment of Offenders told about corporal punishment:

> "The primary aim of punishment is to make the culprit pay for his offence. Sometimes it serves as a deterrence to others or protects the public against dangerous criminals. But punishment as applied to a young offender is to convince him of his guilt and reform him as well.
>
> Corporal punishment is one of the controversial corrective treatments in modern Nigeria. Some people approve it while others oppose it. While some regard it as a corrective measure, others consider it primitive, depraved and inhuman. However, it sometimes yields good results when applied on first offenders in mild cases of pilfering and wandering."[68]

It seems from this as though this penalty is being applied in respect of not only dangerous offenders, but trivial offenders also and with quite a wide range of penal objectives. One expects that it still finds a place among the catalogue of punishments in many countries. It has not been in use in England since 1948. Evidence produced to an enquiry suggested that corporal punishment in fact made some offenders worse.[69]

Perhaps before looking more closely into custodial developments, more should be said about what know of the children who are considered dangerous, persistent or unresponsive to non-custodial measures. Those seen in England probably have quite a lot in common with other problem children anywhere. England has six regional facilities involved with the reception and assessment of the most severely disordered and delinquent children in the country. One of these is Aycliffe School, whose principal, Masud Hoghughi, is well-known for his research and writing on the subject.[70] By the time the children reach the assessment centre they usually have a long history of earlier placements. Boys are referred far more frequently than girls, although the girls have often reached a peak where they are particularly difficult to manage and may be committing self-destructive acts and cannot be contained in hospital settings, for example.

The most damaged and difficult children seem to come from even more disordered and disrupted families than do ordinarily delinquent children. They are part of much more noticeable family friction, failing to get on with their siblings and tending to be rejected by their parents. Many of the most difficult children have brothers or sisters who are already in care and parents who have themselves been in institutions, including of a penal kind. The parents tend to be somewhat unco-operative with respect to agencies which are trying to "help". There is quite a lot of drinking and physical illness in these families and violence too.

Some of the group of difficult children tend to be tautologically defined. They have dreadful histories of absconding and running away, from their families, remand homes, residential schools and every sort of environment which has tried to contain them or to exert controls. The children have a very low level of toleration towards confinement and frustration. Every effort to increase security and to establish paameters brings about more absconding and further deterioration in behaviour. A study carried out by the Young Offender Psychology Unit of trainees in Borstal and detention centres showed that 51 per cent

had a history of absconding. 20 per cent had absconded more than five times. The police and the courts find this behaviour very alarming. Other groups may take a different view. The Association of Chief Probation Officers sees it as an "example of a way in which disturbed and delinquent children act out their need for love, recognition and security."[71]

The assessment which is undertaken on the children involves not only observation and reporting by those closest to them, but also careful psychological, educational, social and psychiatric evaluation, medical examination, skills testing, etc. A high proportion will have a very poor educational record and a very unhappy one. Their relationships with peers and teachers are ill-informed and never good. They do not enjoy school or benefit from it and consequently truant and fall still further behind in what they should be achieving. If they are brought back and coerced they are likely to become rebellious, disruptive and violent. Many of the children will have already been placed in schools for the educationally sub-normal, or special units for those with acute behavioural and learning problems. On assessment the children are mostly of low average intelligence but their attainments are a long way behind their potential. They tend to be insecure, emotionally unstable, impulsive, anxious, anti-authority and with delinquent self-images.

Psychiatric reports seem often not to be very helpful. They are given labels of various kinds such as "severely maladjusted", "marked personality disorder" and so on which serve as a sort of stigmatic crutch, but do not seem to lead to successful work with the basic problems. As Masud Hoghughi puts it:

> "The overall impression of the extreme children in relation to psychiatrists is that they present problems which do not easily fit into psychiatric symptomatology and classification. By and large, therefore, most psychiatric intervention is limited to a general diagnosis and prescription of psychotropic drugs as an aid to management."[72]

Medical examination usually reveals the children as showing symptoms of body-neglect and poor self-image. Tatoos are common and bad teeth, neglected hair, scars and defective nourishment leave them a physically unattractive group.

Information such as this often comes back to the courts in the form of a series of reports. Where the courts are going to need more information about an offender prior to sentence the option is either to obtain it by a remand to an institution for assessment or else to allow the defendant to be out on bail and to have the assessments done from home. Before a custodial remand it ought to be incumbent upon a court to be quite sure that there is no alternative. Sometimes where the remand is required for reports it might be true that the offender has refused to co-operate with assessment procedures on the "outside". Occasionally some specialised facility is needed which is not available on the outside. It is also sometimes urged that it is necessary to observe the young person for a sustained period whilst away from the contaminating influence of his family and in a different situation. But these reasons should be examined critically to see that they do not just become excuses for detaining a child in custody. Many workers feel that a more realistic appraisal can be made of a young person by seeing him and watching how he functions in his normal environment. It is not unknown for courts to use a custodial remand where they have no intention of ultimately making a custodial order, simply to give an offender a "taste of what being inside means". This is an abuse of process.

Returning now to the central issue of the grave or persistent offenders who find themselves legitimately given custodial sentences by the courts, one is reminded of the analogy of the Chinese boxes used by Professor Stanley Cohen. Cohen reminds us of the box which contains inside a smaller box, with a little one inside it and when one opens the little one there is yet another inside that and so on through a succession of boxes leading eventually to the tiniest box of all. Cohen has said

that the penal system is like this. If individuals become offenders by their failure to conform in society they are withdrawn from society and placed in a box. If their behaviour in that box is unsatisfactory they are withdrawn into some sort of more secure place which is the equivalent of a smaller box. If they still make negative responses they will be withdrawn still further and so on and so on until they are in the most secure of all forms of custody at the very heart of the penal system. Perhaps this analogy can also be related to the hierarchy of penalties with graver states of withdrawal following breaches of more relaxed ones.

The English position may illustrate how this works out in practice. Children who are in need of care can be placed in community homes. They need not have committed offences. They will probably be going home for holidays and week-ends and will be going out from the children's home every day to school. If truancy and absconding and general bad behaviour continue to give cause for concern these children may be placed in community homes with education on the premises and their release at week-ends and so on may be much more restricted. Children, some children in particular, react very badly to restraints on their freedom and this kind of move from their families to children's homes and thence to community homes with education can itself be the kind of intervention which very quickly precipitates gross rebellion, enhanced delinquency and conduct which becomes quite unmanageable. (However, it will usually be the child who will be blamed and punished for this failure to respond positively to loss of freedom and not the system which brings it about.[73] Girls seem often to be even more refractory at this stage than boys.) It is likely that the child will have several offences behind him by the time this stage is reached and he will act out by scoring up more offences everytime he escapes or can find an opportunity. Earnest case-conferences are likely to be held to discuss security for the offender. There are three principal ways of heightening security. One is by employing a very large number of staff who are especially trained at crisis intervention and management and who by their presence and charisma can anticipate problems, defuse situations and exert quiet but effective control. A second method is by the use, one might say misuse, of drugs. It is not to be thought that it is a method often employed, but information about the practice may be difficult to obtain. Masud Hoghughi writes, "The restriction of liberty and the alleviation of undesirable behaviour which is achieved through the use of medication is not subject to any form of impartial judgement apart from that of the medical practitioner who would be understandably as much impressed by reports of difficult and uncontrollable behaviour as he would be by any objective appraisal of the medical needs of the child. The price of long-term control by medication to the individual may be greater than demanded by justice."[74]

The third method of imposing security is by physical means, that is by walls and bars and locks and the like. Bearing in mind Professor Cohen's analogy we can find attached to some of the community homes or within them, what are called "secure units." A problem with creating this type of facility is that once it is available it tends to be over-used instead of more energetic efforts being sustained with alternatives. "For the majority of boys the secure units provide a brief sojourn in an expensive anteroom to the penal system."[75] Section 25 of the Criminal Justice Act 1982 gives to the juvenile courts some measure of control over the use of these secure units and says that they may not be used to restrict an offender's liberty unless it appears:

"(a) that—

i) he has a history of absconding and is likely to abscond from any other description of accommodation; and

ii) if he absconds it is likely that his physical, mental or moral welfare will be at risk; or

(b) that if he is kept in any other description of accommodation he is likely

to injure himself or other persons."
One might notice that Parliament here is concerned not only about the offender being a danger to others, but also being at risk himself. So far as moral welfare is concerned, in practice this is used as a reason for depriving girls of liberty more frequently than in the case of boys, but that is another story.

The end of this particular line in secure accommodation for this particular age range is reached in England with the new Youth Treatment Centres. There are only two of these highly specialised and highly expensive facilities in the whole of the country, each one dealing with just a couple of dozen children. They are designed to take children and young persons who "are too disturbed and disruptive to respond to treatment in community homes"; but do not need treatment in hospital. Because their accommodation is so limited, the Centres can manage to be very highly selective in the cases that they are prepared to take. A lot of emphasis is placed on research and staff training. By the time most children get to an institution like a Youth Treatment Centre they will be so damaged that even small gains and improvements must be welcomed with delight. The question for us on our quest for a better system and administration of juvenile justice is how far the existing systems are themselves responsible for children sinking into this depth of plight.

Youth treatment centres are not equipped to take children who need hospital treatment. Although instances may be rare, there are always likely to be a few youngsters who are sufficiently mentally disordered to require hospital treatment and any system must provide for them. Although special units can be created in other institutions those who are really badly disturbed need placing where treatment in the proper sense of the word is available. Of course, all the problems of custody, indeterminacy, justice and so on arise.[76] Other things being equal treatment in the community should be sought wherever possible and the stigma of labels avoided.[77]

It might be worth tracing recent experience in England just a little further so far as institutions for the serious and persistent are concerned because general principles are involved. Many people familiar with the English scene have some knowledge of the Borstal system—that organisation of special training institutions for young people between the ages of 15 and 21, which began soon after the turn of the present century. The sentence was a semi-indeterminate one, originally of not less than 9 months and not more than three years, release depending upon progress. Research world-wide has established that success on release is very little affected by the length of time spent in an institution and so more recently the period has been reduced to a minimum of six months and a maximum of two years. The numbers of people being sent to Borstal have increased quite markedly in recent years and there has also been a tendency to send offenders at a younger age. This is probably due to the courts' dissatisfaction with the availability and efficacy of other custodial provision. The pressure of numbers, as much as anything, has forced the administration to process youngsters through the Borstals in 8 or 9 months, irrespective of other factors (unless the inmate makes a serious assault on an officer, or commits some other very serious breach of the rules). The kind of training which can be offered in such a short period is somewhat different from that which could be available over a much longer period. Successive Acts of Parliament have made it very difficult for offenders in this age group to be sent to prison and so Borstal, which originally had very clear conceptual goals, has now become, in practice, a relatively short and fixed-term training facility for young adults.

The other principal short-term institution for young offenders (especially for those whose delinquency is becoming serious or too much for the community homes to contain) is the detention centre. This became linked with the phrase "short, sharp, shock" as it replaced corporal

punishment when it was abolished in 1948 and was intended to have a fairly brisk, rather punitive regime to give pause for thought to those who looked likely to be on the verge of developing a pattern of delinquency. The normal term awarded would be three months. The tendency of most of the detention centres has been to modify their punitive philosophy in favour of a more training-oriented approach, albeit one carried out in a fairly short period.

After a great deal of consultation and deliberation the Government has decided to abolish prison, Borstal and detention centre as at present known for young offenders and to create a single fixed sentence system in lieu. Terms between 3 weeks and 4 months may be served in detention centres in the future and periods upwards of 4 months will be sentences of youth custody and will be served in institutions modelled on the best of the Borstals. A number of goals are achieved by these changes. Lip-service is paid to the justice model of corrections by eliminating the semi-indeterminate element from the Borstal sentence. Power is restored to the judiciary, as less discretion over release is left with the executive and the judiciary are given what they have asked for repeatedly, which is the opportunity to give persistent young offenders just a taste of custody. The proposals which became effective on 24th May 1983 were much debated. It has been argued that giving the magistracy the power to send offenders to detention centres will mean that they will use that power and indeed overuse it, so that many more offenders will go to custody than previously. It may well be true that those who do go inside will do so for shorter periods. It is said that this is desirable because the initial shock is the greatest and the first couple of weeks will have the most impact and that this will be salutory. Critics have argued that it is likely to mean that there will be an undesirably large proportion of the age group growing up in the community who will have had experience of having been inside.

The Government's stated hope is to reduce the number of people being given custodial sentences. Indeed the Act of Parliament which contains the new law embodies the kind of criteria discussed above, that is to say that the courts must not pass sentences of detention or youth custody unless they are "of the opinion that no other method of dealing with him is appropriate because it appears to the court that he is unable or unwilling to respond to non-custodial penalties or because a custodial sentence is necessary for the protection of the public or because the offence was so serious that a non-custodial sentence cannot be justified."[78] It remains to be seen what effect will be given to this by the courts.

So far as care orders are concerned and applying similar criteria to groups of children against whom care orders were made and who had been placed in children's homes, recent research has found that hardly any of the criteria were being met. In one sample of 132 children only 13 satisfied one or more of the criteria. One-third of them had no previous court appearances at all.[79] Surely one has to be continually on guard to ask, why are these children being sent to institutions? Have strict criteria been applied? Why is there no alternative? Are they really at the end of the line?

Sometimes children and young persons may suffer injustice because the administration of their affairs falls between two or three different ministries of government and consistent policy fails to evolve. Different departments may work according to different views and principles and sometimes at some stages juvenile delinquency overlaps more than one. In the nature of government organisation this must sometimes happen and if good communications exist between ministries as indeed should also be the case between other agencies and instrumentalities outside government, all may not be so bad, but sometimes young people suffer because liaison is not as good as it should be or there is no one ministry with exact responsibility in a matter.

Again, as one looks at the records of adult hardened criminals, the "old lags" who have spent perhaps twenty-five of their last thirty years serving terms of imprisonment of various lengths one realises that the courts have not been averse to passing custodial sentences upon them again and again and again even though in the sense of avoiding reconviction the periods of loss of liberty have not stopped their offending. Sometimes, looking at those records one sees that they never had probation, or they had a term of it just once, perhaps 20 or 30 years ago. The fact that in the case of an impetuous youth a supervision order has not been immediately effective ought not necessarily be a reason for progressing to custody. It is not always possible, but there can sometimes be a case for showing patience and trying a non-custodial measure once again.

It would be an obvious mistake to accept too readily that every policy, or every type of regime which works for adults can be scaled down to size and applied with equal efficacy to children. In company with other prison administrations throughout the world the Prison Department responsible for adult corrections in England has been looking for alternatives to the treatment model which is accepted as being outmoded.

> "Above all, we repeat that in putting 'treatment and training' and 'humane containment' aside, the last thing we intend is that nothing should take their place. On the contrary, we fully appreciate that every community, whatever its nature, requires a suitable ethic . . . we think that what we envisage might be best described as 'positive custody.' That is it has to be secure and it must carry out all the intentions of the courts and society, in that respect. On the other hand, penal establishments must also so far as possible be hopeful and purposive communities and not be allowed to degenerate into mere uncaring institutions dulled by their own unimaginative and unenterprising routines."[80]

One doubts whether the concept of 'positive custody' is appropriate, on its own for children. The disillusionment with the efficacy of treatment and training in the case of adults would not necessarily pervade programmes being devised for children who being younger and more malleable remain more suitable for appropriate treatment and training. Also the duty which society finds solely to punish adults must be tempered in the case of children by its equal duty to try to treat, to train and to reform. The idea of the justice model being applied rigidly to youngsters is repugnant. And the merely punitive regime of "short, sharp, shock" in detention centres, for example, has not been a success. So the All-Party Penal Affairs Group found itself recommending ". . . that suitable training regimes should be provided for all those sentenced to youth custody. These should incorporate facilities of a high standard for work, vocational training, education and the development of social skills.[81]

Regimes and programmes vary enormously as everybody knows from one institution to the next. Although one's imagination is sometimes challenged and stimulated by innovative work, the dispiriting result of research seems to be that, in the end, the differences in results are meagre. ". . . studies throughout the prison, borstal and community home systems have found little difference in reconviction rates as a result of different styles of regime."[82]

Perhaps it is worth reminding ourselves, however, that institutions are comprised not only of the inmates, but also of the staff, some of whom will be spending more of their lives in the institution than the inmates, who are passing through. Whatever the benefits might or might not be for the offenders, progressive and stimulating regimes are important in the maintenance of a lively and effective staff also. People working in custodial establishments are no longer contented simply to be turnkeys and guards. Over the years they have come to expect and to need more positive roles and these needs have to be

met if the institution is to be run with any sense of stability and well-being at all. Proper staff selection and staff-training arrangements are more important than ever before.

Staff also have a part to play as interpreters of the institution to families and relatives and others whose support is vital for the well-being of the inmates. Sometimes there should be much more casework and supportive therapy carried out with families whilst a young person is inside. Warmth and cohesiveness, love and understanding are not qualities to be found in much depth amongst the families of many delinquents and they may initially be completely rejecting once a boy is placed inside. There is a case for organising the location of institutions so that offenders are able to go to places reasonably near to their homes and that helpful arrangements for family and friends to visit can be made. There may often be special difficulties in the case of girls. Because so few girls go into custody there might be very few residential establishments for them with the consequence that families have to travel from one end of a country to the other in order to see their offspring. One solution to this problem would be to have the girls resident in institutions together with the boys. This may sound a shocking invocation to some ears, but in fact beginnings have been made in some countries with this sort of policy.

Work with the families outside is almost as important as work with the offenders inside as it is to the family that the young person will most frequently be returned on his eventual release. If the family is unavailable or unable to receive him, or he wants not to go home, there should be a network of properly organised supportive hostels to provide shelter whilst the ex-offender establishes himself in work. Much has been made of through-care and after-care and many statutes which contain provisions for incaceration also contain provisions for supervision on release. No doubt the reasons for this are on the one hand to offer further support of a transitional kind and also to try to maintain surveillance to see that the offenders do not relapse into trouble. All in all it might be best if supervision following a period in custody were limited to a relatively brief period of very intensive work in preference to a long term which drags on with little of practical value being achieved.

Little has been said about the role of the court after sentence has been passed subsequent to trial, because there, in England, the function of the court is ended. But in some countries (Hungary for example) the judges maintain a continuing interest in the cases and may help to take part in the decision about the appropriate moment for release. In so far as release from some juvenile institutions is now a matter of almost unbridled discretion to be exercised by social workers or other administrative agencies, impartial judicial oversight might be no bad thing. It might also be very much of value where inmates are charged with serious breaches of the institutions' rules and stand to suffer severe penalties in consequence, following an internal inquiry. Judges might also be appropriate people sometimes to intervene in a decision as to whether an offender should be moved administratively from one regime to another with a harsher regime and so on.

In the end, the quest for a better system and administration of juvenile justice is a subject upon which it is far from easy for any government to keep fully up to date with developments in theory and practice so far as the use of custody is concerned. Nor is it easy to hold the balance between differing points of view strongly argued by vociferous pressure groups. When in 1976 the then government in England found itself subject to criticism for its policy on juveniles this was the response:

> "There is, and has for a long time been, a basic dilemma here in our policy towards juvenile delinquency (and, indeed, it is reflected in penal policy generally). On the one hand there is a strongly felt and understandable demand for the public to be protected

from serious and persistent, albeit youthful, offenders. On the other hand there is a widespread revulsion against holding young people in secure custody, especially custody of the kind that resembles prison. This reluctance is reinforced by the accumulated evidence over the years that custodial treatment has very disappointing results."[83]

"... there should be a major shift of emphasis towards non-residential care including supervision, intermediate treatment and fostering."[84]

"To sum up, the Government see the overriding need as being a renewed and sustained effort to make effective use of existing—and by no means negligible—powers and resources, with a particular emphasis on improved mutual understanding; increased community involvement; and a greater acceptance of parental responsibility and of the part which can be played by teachers, social workers and others. There is no panacea, except a recognition that everyone in the community can help or hinder, individually or collectively, through the part they play in handling the problems of particular children."[85]

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Strategies of Diversion in European Juvenile Justice Systems

*by Günther Kaiser**

I

The strategies and mechanisms of juvenile justice systems reflect to a certain degree the structure of the problems they deal with: Juvenile delinquency and youth crime. Without disregarding international or even cross-cultural deflections the relatively uniform international picture of juvenile delinquency predetermines the range for policy movement in practice and legislation. Now we will focus our attention on the ways the juvenile justice systems in Europe tackle their issues.

Putting the emphasis on functioning of the systems and judicial reactions is not just a matter of paying respect to the labeling approach to which we owe our awareness of the role and the working of social control institutions. Rather we share the opinion that the type of research related to juvenile justice might profitably focus on characteristics of systems rather than profiles of individuals who are involved in these systems.[1] The reason for this is very simple. Our knowledge of the working of juvenile justice systems lacks far behind our knowledge of juvenile delinquency as such and, moreover, fundamental human rights and rules are involved. These reasons might justify the approach to consider mainly the possibilities and actual working of diversion strategies in European juvenile justice systems.

II

As widely known, the concept of diversion is a strategy which aims at escaping the negative consequences of the traditional sentencing policy while, at the same time, trying to avoid facing crime problems inactively in the sense of "*laisser faire, laisser aller*".

The concept of diversion which originated in the United States in the late 1960's has been newly introduced into the international penal policy discussion in recent years. Considering the concept of diversion to be almost a kind of magic formula, we expect it to exclude the disadvantages of the traditional dealing with offenders and include an optimum of advantages. It is not amazing that it came to the fore of the penal political discussion in the United States; for, the recorded offenders belong to a larger extent to the young age groups, the percentage of prisoners in the population in the USA is more than twice as high as in European countries, or five times as in Japan, and also because according to European standards more cases have to be dealt with by fewer judges. Therefore, it is understandable that a certain part among the large number of offenders is not submitted to the usual course of criminal proceedings but turned over to other agencies without the criminal justice system.

Furthermore, the strategy of diversion must be seen in a theoretical context with other concepts like decriminalization, deinstitutionalization, and due process. They are altogether characterized by the formula of the so-called four "Ds" and have had a very strong impact on both criminal justice and juvenile justice in contemporary society. Although it is said that diversion might be a "new label" for an "old practice"[2] the stimulating influence on present thinking, discussion, and juvenile justice administration cannot be overlooked.

III

This is true also and in particular for the European situation, and is not contrary to the fact that—I suppose for reasons of crime political enforceability—the majority

* Director, Max-Plank-Institute für Ausländishes und Internationales Strafrecht, Federal Republic of Germany.

of diversion programs are to be found in the area of juvenile court procedure and addressed to delinquents belonging to the category between petty and less serious crime. Multiple offenders and so-called recidivists are generally excluded from diversion programs.

Many European countries like Great Britain, Scandinavia, the Netherlands, Belgium, France, Western Germany, Switzerland and the socialist countries make use of more "informal" procedural means, without or with only little stigmatizing potential, which can be subsumed under the concept of diversion. However, the international comparative analysis of practised programs of diversion presents many difficulties because, strictly, diversion can only be considered in the light of its specific genetic situation in the United States. There the situation is, above all, strongly characterized by sanctioning so-called "status offences" (truancy, running-away, non-conform behaviour in public) and by a very wide-reaching discretionary power of the police with regard to dismissal of charges.[3] However, status offences and comparable discretional allowances to the police are largely unknown in Europe, at least in Western Europe.

Only in England and Sweden state agencies can intervene on the basis of behaviour that—if committed by an adult—would not be punishable. But the other European countries do not know special juvenile offences such as immoral conduct, abuse of intoxicating beverages or narcotics,[4] truancy or running-away. They know only two categories: offenders, and children "in danger".[5]

Therefore, a European parallel to the American "police diversion[6] according to which the police as such is authorized to impose short-term specific treatments and educational programs on young offenders can hardly be conceived, not to mention realized. In Europe too, we meet a kind of police diversion, especially in England and Wales, only in connection with cautioning juvenile delinquents by police.[7]

Seen from a worldwide and a European perspective models of so-called "pre-trial diversion"—according to which the order for adequate measures (like community service, social training or traffic education courses) is left to the judiciary—are most currently applied. The order is pronounced after the complaint be filed, but before the case is brought to trial. Most programs strive for a strong orientation to community and neighborhood.[8] The extent in replacing formal sanctions and keeping organizational distance to the judiciary system differs from one model to the other. Therefore, according to the kind of social control inherent to each project we generally notice a tripartition[9]: "Legal" are programs in which the staff belong to the judiciary system and a stay of proceedings may be ordered only under specific conditions. We might think here of some kind of "stay on probation" corresponding to Sec. 45 German Juvenile Court Law. "Para-legal" programs are administered under the supervision of an independent authority which, however, is acting close to the judiciary with regard to financing, personnel, and the right to consult the court files. Finally, "non-legal" programs are those which do not at all depend from the judiciary giving prime importance to the voluntary contact from the part of the actors. In Europe we generally know legal or para-legal programs, *viz.* programs close to juvenile jurisdiction.

However, we still must consider that juvenile justice systems in Europe are differently organized according to whether they belong to a "welfare model" like in the Scandinavian countries, Scotland or Belgium, or to a "justice model" as practised in England, France or West Germany. A "welfare" based system aims at developing the child's treatment according to his response and changing needs. This particular approach has come to be much criticized by those who believe that a more "justice" based system would be both more effective and humane.[10] These critics argue that a "justice" approach would limit discretion in the system, produce intervention proportional to the trivial nature of most juvenile crime, and provide determinate sentences which are

understood by juveniles. Systems following the "welfare model" give more chance and space to diversion strategies, but they have at the same time less necessity for such means since they anyway favor informal execution to a larger extent than systems ranging in a "justice model". Despite the apparently wide and irreconcilable divisions between the proponents of "welfare" and "justice", both agree that diversion away from formalized court hearings by means of cautioning and reductions in the levels of use in custody are desirable objectives to pursue. We will come back later to the differences between the two systems. But already at this point the question becomes critical: if we do not want to punish, but do not know how to treat, then what can we do? Apparently the conflict between the punitive correctional approach and the welfare-treatment approach cannot really be solved.

IV

Although in Europe a lively discussion about diversion has taken place in the last decade in Europe,[11] and under the name of diversion specific programs are administered, one cannot deny that the majority of innovations is realized in the area of community service, and that they are restricted to exhaust means of more informal execution which are not given enough emphasis by the juvenile prosecutors.

The limits set to reception and taking-over of diversion strategies in Europe are mainly attributed to legal procedural, legal constitutional and socio-pedagogic factors. The administering of diversion measures already before a verdict of guilt is spoken is hardly compatible with the so-called "supposition of not-guilty" (cf. Art. 6 II European Convention on Human Rights). Furtheron, the diversity of regionally oriented programs gives also rise to doubts as to treatment equity and command for certainty.[12] But above all—and this bears the most serious consequences—the rule of compulsory prosecution laid down in several penal procedural codes is contrary to the American conception of diversion.

However, as far as diversion strategies would be admitted by French, Swiss or Swedish law, this appears to be needless because it does not promise additional yields in findings, help, or practicability. The actual large practice of the provisions for the rule of discretionary justice which are applied in about two-fifths of all cases to be brought to trial in West Germany, has exhausted to a large extent already the appropriate framework for alternative administrative measures.[13] In West Germany, therefore, they give prime importance to the development of manifold ways and means to be put at disposal of juvenile court law. The same is true also for the other European countries.[14] This development might—it is true—not exactly adapt itself conceptually to diversion, but at the end it pursues the same objectives. This becomes more and more clear when we consider, for example, the expansion and the development of educational courses, community service orders, orders of social care, and the reparation of damages. There partly exist connecting views in relation to traditional neglecting of victims—*viz.* victimological perspectives—with the search for penal sanctions imposable to juvenile offenders which would be more efficient in education such as repairing damages.

In Switzerland the commitment to community service as a special correctional measure was introduced in juvenile criminal law already at the beginning of the seventies. However, this occurred completely independently from the idea of diversion. The reason was moreover "treatment without deprivation of liberty" as demanded and practised by some German juvenile court judges.[15] In the meantime, community service takes as a formal penal sanction a considerable part (about one-fifth) in the Swiss sentencing practice against juveniles. Of course, there still exist besides this sanction further means, like the caution or the dismissal of charges which are practically—if not always formally—closely related to diversion.

In Sweden the Central Board for Social Welfare Services may refrain from taking

any measures against juvenile deviants if it does not feel that they are necessary. With respect to juvenile delinquency the board usually does not take any measures if the offence is not extensive or very serious and if there are no other special social reasons for an intervention. In such cases the Board usually decides to let the matter rest upon conclusion of the social case study in which the grounds for the notification and the juvenile social situation are investigated. The study itself, which involves discussions with the parties concerned, is regarded as having certain preventive effects.[16]

Persons who have reached the age of fifteen and who are guilty of crimes can in principle be prosecuted and sentenced for their actions. In practice, however, this occurs very rarely if the crime suspect is under the age of 18. For persons of that age the prosecutor generally decides not to bring charges against the young person for the criminal actions of which he is suspected. The prosecutor does this after first having received a statement of opinion on the matter from the Central Board for Social Welfare Services. The great majority of social welfare boards in Sweden tend, as a rule, to answer the prosecutor's inquiry by requesting that the young person not be charged with a crime. In most cases the young people are already known to the social welfare authorities from previous occasions and are the subject of some form of measures from the authorities. For those not previously known to the social welfare authorities, the authorities agree to take appropriate measures before the question of prosecution is taken under review. The measures which the Central Board for Social Welfare Services may take in the case of young people between the ages of 15 and 18, and in certain cases up to the age of 20, are identical to those previously described for children under 15. If the crime is especially serious or if prosecution is warranted on grounds of general obedience to the law, the prosecutor may bring charges against the young person despite the fact that he is under 18.

In such cases Swedish law provides that the punishment for the offence should be reduced in comparison to the normal sanction for such a crime. If the young person is nevertheless sentenced, the sanction is usually a fine, probation, and in certain cases a suspended sentence. Youth prison has recently disappeared from Swedish law.[17]

In 1976, for example, 22 young people under the age of 18 were sentenced to prison, charges were dropped for more than 8,000 and 15,000 received fines, 103 probation, and 86 suspended sentences. In all, legal actions were brought against nearly 24,000 young people between the ages of 15 and 17 that year.

However, in recent years there has been a certain tendency towards a somewhat more restrictive attitude on the part of the prosecutor as regards dismissal of charges. The "non interventionist" and treatment-attitudes of the authorities with respect to criminality among young people has been called into question by researchers and others in the most recent period. It is also felt that young people who have committed criminal acts must have some form of immediate reaction to their offences from society. This reaction does not have to involve punishment, but it should contain a strong indication of society's disapproval of the act. The lack of any adequate reaction, together with a low percentage of juvenile crimes which are cleared, may give young people the impression that society has no objections, at least as far as less serious crime is concerned. When society then intervenes as the criminal behaviour continues and becomes increasingly more flagrant and extensive, this reaction may be experienced by the young person as hard, unfair, and in many cases incomprehensible. Nevertheless, the labeling approach has been subjected to strong criticism by research workers who feel that they in the first place do not measure up to the standards of a consistent scientific theory and in the second place have not been empirically confirmed. Therefore, this approach is being increasingly rejected in favour of an approach which would ensure that juvenile delinquency is

investigated and met by adequate reactions which provide guidance for the young person in his future behaviour. But this reaction must not have the nature of punishment.[18]

Furthermore, the Scottish Children's Hearing System is to be mentioned which was introduced in 1971 as well. Its main objective is to correct young people without the stigma of a criminal conviction. The whole system is based on welfare principles instead of judicial rules.[19]

In England and Wales the Children and Young Persons' Act 1969 was framed on the assumption that juvenile offenders most in need of particular types of treatment could be identified and appropriate decisions made on how best to deal with them. The method suggested for identifying the suitable offenders was consultation and the sharing of information between the police and the local authority social services departments. The Children and Young Persons' Act 1969 was therefore intended to be a diversionary statute.[20] This was clearly demonstrated in Sect. 5 of the Act, which made consultations between the police and social services a statutory requirement prior to the decision to prosecute any child or young person in the juvenile court. But between the passage of the Act through Parliament and its date of implementation a general election took place. The new conservative government decided not to implement the Act in full. Consequently Sect. 5 was never activated and despite the changes in government in the 1970s neither labour nor conservative administrations have shown any intent to implement this section. But agreement on the desirability of diversion of juvenile offenders from formal court proceedings has persisted despite other changes in policy. In 1981, the parliamentary All Party Penal Affairs Group used a strategy document which encouraged further expansion of police cautioning policy.

This further encouragement occurred in the phase of growing research criticism of the real effect of increased cautioning. However, there has not been a great deal of research on the operation of the various types of consultation procedure or of their effects, in terms of cautioning and prosecution practice. Neither has there been much investigation of reconviction rates during a period following cautioning or prosecution. Researchers found that remorseful juveniles with concerned parents living in good physical surroundings were most likely to be cautioned whether or not they were first offenders. Other researchers found studying first offenders dealt with by one metropolitan police juvenile bureau that the social class of the family and the bureau officer's assessment, of whether the juvenile had a good or a bad attitude, were the two most important considerations in the decision. According to a third study all police forces examined were likely to caution first offenders, unless the offence was denied or the victim insisted on prosecution, or the offence was regarded as serious. Very few recidivists were cautioned by any of the forces unless the social agencies advised that some other action was already being taken. No further action decisions were usually made when the victim withdrew the complaint or more rarely when a very trivial offence was committed by a juvenile already in care. This decision was made however for only 3 percent of the juveniles in the total sample of 598.[21] The final result has been that a wide variety of procedures have been developed in forces dealing with what in many respects is a very similar problem.

Besides that, the so-called community service order has to be mentioned also in connection with England and Wales and with the Netherlands. However, the introduction of this sanction does not so much base on the concept of diversion than rather on the attempt to avoid institutional sentence (deinstitutionalization).

In West Germany also we find a strong mobilizing of community service mainly substantiated in the public discussion in diversion strategic view points. However, practitioners make use of such means according to equivalent legal regulations since the 1950's already – still independently from the recent introduction of this measure. In this respect the leading idea is

above all to avoid custodial sentence.[22] In this case the recourse to the concept of diversion acted as a motor in order to make a better use of existing legal means.

A few German diversion programs known as "Brücke-Modelle" (Bridge Models) comprehend themselves as a contribution to the "inner reform" of juvenile criminal law. Whilst some of the programs rather concentrate on pedagogic means with emphasis on leisure time activities, other projects put the organization of service orders and orders of care in the foreground. However, the objective common to all experiments is to set back means considered as repressive such as youth detention and fine in favour of alternatives considered to be pedagogically more effective. The same is true for the increasing juvenile prosecutors' and judges practice to dismiss charges in giving orders of care and service orders to avoid formal stigmatization. So-called orders of care are, as a rule, imposed for a term of 6 to at most 12 months. The average caseload of one social worker amounts to 7 to 10 probationers. This small number allows a far more intensive work than care in the frame of current probation where a caseload of 50 to 60 cases is the average. One further advantage is seen in the possibility to give social care in avoiding youth prison or suspended sentence. Care is here tied to single case or group work. Most cases are settled without formal conviction; the order of care or the service order is bound to the stay of proceedings. This leads to a diminution of custodial sentence against juvenile offenders in the districts of the projects. According to the existing empirical findings the conditions and orders administered were accomplished in a satisfying way in more than 90 per cent of all cases. Hitherto existing experiences seem to indicate that even with regard to recidivism more favourable results were registered with cases where orders of care and service orders had been administered than with cases where youth detention had been inflicted.[23]

Independently from the above experiments and in connection with a more intensive care through social workers or with community service one can observe in the light of juvenile court statistics that since the beginning of the 1980's half of the cases ready to be brought to trial in juvenile court procedures were dismissed by the prosecutors or the judges and settled with a caution, an order or conditions. On the whole we may say that decision patterns which can be classed with strategies of diversion are very currently used, even if practitioners do not appeal to it.

V

Among some major innovations in the field of penal measures applied to juveniles should be mentioned primarily the experiments that were introduced in about ten West European countries during the last decade, called community service. Most of these countries have been inspired to a certain degree by the community service order as it has been developed by the English since the beginning of the 1970's. Although originally designed as a measure for adults to replace a prison sentence, it has many appealing features. The idea of rendering services to the community instead of serving time in an institution is attractive both to judicial authorities and to offenders. The measure may even become more popular as well as more productive for juveniles and for adults.

In the present time, community service is practised or experiments and pilot-projects, trying out the new measure, are taking place in England and Wales, Denmark, France, the Netherlands, Norway, Portugal, Switzerland, the Soviet Union and West Germany. However, in England and Wales the step in practising community service from adults to minors has been taken not before the government's White Paper on "Young Offenders" of October 1980, proposing to give magistrates a new power to impose community service orders on offenders aged 16.[24]

Similar changes seem to have taken place in the Soviet Union as in Western European countries. In the Soviet Union

the new measure of community service has been made possible by a revision of the law in 1977. The objective was to rehabilitate a juvenile without isolating him from the community. The court may oblige a juvenile to enter work or a special educational program, to repair the damage done, or to fulfil other activities, eventually under supervision of a labour committee. If the measure is successful, the court releases the juvenile from punishment (which otherwise would have been custody). But we must say that the fulfilment of community service by offenders—especially on the order of so-called comradeship courts in the Soviet Union and in East Germany[25]—has already a long lasting tradition. It also has been stimulated and supported by the worldwide trend to treatment without deprivation of liberty, *viz.* deinstitutionalization. The so-called Wootton report at the beginning of the seventies is one example for the achievement of efforts devoted to the search for alternatives to custodial sentences.[26]

In Europe the legal fundaments of community service differ from one country to the other. Whilst, for example, the English scheme was set up on the basis of a new law, the Criminal Justice Act of 1972, comparable to the Swiss regulation enforced by the Law of 1971, the Netherlands and West Germany did not issue a special law until now. One of the main reasons is that community service is conducted under experimental conditions, but under prevailing law and within the existing legal framework. Insofar, the essential difference is that some systems have preferred to conduct a certain number of experiments first and to change the law afterwards, if there would be a need for legal reform. Another reason in recent German penal theory, or more precisely objection against adopting community service as a formal penal sanction into the juvenile court law, is the possible danger that community service could be indirectly used as "forced labour". However, such a kind of sanction would be a violation of German constitutional law and of Art. 4 IIIa of the European Convention on Human Rights. In any case, it should be secured that the condemned person accomplishes community service voluntarily, and that he may in appropriate instances choose between accomplishing community service and serving institutional measure with deprivation of liberty.

There is a strong opinion to apply community service as early as possible in the juvenile justice administration process according to a kind of scale running from an unconditional dismissal by the prosecutor to the suspended sentence, or even as a special condition in the case of a non-custodial sentence by the juvenile court judge. In fact, one could say that prosecutors, judges and social workers are inclined to use community service as a measure of diversion so that the offender could get out the juvenile justice system without having a criminal record. The modalities are roughly the following:

Community service can be ordered in combination with

- unconditional dismissal,
- conditional dismissal,
- suspension of the decision to prosecute,
- suspended sentence,
- non-custodial sentence with special conditions.

Although in England community service has been devised to form an alternative for imprisonment and to constitute a kind of relief for the overcrowded English prisons, this has never been stated as an absolute imperative to the judiciary or to the probation service. From the beginning there has been quite some ambivalence about in what cases to apply the measure. Actually, it was found that in only half the cases examined, the community service effectively displaced a prison sentence.[27] The Netherlands therefore try to circumvent this difficulty by stating explicitely that the overruling objective of community service was to replace prison sentences up to a maximum of six months.[28]

The next point is that the time limits, within which the community service is adequately executed, are differentiating within the European systems. Whereas in

England the maximum number of hours that can be imposed is 240 hours, in the Netherlands it came to be 150 hours—to be completed within six months—, the Swiss and the German juvenile court law do have no provisions related to time limits for community service. According to the rule of law this might be doubtful or even dangerous, but according to the experience until now there seem to be no cases a community service is executed within times that must be regarded as an arbitrary, misused or disproportionate policy by prosecutors or judges. Moreover, the analysis of community service in the Netherlands practice shows that concerning the number of hours community service was imposed the time limits (minimum of 30, maximum of 150 hours in the Netherlands) were not followed: in half of the cases the number of hours imposed was less than 30, and in half more than 150 hours.[29] The reason was, only about one-third of the offenders had a job. This had some consequences for the number of hours imposed: there was a clear tendency to impose more hours if the offender was unemployed. In West Germany community service orders are completed to more than 80 per cent within two months.[30]

Although in England and Wales and in the Netherlands in the 1980's community service is also ordered upon juveniles, this happens only to a small extent. Contrarily, in Switzerland or West Germany they generally apply community service only to juveniles. Nevertheless, from the Netherlands is reported that most of the prosecutors cases are among the younger age-groups while the judges cases are on the average older offenders. Therefore one might conclude that the prosecutors take the view that community service as some sort of diversion is especially indicated for the youngest offenders. Half of the prosecutors cases dealt with community service were first-offenders and the other half had been convicted before.[31]

As far as the nature of the offence is concerned, prosecutors tend to apply community service most often in the case of property offences (58 per cent) and hardly in the case of traffic offences (8.5 per cent), whereas at the judges level traffic offences form nearly one-third of all offences (30.5 per cent).

The work consisted in the majority of cases of maintenance, reparing or painting all kinds of odd jobs mostly in the field of welfare and social work. Gardening and cleaning as well as welfare work with olds, blinds and infirms was prevailing. In general, the work had no relation to the nature of the offence committed. For about 25 per cent of offenders the work was a full-time job. Until now there have been no problems in finding suitable placements.

After successful completion of the community service in the Netherlands all cases handled by the prosecutor were dismissed. But when there had been a court decision the offenders had to reappear in court and were then convicted. Most of them got a conditional prison sentence with a symbolic probation term of for instance one week. One-third of them was sentenced to fine and 15 per cent got their driving license taken in. Of the offenders who did fail the community service agreement about half were convicted and got a custodial sentence ranging from several days to six months, with an average of two months.[32]

Although the probation service has been prepared to give guidance and support to the offender, the matter of reporting back to the judiciary is not yet resolved in a satisfactory way. Despite that nearly 90 per cent of community service cases were completed to satisfaction, community service of less than 30 hours and more than 150 hours failed significantly more often than those within the advised range of 30 to 150 hours. Half of the failures were due to circumstances beyond the offenders will: family circumstances, illness, accidents.[33]

In the Federal Republic of Germany a later study refers to the impact of the judges' decision-making style. According to this study the attitude of more assisting and communicative judges in more formless educational proceedings leads to a more favourable observance of the service orders than the attitude of judges who were more punitive and authoritarian and

who rather preferred formal proceedings. Accordingly, judges who generally inflict non-custodial punishments in exhausting legal procedural means, and who largely differentiate with regard to socio-pedagogic criteria, are supposed to be more successful.[34] However, in this study the time of risk with regard to recidivism was only one and a half year. Furtheron, they could not consider in the evaluation whether equivalent non-custodial sanctions were corresponding as to their kind and organization or whether they differed one another.[35] Also, the study did not include data regarding social profiles of the treated persons besides the previous convictions and did not give nearer information about the social workers in charge of the implementation of the non-custodial sentences.

Although failures are rare, there still exist many uncertainties and questions: "We still don't know whether there is real displacement of custodial sentences".[36] In some districts half of the offenders elligible for community service do indeed get community service instead of short prison sentences. In other districts this is true for about 25 per cent of elligible offenders.

Another problem seems to lie in the differentiating views between the judiciary and the social workers (probation service). The probation service continues to emphasize the rehabilitative and re-educative side of community service, whereas for the judiciary it more and more appears to be a real sanction. Due to the enormous rise in unemployment in some districts community service must find against the competition of other volunteers, and placements may become more scarce. Moreover, the unions also offer some opposition although the group of community service workers is too small to be a real threat to the job-market. Another worry is the fact that judicial authorities tend to impose more hours to the unemployed than the employed. This would mean that this group of offenders is punished twice, which would introduce a factual inequality before the law. But on the whole there are good reasons to be moderately optimistic.

VI

Regarded generally, in most of the West European countries considerably less children enter the juvenile justice system now than some ten or twenty years ago. Furtheron, there is a change in treatment policy emphasizing less intrusive interventions in the life of children. This shows mostly a reduction of institutional placements and a search for alternative measures. But on the other side an opposite trend towards greater punitiveness with respect to specific types of offenders cannot be overlooked. This is especially true for England and France. The conflict between the conception of the court as an agency of child care and protection and the conception of juvenile court as a court of justice, is solved here by eliminating older hard-core offenders from the juvenile justice system into the adult court system.[37] The older the children, the more often they were prosecuted and the fewer treatment sentences they received. The orientation of the cases depends on the circumstances of the offence and not on the minors personality. However, the Netherlands present a slight different picture, in that sentences to prison have not increased from 1965 to 1972. But the number of remands increased considerably (from only 1 per cent to 8 per cent in 1972 and 13 per cent in 1977).

Emphasis in Sweden is on the needs of clients, on individual help and on welfare. Though, the Swedish welfare boards deal with all children under 15, a great number of those aged 15 to 18 are diverted to the boards by the prosecutor. As the proceedings are not open to the public, little is known about the ways in which the board comes to its decisions and on which criteria the decisions are based. It is said that the welfare boards are well adapted to handle younger children whose delinquent behaviour problems are defined and treated as welfare problems, but they seem less well prepared to handle all more serious offenders. Furtheron, the boards have extensive discretionary powers. They may arrive at a decision even without a

child being heard. The question arises whether legal rules, due process and a court decision are not a better guarantee of the individuals rights.[38]

The English Children and Young Persons Act 1969 represents a serious effort to keep younger children presenting a variety of problems out of juvenile court, and to look for alternative measures. On the other hand, if situations grow out of control, then authorities can channel cases to the court. But in behalf of the shortage of staff and adequate institutions there has been an increase in fifteen years old juveniles sent to borstals and detention centers. Implicit is a kind of conflict or at least opposing attitudes between juvenile judges and social workers. Social workers are perceived as keeping children out of court and institutions, no matter what they do. Judges are perceived as unable to understand the real needs of children.

As mentioned before, the most interesting reform has taken place in Scotland. The reform is materialized in the Social Work Act 1968. A complete separation has been operated between the judicial function and the dispositions taken. In Scotland the juvenile courts have been abolished and replaced by welfare committees composed of lay people. These children hearings are concerned only with the measures to be taken. The prosecutor has been replaced by a special functionary, the reporter. The reporter decides whether a child is in need of a compulsory measure of care. But the system applies only to juveniles under the age of 16. The children's hearings can discharge the referee or impose a supervision order which may include residence in a kind of training school. An important result of the new law is that fewer children enter the juvenile control system than before.[39] As can be expected even this system is not without its critics. The discretionary power given to lay panels is considerable in that they can send children away from home for an indefinite period. Another critic point is the fact that where there is no consistent body of knowledge on treatment or needs, the lay approach to delinquency control will in fact reflect traditional ideas on retribution, deterrence, and equality. This will in turn affect the decisions taken by the panel, so that the disposals will have more or less a punitive character according to the seriousness of the offence.

VII

Most of the new solutions have been developed on the basis of the non-intervention model or diversion. One of the main advantages of diversion programs is the rapidity of the intervention: They are quicker to reach a decision and prefer an informal contact. However, the main weak point is in so far the lack of evaluation. There are of course methodological problems that render the measurement of results difficult. But the reliability and justification of diversion programs will ultimately depend on adequate testing and verifying of its assumptions.

Consequently, strategies of diversion have come to know increasing criticism during the last years in Western European countries outside the Federal Republic. It is attributed either to lacking empirical control of the implemented diversion programs or to the demonstrated failure of a few projects. It is particularly grave that to some extent diversion has offered no alternative to custodial sentence; on the contrary, it has led to a considerable advanced displacement and relaxation of the social net work.[40] Whilst in the United States juveniles were often incorporated in such programs whose cases formerly would have been dropped without any further consequences, in England—for example—community service orders introduced by the law and which were to replace custodial sentences achieved this goal effectively in only one-half of the cases at the most. For the rest they had been inflicted on offenders who anyway would not have been imposed with a custodial sentence.

Furthermore, other causes for criticism are that on one hand it is said that diversion aims at maintaining offenders as long

as possible in their social surroundings. But just there are often the causes of deviant behaviour to be looked for. On the other hand it is questionable whether diversion really prevents stigmatization. As a matter of fact, because most of the programs are dealing with cases of less severe crime there just is a danger of "labeling" those persons who have not been diverted through programs of diversion.[41] Further critics are related to the unequal dealing with juvenile offenders in order to achieve a greater consistency in the cautioning practice throughout the country. Juveniles committing similar offences in different police force areas ought to have at least a similar opportunity and likelyhood of receiving a caution even if the methods by which they were processed by the police were dissimilar.[42]

VIII

Whether you vest the powers of intervention in an administrative body or in a court, whether you call it reaction or help, you always have to find a proper balance between procedural safeguards on the one hand and socio-pedagogical flexibility on the other.

In spite of the rise of the civil rights movement there is a still wide agreement that juveniles in trouble should either be subjected to educational measures or preferably to selfhelp. Even a juvenile justice system based on the criminal law model has its place within an overall juvenile policy which is supposed to help juveniles to integrate better in society. Such a policy calls above all for a system of flexible solutions.

Everybody seems to agree that punitive measures should be avoided. On the other hand, there is a wide-spread missionary tendency to suppose that help needs no further legitimation and that it will be of use to the juveniles regardless of whether it is granted informally or as a result of an administrative proceeding. This attitude underestimates the detrimental side effects of any formalized state reaction whether you call it punishment or help. The stigmatizing effect of procedure can never be totally avoided. Often enough help is being taken for a more subtile form of punishment.

But I have not in mind to discredit help as a policy of state intervention. We should certainly continue our efforts to replace punishment by socio-pedagogical measures and we should also continue to organize juvenile justice systems in a way that allows us to shift to socio-pedagogic measures. However, we should not disregard the fact that from the juveniles point of view the agents of social control appear as unit processing him administratively rather than dealing with his personal conflict. Therefore, we should encourage strategies of "no action."[43] The Scottish hearing system offer such an outlet in as much as it is within the reporters discretion whether to refer the case to a hearing or whether to do nothing at all. In German juvenile court procedure the prosecutor does not have similar powers of diversion. Section 45 German Juvenile Court Law give the priority to educational measures, a regulation which functions as an outlet for petty cases in particular. Almost 40 per cent of the cases pending will be dropped without a verdict in German juvenile procedure, mostly on the basis of an alternative educational measure. However, the German system hesitates—at least in the case of juvenile delinquents—to provide for a "no action"-decision. This may be due to the fact that Sect. 45 Juvenile Court Law is a pedagogically inspired modification of a prosecutorial system which still conceives the prosecutorial discretion as an exception. We should also keep in mind that the German juvenile justice applies to an older age group where decisions of "no action" may no longer be appropriate. Both systems according to the welfare model or the justice model offer to a greater or a lesser extent techniques for minimizing state intervention.

In comparing juvenile justice systems one needs patience and a sound sense of direction in order to locate where the real problems are. The task is perhaps

more complicated than in other fields of law because juvenile justice is uneasily located between welfare law and criminal law, because its needs are defined by criminal lawyers and social workers at the same time.

One is accustomed to label legal systems in a clear and specific manner. There is a great danger that this process does not reach beyond a superficial classification of systems. A meaningful international or cross-cultural comparison of juvenile justice systems can only be achieved on the basis of a problem pattern which derives from an empirical analysis. A sophisticated analysis, however, shows that an isolated interpretation of a specific legal institution reveals only half the truth, if any at all. Like medical transplants, legal transplants will only fit into another system if their compatibility is carefully tested. Such being the case, diversion considered by itself and as one part of the 4 Ds is meaningful on international level. It has justifiably taken a considerable influence on the present crime political discussion and offers a practicable way to overcome less severe criminality. But in no case it can replace formal social control and criminal law. Diversion, however, is to give impulses to crime policy and seems to be a needful corrective instrument to limit unwanted effects in juvenile justice.

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The Nature and Effectiveness of Positive Treatment Programs

*by Ted Palmer**

I. TREATMENT AND ITS EFFECTIVENESS

In this paper we will first review the goals and nature of treatment, the question of treatment-effectiveness, and several general considerations regarding treatment. We will then review a well-known program which bears on the question of effectiveness and which contained several programs elements and approaches that seem appropriate when working with serious, multiple offenders in non-institutional settings.

Goals and Nature of Treatment

Within the criminal justice system, the primary or *socially centered* goal of treatment is the increased protection of society. At the level of individual intervention, this goal is achieved when the offender's behavior is modified so that it conforms to the law. It is promoted but not in itself achieved by modifying his or her attitudes, by strengthening him as a person, by reducing various external pressures and increasing given supports or opportunities, and/or by helping him become more satisfied and self-fulfilled within the context of society's values. Attitude-change, increased coping ability, etc., comprise the secondary or *offender-centered* goal of treatment. Though this goal has absolute value in itself, it is—given the justice system's main role in society—chiefly a "means" to the socially centered "end" of public protection. (Palmer, 1978) Treatment methods which focus directly or predominantly on illegal behavior mainly emphasize this socially centered goal; such emphasis is observed in some forms of "behavior modification." Methods which focus on attitude-change, coping ability, etc., operate *indirectly* on behavior yet may or may not mainly emphasize the offender-centered goal. Most treatments, *e.g.*, counseling and vocational training, mainly rely on this indirect approach yet often deal with behavior in a direct manner as well; at any rate, they, like remaining treatments, are ultimately concerned with public protection.

The goal of increased public protection, *i.e.*, reduced illegal behavior, is not unique to treatment; it is shared by punishment and incapacitation. What distinguishes treatment from these social-protection strategies is its manner of focusing, not so much on illegal behavior *per se*, but on one or both of the following: (1) factors that have presumably generated or at least maintained the individual's illegal behavior; (2) factors that may help offset or eliminate the preceding factors. In addition, treatment is more concerned than either punishment or incapacitation with offender-centered goals *per se, i.e.*, aside from the latters' role as a means to increased public protection.

Specifically, then, treatment usually tries to reach its socially centered and offender-centered goals by focusing on such factors and conditions as the offender's *adjustment techniques*, his *interests and skills*, his *personal limitations*, and/or his *life-circumstances* in ways that are designed to affect his future behavior and adjustment. Treatment efforts can thus focus on any of several factors or conditions and are directed at particular future events. These efforts may be called "treatment programs" or "treatment approaches" insofar as they (1) involve specific components or inputs (*e.g.*, counseling or skill-development) that are organized, interrelated, and otherwise *planned* so as to (2) generate *changes* in the above factors and conditions (*e.g.*, the offender's skills or life-circumstances)—

* Senior Researcher, California Youth Authority, U.S.A.

changes which may, in turn, (3) help generate the desired future events.

Through this set of inputs and sequence of events, treatment attempts to modify the character of the offender's adjustment pattern or techniques, that of his immediate environment, or both. In effect, it tries to modify the relationship which he has to himself and his environment, and/or the relationship which parts of that environment, *e.g.*, peers or family, have to him. In dealing with these relationships, punishment and incapacitation do not focus on and try to utilize the preceding factors and conditions in quite the same way as does treatment; nor, for the most part, do they involve the same components or inputs. For example, punishment and incapacitation are not designed to organize or increase the individual's present skills and interests so as to direct them against—and thus help offset or eliminate—past and present personal difficulties or environmental conditions that seem to trigger or reinforce illegal behavior; nor do they try to systematically or specifically confront and reduce given environmental conditions, *e.g.*, parental violence, themselves. Thus, these social-protection strategies do not focus on the above relationships via a set or series of inputs and activities that are designed to bear on the concrete details of the individual's future adjustment and possible satisfactions. This applies to the "just deserts" or "commensurate deserts" approach as well, taken by itself.

Treatment efforts—"interventions" into an offender's life—may also include external controls, *e.g.*, restrictions or surveillance. Moreover, under certain conditions, even some forms of punishment (other than for the instant offense itself) may be considered adjuncts to treatment. For instance, though such punishments as withdrawal-of-priveleges, added restrictions, and short-term confinement may well affect an offender's future behavior and adjustment, they would *not* be considered part of treatment if used as ends in themselves or as means of revenge. However, if used in conjunction with and in a subordinate relationship to focused and organized activities such as those mentioned earlier—*e.g.*, if occasionally used to increase or revitalize the offender's involvement with the overall program by first gaining or regaining his attention, or if used to directly impress on him the consequences of various unacceptable activities—such approaches may be viewed as adjuncts to treatment. Nevertheless, the distinguishing features of most treatment programs are those designed to (1) change/modify the offender mainly through positive incentives and rewards, subtle or otherwise, or to (2) change/modify his life-circumstances and improve his social opportunities by various pragmatic means. We call such efforts *positive treatment programs or approaches (PTP's).*

Consistent with these distinguishing features, positive treatment programs focus on methods that basically *utilize, develop, or redirect the powers and mechanisms of the individual's mind and body*, not reduce, physically traumatize, disorganize, or devastate them, by whatever means. From this perspective, PTP's would not include electroshock treatment, psychosurgery, etc., despite the factors or conditions on which these methods may focus.[1] Positive treatment programs would certainly exclude methods such as mutilation or dismemberment, sterilization or castration, and physical stigmatization (*e.g.*, branding) or public humiliation (*e.g.*, via stock and pillory). In any event, they would exclude those methods whose "humaneness" is open to serious, certainly widespread question, regardless of either their potential or demonstrated impact on behavior—and local or even society-wide customs or acceptance notwithstanding. Psychosurgery, dismemberment, etc., fall within this category and may be termed *drastic or traumatic rehabilitation approaches (DRA's).*[2] Some but certainly not all DRA's are designed to achieve social self-protection both swiftly and efficiently, almost regardless of the overall cost to offenders. In such cases, offender-centered goals—whether by themselves or as means-to-an-end—have relatively low priority.

Finally, in some societies, positive treatment programs often reflect the following belief: Every human being has worth and potential and should have a chance to improve himself and his existence regardless of his past, certainly if he wishes to try. Implicit, here, is the view that (1) offenders—by having offended—have not ipso facto lost their humanity, and (2) even if their worth and worthiness *is* now diminished (as is usually considered the case), they have not forfeited all claim to possible future happiness and may still contribute positively to society. Given such views, and even apart from the societies' deeper concern with public protection, such societies may feel they should, if possible, make at least some opportunities and programmed assistance available to offenders as human beings. Programs which reflect such ideas are more likely than others to emphasize offender-centered goals, even though (1) their primary objectives may remain the protection of society and (2) the public may be generally fearful of or angry toward many or most offenders. In any event, PTP's may serve their public-protection function regardless of whether the overall society considers its offenders "valuable" or "worthless," and actually allows them—for whatever reasons—few or many rights.

The remainder of this paper will focus on positive treatment programs.

Effectiveness of Treatment

Do PTP's achieve the primary goal of treatment: increase public protection by reducing the illegal behavior of their target groups? Based on several large-scale literature reviews, the best-supported answer is "Yes—but only in certain circumstances." More specifically, recidivism-reduction (as judged in relation to control groups) depends largely on the following factors: (1) the particular approach that is used; (2) the type of target groups (offenders) involved; (3) the setting in which, or conditions under which, treatment occurs. The following might help clarify this situation.

To determine whether treatment "works" (reduces recidivism) and, if it does, just *what* works, say that 200 programs which have been experimentally studied are first classified according to their *principal treatment method*, as follows: 20 are individual therapy programs, 25 are group counseling programs, 25 center on skill development (vocational or educational training), 15 center on milieu therapy, and so on—until all 200 have been placed into one and only one of these broad treatment categories, *i.e.*, methods. When one then reviews the findings for each such method in turn—*i.e.*, first for all 20 individual therapy programs, then for all 25 group counseling programs, etc.—one finds that none of these broadly categorized treatments has reduced recidivism 100% of the time; that is, no group of programs, *e.g.*, individual therapy's 20 programs, have all reduced it. Nor have they usually done so. (See Chart 1.) In short, no one method is guaranteed to work or even very typically work; and in this specific sense one can appropriately conclude that "nothing," *i.e.*, no such *method*, works. Yet in this same review of 200 programs—however categorized they may have been—*something* has nevertheless worked, *i.e.*, it has reduced illegal behavior. Thus, from one perspective or at one level, "nothing" works; from another, treatment does work. Four sets of factors help explain this two-sided or dual-level finding:

(1) None of the above methods, *e.g.*, group counseling, consisted of but a single, "pure" approach. Instead, each was a collection of numerous specific approaches, *i.e.*, variations, forms, or concrete expressions of the group counseling *concept* or feature. It was this range of specific approaches—not a pure or homogeneous method—which had in actuality been implemented and whose results had been reviewed; and, in the case of any one method, *i.e.*, set of approaches, any given approach was likely to be somewhat or even quite different from many others with regard to specific techniques, strategies, and/or theory. (Klockers, 1975;

Chart 1: Outcomes of Experimental Studies of Selected Treatment Methods

		Methods[a]			
	Study #	Individual Therapy	Group Counseling	Skill Development	Milieu Therapy
Outcomes[b]	1	0	+	–	0
	2	+	0	0	0
	3	0	0	0	+
	4	0	+	+	–
	5	+	+	0.	0
	6	–	0	+	0
	7	0.	0	+	+
	8	0	–	0	+
	9	0	0.	0	0.
	10	+	–	+	0.
	11	+	–.	+	0
	12	0	+	–	0
	13	+	0	0	0
	14	0	0	0	+
	15	0	+	+	–
	16	+	+	0.	
	17	–	0	+	
	18	0.	0	+	
	19	0	–	0	
	20	0	0.		
	.				
	.				
	.				
	25		–	0	

[a] All studies are classified according to their principal treatment modality, *e.g.*, individual therapy. (This Chart was constructed for purposes of illustration only; nevertheless, it is generally representative of actual data from the Lipton et al survey.)

[b] "+" means: Experimentals (E's) performed better than Controls (C's); that is, E's had lower recidivism rates than C's, after treatment.
"0" means: No difference in performance between E's and C's.
"–" means: E's performed worse than C's.
"." means: At least one E subgroup performed better than its C counterpart, despite the overall outcome (*i.e.*, for all subgroups combined).

Palmer, 1975) Thus, for example, rather than simply finding that the group counseling or skill development methods, as methods, could not be guaranteed to work or usually work, what one also observed was this: *Some* group counseling *approaches*, some skill development approaches, etc., had reduced recidivism, while most other approaches made no difference in recidivism and a few had even increased it; at least, they had reduced it, etc., under circumstances mentioned below. Conservatively, 20-25% of all experimental programs—across all treatment methods combined—had significantly reduced recidivism for their overall sample of offenders and an additional 10-15% had done so for one or more identified

portions (offender subgroups) of their sample, though not for the overall sample itself.[3] (Within any given treatment category or method, *e.g.*, skill development, any given approach may have been represented by several individual programs.) Still, no one *method* seemed promising and reliable as a whole, *i.e.*, when all its programs—and, therefore, all its approaches—were combined. Thus, the "nothing works" conclusion made sense when one focused exclusively on each broad treatment category as such, and evaluated that category as an undifferentiated entity. In contrast, the "something works" conclusion was appropriate when one focused on the specific approaches, or groups of individual programs, which comprised those categories. The latter approach, then, better represented concrete reality.

(2) Further complicating this situation were certain program-implementation, research evaluation, and target-group factors. For instance, any two or more approaches —say, two group counseling approaches— which were quite similar to each other with respect to techniques, underlying theory, etc., may nevertheless have been implemented at rather different levels of intensity or even adequacy. Moreover, even if those approaches had been rather *similar* to each other with regard to implementation and had been appropriately implemented as well, their respective researchers may have evaluated their impact by means of somewhat different measures of recidivism or in relation to differing amounts of community follow-up.[4] In addition, the offenders (target groups) that were involved in the given approaches may have been rather different from each other, *e.g.*, in terms of age, length or severity of offense-histories, and/or personality-types. For such reasons alone, any given approach—as defined by its main techniques, strategies, orientation, program-components, etc.—which yielded positive results in the case of one experimental study may nevertheless have yielded negative results, *i.e.*, no recidivism-reduction, in another. (Palmer, 1975; Sechrest, White, and Brown, 1979; Gottfredson, 1982)

(3) For any given treatment method, various approaches may each—in their respective, individual programs—have reduced recidivism for one particular *subgroup, e.g.*, a specified offender-type, within the total target group (TTG). However, those same approaches may not have reduced recidivism for the TTG itself, *i.e.*, for all subgroups combined. For instance, a reduction in illegal behavior that was observed for hypothetical "subgroup 1" (say, independent youths) may, in the above treatment approaches, have been statistically cancelled out by an *absence* of reduced recidivism, or even by an increase in recidivism, on the part of "subgroup 2" (dependent youths). Results for the *total* group—all offenders combined (in this case, subgroups 1 + 2)—would therefore have been negative. That is, no statistically significant or perhaps even no substantial percentage-differences in recidivism would have been observed between experimentals (*i.e.*, the TTG) and their controls, especially if the respective subgroups were about equal in size. Such cancelling and subsequent masking of positive findings for particular subgroups increased the percentage of apparent program-failures within each of the broad treatment categories or methods, not only when program-results were reported for the total target group alone. Perhaps more important, it helped obscure the fact that certain programs and approaches held promise for some offender-subgroups only.

(4) Approaches that have been found to work for certain offender-subgroups in (a) some *settings* (*e.g.*, institutions) or (b) under some but not other conditions *within* those settings, sometimes have not worked in other settings or under other conditions for those same or similar subgroups.

Thus, although several hundred programs have been experimentally studied with respect to many treatment methods or categories, no single *category* has been shown to consistently or even usually work for all offenders and all settings or

conditions. This applies to *individual approaches* as well, within any single treatment category. Instead, because of complications (1)→(4) above, reduced illegal behavior has been observed only for certain *combinations of approaches* (program-components, techniques, or orientations), on the one hand, and offender-subgroups and/or specified settings/conditions, on the other. For instance, one of the most detailed reviews-to-date indicated the following:

a. Individual therapy "is effective with [institutionalized males] when it has a pragmatic orientation and is enthusiastically administered by interested and concerned therapists to older (16-20) amenable offenders."
b. Group counseling [*i.e.*, of specified types] is "more effective than no treatment at all . . . provided that the institution does not emphasize security or the program does not become routinized"; . . . and "when 'community living' [*e.g.*, certain milieu therapy approaches] became a regular part of the treatment program, . . . men receiving this combination-type program were more successful than men who received either the unstable or stable form of group counseling alone."
c. Regarding skill development, "vocationally oriented training programs for youthful offenders (over 16) both in institutions and in the community are associated with lower rates of recidivism than standard institutional care or standard parole. These programs appear to be most successful when they provide the offender with a marketable skill." (Lipton, Martinson, and Wilks, 1975)
d. "For older youths who were deemed to be good risks for the future, a minimum security institution produced better results than a maximum security one." (Martinson, 1974)

In short, program-results (outcomes) which were positive were conditional rather than all-inclusive or applicable across-the-board. Nevertheless, they often applied to a sizable portion of the total target group, and the reduction in recidivism—while seldom vast—was usually substantial. (Palmer, 1978; Martinson, 1979)

As indicated the preceding results ("a" through "d") emerged when numerous programs were first grouped according to their principal treatment method and each such method was then examined individually, relative to those particular programs alone. However, results and patterns which were more broadly based emerged when one had not even used such groupings—*i.e.*, had entirely bypassed or eliminated all method- or category-restrictions—so that the findings from every program, *e.g.*, the original 200, could be examined *together*.[5] (In this approach, we can *cut across*—and thus combine—any and all columns shown in Chart 1.) Here, the main patterns were as follows (these patterns were not just based on the above-mentioned review; and, as before, they involved combinations of program-approaches, offender-subgroups, and settings or conditions, though the role of offender-subgroups was especially clear):

"(1) Various methods of intervention — *e.g.*, individual or group counseling—are more likely to be associated with positive behavioral outcome (*i.e.*, less recidivism) in relation to some offenders as compared to others. The former, more successful individuals, have been described as 'higher maturity,' 'more sociable,' 'prosocial,' 'neurotic,' 'middle risk on base expectancy,' and/or (in the case of adolescents) 'older as *vs.* younger.' [The less successful individuals are described below; like the previous offenders, they are probably not a homogeneous set of individuals. This trend has been observed in relation to institutional and community settings alike. Within the former setting, positive outcome for 'middle-risk' or 'higher maturity' individuals is associated with offender-staff or offender-offender interactions which seem to be of a relatively 'stabilized,' 'extensive,' and possibly 'intensive' nature—*e.g.*, less staff turnover and greater total number of con-

tacts. Within community settings it is generally associated with smaller-sized caseloads or relatively comprehensive, pragmatically oriented utilization of resources—*e.g.,* 'job and residence placement' and 'delivery of social services.' It has been associated with offender-staff matching as well.

"(2) Once again using positive behavioral outcome, it is these same 'middle risk' offenders, and/or those who have 'relatively strong personal controls,' who appear to be better suited than remaining *offenders* (see below) when it comes to placement on probation or parole in lieu of institutionalization. This also applies to their placement within institutional settings that are usually described as 'open' or 'minimum security.' To perhaps a lesser extent, the concept of 'better suited' also applies to the placement of middle-risk offenders into open or minimum security *settings* as compared, *e.g.,* to their placement within those of a highly secure/long-term nature. The 'remaining' offenders, mentioned above, are those who seem to respond more favorably to closed or higher security settings than to open or minimum security settings. These individuals are often described as 'lower or middle maturity,' 'power oriented,' 'having extensive delinquent backgrounds,' 'aggressive' (whether as lone offenders or as members of a gang), and/or 'younger as *vs.* older' (among adolescents). They are also the ones who seem less likely to respond positively to earlier-mentioned modes of intervention such as individual counseling, etc." (Palmer, 1975)

In part, these findings reflect what might be called the *basic treatment amenability (BTA)* position. This view generally asserts that (1) certain offenders (*e.g.,* the "bright, verbal, and anxious") will respond positively to many treatment approaches, presumably under most conditions or settings, and (2) most remaining offenders will respond positively to few if any approaches, again, regardless of conditions or settings. However, those and other findings give somewhat stronger support to a position which may be termed the *differential intervention (DI)* view. This view, while consistent with the BTA view in important respects, also goes beyond it and diverges from it in rather significant ways: Basically, the DI view suggests that some offenders (BTA's amenables included) will respond positively to given approaches under certain conditions only, and that these same individuals may respond *negatively* to other approaches under very similar conditions; other combinations of offender, approach, setting—and resulting outcome—are also implied. The differential intervention view also suggests that many offenders who, in the treatment amenability view, are generally described as nonamenables may in fact respond positively to certain approaches under particular conditions, *e.g.,* close structuring within institutional settings.

In sum, treatment often—but far from always—achieves its primary goal. In this connection, it is more appropriate to ask, "What works for *whom* under what *conditions*?" than simply, "What works—*i.e.,* for everyone, everywhere?"

Controversy and Agreement Regarding Effectiveness

Some observers believe that, despite the hundreds of controlled, experimental studies conducted in the past few decades, such results and patterns (above) are far from convincing, mainly due to the existence of at least minor designflaws in almost all individual studies on which they are based. Moreover, various reviewers point out that most of the original "hundreds" had serious, not minor, shortcomings. (Sechrest, White, and Brown, 1979; Conrad, 1982) Other observers, this author included, agree that very few experiments have been virtually flawless and that, indeed, most have had major defects or limitations and cannot, or in many cases can only minimally, be relied on.[6] (The 'flawed' and 'reliability' issues apply to studies with negative results as well.) Yet, in light of the following, these

individuals reject the formers' view that the preceding results have very limited reliability and strength and should be given little weight: (1) Even though *most* of the several hundred experiments were seriously flawed or limited, a great many studies remain; most of the latter studies—their minor or at least far-from-critical flaws notwithstanding—were of acceptable-to-high quality as judged by long-standing, widely recognized scientific standards. Studies need not be near-perfect in order to yield valuable results or strong clues. (2) Though the preceding findings (collectively) are not perfectly consistent with each other, *e.g.*, due to some of the complications mentioned above, and although these findings (individually) are indeed not indisputable or foolproof, (a) results from many of the latter, more reliable studies provide *converging* and often mutually reinforcing leads and patterns, and (b) most such patterns are further supported by a number of less reliable or more limited, yet by no means worthless, studies. From this perspective, the convergence—and in some respects the partial replication—in question is difficult to minimize, especially when a range of settings, conditions, or offenders is involved across the given studies. This is apart from the fact that any given positive results might well have been stronger if the programs on which they were based had been better implemented than they often were—regardless of the programs' *research design* and specific outcome-measures. (Sechrest, White, and Brown, 1979; Palmer, 1983) This assessment of the evidence also applies even though, as indicated earlier, no single approach—no positive treatment program, not just treatment *method* (category)—is guaranteed to work under virtually all conditions.

Despite this disagreement, both groups of observers believe that, in order to be effective with serious or multiple offenders, rehabilitation programs must be broader and more intensive than in the past. That is, given the often complex and interrelated problems, limitations, and attitudes of most such offenders, future programs will often have to use "multiple modality" approaches, *e.g.*, simultaneous or successive combinations of vocational training, individual counseling, and perhaps others. Moreover, to achieve substantial rather than minimal impact, such approaches will have to be provided on a more intensive basis. (Palmer, 1983) Even the former observers believe that—with "improved" research designs—many treatment approaches might have been shown to work if they had met preconditions such as those just mentioned, assuming that *program-implementation* had been generally adequate. (Sechrest, White, and Brown, 1979)

Finally, both groups, and others as well, believe it is important to match offenders and programs. (We are distinguishing offender/program from offender/staff matching.) Here, a program's resources—multiple-modality or otherwise, intensively provided or not—are not applied to the total target group, *i.e.*, to all offenders combined, in an indiscriminate, across-the-board manner. Instead, wherever possible, they are organized and distributed according to the particular needs, interests, and limitations of each major offender-subgroup that is present. This, in effect, involves "differential treatment" or "differential intervention": use of differing approaches for different offenders.

Taken together, these areas of agreement among otherwise mutually critical observers suggest that future programs should be more closely adapted to the life-circumstances and personal/interpersonal characteristics of offenders. They suggest that concentrated efforts and perhaps greater individualization are needed in order to affect substantial change in at least serious offenders. As such, they comprise some of the more constructive or potentially constructive products of corrections' effectiveness-debate thus far. At any rate, these areas of agreement have policy implications regardless of *how many* programs have been successful, and exactly *how* successful they have been.

Before presenting some additional observations, we might add a point which

focuses on a probable precondition to effective rehabilitation and which applies to all offenders:

> Fairness or "fair treatment" by the justice system, and humane interactions overall, can help create a tolerable, believable, sometimes supportive atmosphere for involvement and decision-making by offenders, especially but not exclusively in institutions.

Yet the following might be noted. Fair treatment, etc., like *just deserts* and standardized dispositions by themselves, does not supply the direction, does not arouse the motivation, and does not provide the feedback or personal rewards that probably must exist before realistic, satisfying decisions are generated and maintained by most individuals. That is, unlike many rehabilitation efforts, fair treatment and just deserts are not, by themselves, designed to address the specifics of the offenders' future—their concrete needs and opportunities within an often demanding environment. Nor do they try to address the often complex task of motivating or realistically helping those offenders come to grips with that environment and, in many cases, with themselves. Thus, for many offenders, fairness and humane interactions without programed assistance can be empty, in a sense blind, and programs without fairness can be futile, even pathetic.

Additional Observations

A. Findings from the earlier-mentioned survey of over 200 studies suggest that many institutional and community-based programs provide assistance, not just with respect to the socially centered goal of reducing recidivism—on which we have focused thus far—but in connection with *offender-centered* goals. (Lipton, Martinson, and Wilks, 1975) Specifically, regarding vocational adjustment, educational achievement, and community adjustment combined, 43% of the experimental studies that evaluated outcome in at least one such area showed strong positive results or clearcut gains for offenders in that specific area; 29% showed mixed-positive or moderate gains, and the remaining 29% showed no positive results.[7] (Mixed-positive meant positive on some but not other measures of the given area, or positive for some but not other offender-groups.) Similarly, of the studies that evaluated personality and attitude change, 47% showed strong positive results or clearcut gains, 32% showed mixed results or moderate gains, and 21% showed no positive results. (Palmer, 1978) Similar offender-centered gains have been found in many experimental studies conducted subsequent to the above survey, again for juveniles and adults. (Ross and Gendreau, 1980; Romig, 1978)

In addition, within institutions, the existence of positive treatment programs is often associated with certain conditions and benefits that are broader than the above—and harder to systematically measure. Involved, here, are a generally more humane or relaxed atmosphere and a feeling, by many offenders, of greater hope, *i.e.*, more to look forward to especially after release. (Cullen and Gilbert, 1982; Conrad, 1978)

B. When considering the *limits* of positive treatment programs, the following perspective may be useful. Any given program, say, one which handles 100 offenders a year, is mainly responsible for impacting those individuals alone, *e.g.*, their recidivism. It should not be expected to substantially reduce the overall, annual *crime rate* that exists, say, for the moderate- or large-sized city or geographic area within which it may be operating. That crime rate is largely produced, not by the 100 program-participants, but by at least several hundred or, more likely, several thousand non-participants, many of whom were perhaps never arrested or adjudicated. This is apart from the fact that several other programs may be serving the given area, as well.

C. Four final points, regarding the future of treatment. First, treatment need not be wedded to a "medical model," *e.g.*, one which assumes that most offenders are (1) quite sick, psychologically

or otherwise, or are (2) at least unwilling and/or unable to muster the relatively few strengths they presumably have. Instead, treatment can proceed on the assumption that offenders, like non-offenders, have considerable positive potential—which, moreover, they can, should, and usually wish to use. Though many offenders, especially multiple offenders, are undeniably hostile, anxious, conflicted, or confused, they and others need not be viewed as defective, intrinsically criminogenic, and/or otherwise fundamentally flawed or qualitatively different than other people. Moreover, like most non-offenders, the vast majority can recognize the potential relevance to their lives of various forms of assistance, *e.g.*, vocational training and practical advice. To assume that offenders lack either this or various other abilities, or can seldom exercise or sustain them, is to consider these individuals defective or highly indifferent indeed—no less so, perhaps, than in the above medical model itself. Even the fact that some or perhaps many offenders often play "treatment games" does not mean that the majority do so, or that few of the former are ever sincerely involved in their program; to be sure, some offenders do reject treatment, with or without pretence.

Along related lines, though this discussion has sometimes emphasized relatively serious offenders—those heavily involved in illegal behavior—it is clear that not all offenders *are* serious in this respect, and it is especially important to recognize that they do not all need, and cannot all use, identical types and equal amounts of treatment. More specifically, with respect to *amount*, many need little or none, others need moderate quantities, and still others need much, whether in or out of institutions. This is apart from the fact that many individuals who receive treatment—whatever its amount or type—are, in a sense, being habilitated more than rehabilitated. At any rate, it is perhaps useful to remember that, even apart from their underlying social-psychological needs, these individuals are people first and offenders second. As such, they (collectively), like non-offenders, have a wide range of assets, limitations, and motives; wherever possible, these features should be reflected in the type and amount of treatment they (individually) receive—if they receive any at all.

Secondly, treatment need not be linked to indeterminate sentencing. It can be implemented in a determinate framework, with or without a written contract between the offender and justice system personnel, *e.g.*, a contract which outlines the general or even specific nature of the former's treatment-involvement and perhaps certain goals to be achieved. (Within the above framework, sentences could nevertheless be extended under unusual, albeit specified types of conditions, *e.g.*, suicide attempts, psychotic breaks, and major aggressive acts.)

Third, correctional treatment need not demean its participants, *e.g.*, deprive them of their autonomy or sense of dignity; nor need it interfere with given reform movements, *e.g.*, prisoners' rights and decriminalization of specified offenses. It can dissociate itself from the inappropriate practices that were pointed out within the USA in the late 1960s and early 1970s—*e.g.*, use of "treatment" (not limited to drastic rehabilitation approaches) to maintain institutional control—and it can be integrated with numerous justice system concerns and legitimate strivings of the present and future. At any rate, intervention—including probation and diversion programs as well—can operate in a framework of humane interaction and exchange, despite the unavoidable need, outside as well as inside the system, for some external control and for accountability on the part of offenders.

Finally, by building on its past *successes*, *e.g.*, its most promising programs, and by discarding its numerous failures and negative practices, treatment can be increasingly accepted, not as a panacea or even a universal requirement, but as one more legitimate option for society, for society's decision-makers, and for many offenders. In this respect, its potential

value and unique potential should not be minimized. (Palmer, 1978; Cullen and Gilbert, 1982) Treatment programs, one might say, are perhaps the only vehicles that currently show promise of helping a substantial portion of known offenders focus on their needs and life-circumstances in concrete, fairly individualized ways, on a relatively sustained, "here-and-now" basis. Insofar as society develops and supports programs that successfully perform this function, it serves not just the interests of offenders but its own immediate and future needs for self-protection. Nevertheless, toward this latter, socially-centered end, treatment should be considered only a partner of, never a substitute for, the much *broader*, albeit longrange responses to crime and delinquency: prevention, public education, early apprehension, court reform, etc. The latter responses are indispensable, especially for eventually reducing society's high crime rates.

Though it is encouraging to know that treatment already has much to build on and much to do, it is equally encouraging to know that this field is still quite young, that many approaches are still untried, and that much growth can doubtlessly occur.

II. CALIFORNIA'S COMMUNITY TREATMENT PROJECT: A VIABLE APPROACH

From 1961 to 1974 the California Youth Authority (CYA) conducted a large-scale, two-part experiment known as the Community Treatment Project (CTP). Part 1 was completed in 1969. Its basic goal was to see if serious juvenile offenders could be allowed to remain in their home communities if given intensive supervision and treatment within a small-sized parole caseload. The main question was: Could CYA parole agents work effectively with these individuals *without first locking them up for several months* in a large-sized, State institution? The 1961-1969 phase of this experiment was conducted mainly in Sacramento and Stockton, with San Francisco being added in 1965. In each of these cities, all areas or regions were included. I will only describe Part 1 of the experiment.

Who Participated?

802 boys and 212 girls participated in the 1961-1969 effort. All economic levels and racial backgrounds were included; in this respect, CTP's sample was typical of the Youth Authority's population within California as a whole. Most participants were 13 to 19 years of age when first sent to the CYA. Typically, they had been in trouble with the law on 6 occasions at the time they were committed to the Youth Authority by the local juvenile court. Their "troubles" had usually begun several years prior to the burglary, auto theft, etc., which typically preceded their commitment.

Certain youths were excluded from the 1961-1969 experiment—for example, everyone who had come to the CYA for armed robbery, assault with a deadly weapon, or forcible rape. (These nonparticipants were called "ineligibles"; participants were called "eligibles.") Despite such restrictions, it was possible to include 65% of all boys and 83% of all girls who had been sent to the CYA for the first time, from the Sacramento, Stockton, and San Francisco Juvenile Courts. In this connection, such conditions as the following did *not*, in themselves, prevent youths from participating in the experiment: marked drug involvement, homosexuality, chronic or severe neurosis, occasional psychotic episodes, and apparent suicidal tendencies.

The Program

This experiment was conducted in a careful, scientific way: a "control" group was established from the start. This approach made it possible to compare the performance of (1) youths who were placed directly into the intensive CTP program, without prior institutionalization, against that of (2) "controls"—*i.e.*, youths who were sent to an institution for several

months *prior* to being returned to their home communities and then being given routine supervision within standard-sized parole caseloads which were operated by a different (non-CTP) group of parole agents.[8] Thus, all eligible youths were randomly assigned to either the *experimental* (CTP) or the *control (traditional)* program—both of which were operated entirely by the Youth Authority. 686 experimentals and 328 controls eventually became part of the 1961-1969 experiment.

All CYA youths, or "wards," who were assigned to the *experimental* (CTP) program were placed on a caseload which contained no more than 12 youths for each parole agent. Based upon (1) detailed initial interviews, (2) a careful review of written background material, and (3) a joint conference by CTP staff, a "treatment plan" was developed for each experimental youth shortly after his assignment to the program. This plan tried to reflect the youth's major strengths, weaknesses, and interests, together with his overall "level of maturity" and various circumstances of his personal life, family life, and social situation. (See Appendix A, Part 1, regarding "level of maturity.") The resulting plan usually varied a good deal from one youth to the next.

Goals and Operating Assumptions

CTP's ultimate goal was the long-term protection of society. This was to be achieved, not primarily through surveillance and external controls, but through the following route or *subgoals*:

1) change in youth's perception of self and others;
2) expansion or redirection of youth's coping abilities;
3) reduction of stresses and/or expansion of supports in youth's immediate environment.

Only through such changes, it was believed, could major and relatively permanent effects be obtained; however, it was not assumed that changes had to occur in all three areas. External controls, it was thought, would not in themselves supply new directions, lead to new forms of personal enjoyment, and result in different patterns of interaction; by themselves, their impact on illegal behavior would probably be short-term only, at least in most cases.

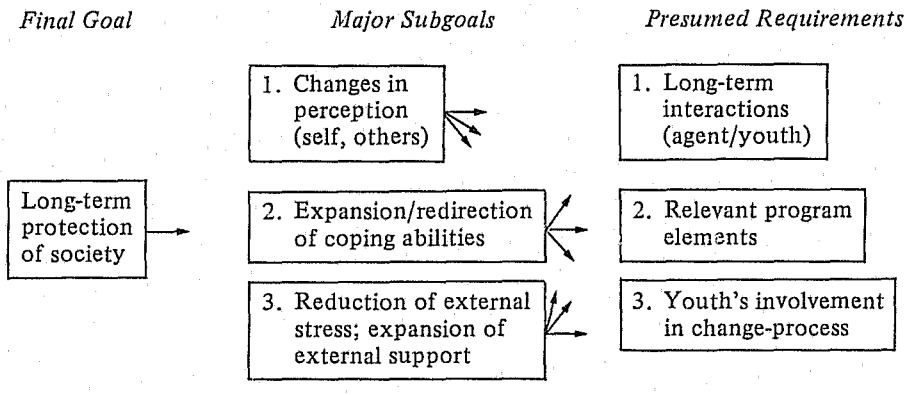
It was assumed that three main conditions or *inputs* ("presumed requirements") were usually needed to achieve the preceding subgoals:

1) long-term interaction between agent and youth;
2) program elements that could bear directly on youth's everyday adjustment and emerging pressures;
3) substantial involvement, by youth, in the process of change.

The latter requirement seemed necessary in order to tap or develope the individual's internal motivation and to avoid, where possible, a primary or heavy emphasis on external controls. Internal motivation and internal controls seemed necessary to sustain long-term efforts; and, such efforts, in turn, were often considered essential to the achievement of *subgoals* (1) and (2). (See Chart 2.)

In effect, the preceding subgoals and inputs reflected an implicit yet rather critical perspective: Project personnel assumed that CTP's social-protection goal would best be achieved by efforts which focused on the more immediate causes—the apparent triggering and perhaps sustaining conditions—of the youth's illegal behavior. This view was closely related to yet another assumption, one which concerned the longer-standing, cultural/historical factors that might ultimately have been responsible for the overall conditions within the youngster's social environment and may have helped set the stage for his legal and personal difficulties in particular. This assumption was that—within most segments of contemporary society—most such factors, and related social conditions, could not be changed or improved rapidly enough to make any decisive difference in the youngster's immediate future or to substantially modify his already-established, often self-reinforcing pattern of delinquency. It was therefore taken for granted that most of the chang-

Chart 2: Final Goal, Major Subgoals, and Presumed Requirements of CTP



ing or adapting would have to come from the individual himself and from influential members of his immediate environment.

To help implement the earlier-mentioned *inputs,* certain principles, strategies, and techniques were followed in connection with youths assigned to CTP. Included were: (1) A personal commitment by the parole agent to work with individual youths for a number of years if necessary; (2) careful placement planning (*e.g.,* Exactly *where* will this youth live, and with *whom*?), especially during early phases of the youth's parole program; (3) parole agent contact on behalf of youths, with any of several community or volunteer agencies (*e.g.,* probation, employment, school); (4) ready access to the parole agent, by the youths, if and when a need or emergency would arise; (5) flexible agent-youth contacts (office or streets; formal or informal), on a daily basis if necessary; (6) extensive surveillance by the parole agent (*e.g.,* during evenings or weekends) regarding the youths' community activities, if and as needed.

In addition, each CTP parole officer's caseload was purposely limited to only certain "types" of youth or particular "levels of maturity." That is, it included only those youths who exhibited a particular range of personality characteristics or who usually displayed certain distinguishing patterns of behavior. In order to best utilize the CTP parole agent's particular skills and interests, each such agent was selected to work primarily with only *certain types* of youth, or "personality patterns." In this sense, he was paired, or "matched," with youths who were placed on his caseload; thus, he was not expected to be "all things to all people."

Further Assumptions

CTP's most general, explicit assumption was that youths differ from each other in important ways, *e.g.,* in their views of the environment and in their actual as well as desired relationships with others. This concept had one specific corollary and one related assumption (the latter did not necessarily follow from either the concept or the corollary):

(1) Illegal behavior and related lifestyles may result from several factors, operating singly or in combination (*e.g.*: undersocialization/poor impulse control; desire for material gain; peer pressures; personal conflicts; family conflicts or pressures.)

(2) A set of youth-specific interventions, either centered around or largely mediated/monitored by adult authority-figures, is necessary in order to help most serious, multiple offenders permanently overcome, obviate, or largely circumvent the above factors.

Together, these concepts or assumptions —namely, differential perception and interaction, differential and multiple causation,

and differential intervention—were a major, specific source of CTP's stance on individualization. They were consistent with a principle and a tacit goal which also contributed to this stance, though in a more general way:

> Insofar as possible, a program should facilitate *individualized justice* and minimize rigid, undifferentiated solutions ("frontier justice")—thereby integrating, wherever possible, the multiple needs, resources, and professed ideals of society with needs and resources of the growing youth.

This, in effect, broadly defined one possible role of the justice system with regard to common social ideals and individual needs.

Program Elements

The following program elements could be made available, depending upon the youth's needs and life-situation:

> Individual, group, and family counseling; pragmatically oriented discussions and decision-making; limit-setting sessions and surveillance; accredited school program, located at CTP; recreation and socializing experiences; out-of-home placements; short-term detention.

CTP youths were exposed to an average of four such elements during any given time-period, *i.e.*, any three-month interval; moreover, any two or more elements could be used successively (one after another) rather than simultaneously, *i.e.*, across give time-periods. This multiple-modality approach—referred to as *extensive intervention*—was designed to (1) comprehensively and flexibly address the individual's often-complex difficulties or shifting challenges, and (2) substantially improve his "external *support*-versus-external *stress*" ratio and his "coping *skills*-versus-coping *deficiencies*" ratio, in favor of external support and coping skills. Additional elements that contributed to the above were: (1) collateral contacts, by parole agent, on behalf of youths; and (2) material aid, *e.g.*, clothing and transportation. By itself, no single element was considered adequate to the task, at least for the preponderance of youths. This mainly reflected the depth or extent of the youths' problems, *e.g.*, with regard to support-versus-stress. The specific combination and/or succession of elements that was used depended mainly on the youth's particular needs, situation, and personality, and secondarily on the parole agent's preferences and skills.

Individual counseling was the most common form of agent-youth interaction; for youths with whom this approach was used, there were over 5 such contacts per month, average across their entire parole experience. Group and family counseling were used less often. Limit-setting and surveillance occurred 1½ times a month, while pragmatically oriented interactions and collateral contacts were each slightly less frequent. This relatively high rate of interaction was called *intensive intervention.* In all, most CTP youths had between 150 and 250 face-to-face contacts of some type with their agent; many interacted, formally and informally, with other staff as well, *e.g.*, school teachers and secretaries.

Finally, short-term detention totalled 1.5 months during the youths' parole experience; that is, youths accumulated an average of 47 such days of lockup while in CTP (2.4 lockups, at 19 days each). This contrasted with roughly 9 months of initial institutionalization for typical traditional-program youths. Thus, external control—in the form of direct, physical restraint—*was* used in CTP and the traditional program alike; however, its usage was far greater within the latter.

Main Results

Using *rate of arrest and conviction* based on Bureau of Criminal Statistics rapsheets as the primary measure of effectiveness, the following was demonstrated (these rates referred to almost 7 years follow-up in the community; this included an average of 3 years on parole and—in all cases—4 years of post-Youth Authority ["postdischarge"] time):

A. For Sacramento + Stockton males, CTP youths had far (38-to-50%) fewer

arrests and convictions that their matched Controls; that is, their rates were much lower.[9] This finding was especially strong relative to (1) severe offenses (*e.g.*, burglary, felony drug violations, and felonies against persons), and, focusing *within* the severe-offenses category, (2) violent offenses in particular (*e.g.*, assault with a deadly weapon, forcible rape, robbery, and murder). The results for severe and violent offenses applied to Sacramento, Stockton, and San Francisco youths alike; they were especially strong relative to individuals described as "Conflicted"—youths who comprised about 60% of all Youth Authority males within these communities combined. On the other hand, CTP was *less* effective than the traditional program with "Power Oriented" males, at least with those described as "manipulative"; in addition, CTP was neither more nor less effective with females.*

B. The Youth Authority's *traditional* program clearly provided the community with more short-term protection than did CTP, since traditional-program youths (Controls) were first locked up for approximately 9 months before being paroled. However, once released from the institution, Controls soon began committing offenses at a much higher rate than CTP youths—none of whom had been initially institutionalized. As a result, beginning about four years from initial commitment to the Youth Authority and continuing for at least five years thereafter—thereby extending well beyond Youth Authority discharge—traditional-program youths had accumulated substantially more offenses than those on CTP. (Within less than two years from initial commitment, the number of accumulated offenses was already *equal* across the two programs.) In effect, the numerous arrests that were chalked up by Controls while they were at risk in the community were not offset by the *absence* of arrests while they were in lockup. Thus, incapacitation notwithstanding, CTP ended up providing more long-term protection to the community than did the traditional program, particularly in relation to Conflicted, though not Power Oriented, youths. This finding pertains to males and would probably have remained much the same even if Controls had initially been locked up twice as long as they were.

C. During the most recent price-period analyzed (1971-1972), Youth Authority career costs were $1,049 lower per CTP youth than per Control. When non-Youth Authority costs (country expenses for arrests, detentions, and adjudications; prison and parole costs subsequent to YA discharge; etc.) were added, the overall savings to society was estimated at $4,545 per CTP youth. This cost-difference mainly resulted from the larger number of arrests on the part of Controls and from these youths' greater tendency to commit violent offenses—acts which often resulted in long periods of lockup. The estimated savings would probably be twice as large today, mainly because incarceration costs have more than doubled since the early 1970s; this is apart from the fact that *length* of incarceration has itself increased for violent offenses—within and, in many cases, outside California.

Table 1 summarizes findings $A \rightarrow C$ for Sacramento + Stockton males, separate by youth-group. Together with Phase 3 results. these findings mainly focus on *societal-centered* goals: community protection and reduced costs.

Table 2 compares CTP and the traditional program in terms of five *offender-centered* goals which are often distinguished from community protection and costs *per se.* These relate to reduced labeling, reduced coercion and control, more service and assistance, better school and/or work adjustment, and more positive attitude-change. Here, as with societal-centered goals, CTP came out generally ahead. (See "Total Group" column of Table 2.)

Key Factors

What factors accounted for reduced or comparable illegal behavior among CTP as

* See Appendix A, Part 2, regarding youth-groups such as "Conflicted."

Table 1: Performance or Utility of CTP versus Traditional Program, Relative to Societal Goals[a]

Goals	Youths[b]			
	Conflicted	Power oriented	Passive conformist	Total group[c]
More short-term protection[d]	C	C	C	C
More long-term protection[d]	E	C	E	E
Lower costs[e]	E	C	E	E

(a) "C," in Table, means: traditional program outperformed CTP.
"E" means: CTP outperformed traditional program.
("C" = controls; "E" = experimentals.)
(b) Sacramento + Stockton males, 1961–1969.
(c) Includes all subjects, not just the conflicted, power oriented, etc.
(d) Fewer illegal activities by youths.
(e) Combines short- and long-term costs.

Table 2: Performance or Utility of CTP versus Traditional Program, Relative to Offender-Centered Goals[a]

Goals	Youths[b]			
	Conflicted	Power oriented	Passive conformist	Total group[c]
Less labeling and stigmatization	E	E	E	E
Less coercion and control	E	E	E	E
More service and assistance	*	*	*	*
Better school and work adjustment	E	–	C	–[d]
Positive attitude-change	–	E	–	E

(a) "E," in Table, means: CTP outperformed traditional program.
"C" means: traditional program outperformed CTP.
"*" means: difficult to compare CTP and traditional programs.
"–" means: no significant, substantial, or otherwise clear performance-difference between CTP and traditional program.
(b), (c) See notes (b) and (c) in Table 1.
(d) On school adjustment, CTP (total group) outperformed the traditional program. On work adjustment, the two groups performed about the same. The net result was therefore "–" (no difference) when school and work were combined.

compared to traditional program youths? Based on almost ten years of direct observations, routine case-documentation, formal staffings, informal discussions, formal interviews, and selected statistical analyses, the following results emerged (researchers, operations staff, and youths were all involved in the above):

The three most important factors were: *small caseloads; intensive and/or extensive contacts; individualization and flexible programming.* Each such factor made a major contribution relative to all or almost all youth-groups. Small caseloads were a prerequisite not only to the second and, to a lesser extent, the third such factor, but to other factors as well. Flexible programming meant the ability to modify a youth's program if necessary, depending on his changing situation and needs; in effect, it was an ongoing expression of individualization.

Next in importance were: *personal characteristics and professional orientation of agent; specific abilities and overall perceptiveness of agent; explicit, detailed guidelines:* Each such factor made either substantial or major contributions to the above youth-groups, and the latter two factors seemed virtually equal in importance. The first and second of these factors related to matching; the third related to pre-established, general strategies that were used with the differing groups of youth, consistent with the principle of individualization. Separately and collectively, these three factors and especially the three *preceding* factors stood out above the four remaining factors that were identified (e.g., *long-term contacts, CTP's positive reputation and positive expectations for youths,* and *the community setting per se*). Collectively, though not individually, these remaining factors made a major contribution to most youth-groups. Long-term contacts were much more important to some youths, *e.g.*, Passive Conformists (see Appendix A), than others.

The preceding factors, of course, did not operate in a vacuum: Basically, they had force and value mainly in conjunction with the earlier-mentioned *program-elements*—counseling, recreation, out-of-home, placement, etc.—in terms of which the youth's needs and situation were concretely addressed.

General Implications

1. Community-based programming, in this case individualized intervention, can substantially reduce a wide range of moderate and severe illegal activities by numerous multiple offenders. Given today's high crime rate, this means that individualized intervention in the community can play a valuable role relative to criminal justice and society overall. It contradicts the view that intervention which focuses on individuals does not work.

2. Community-based programming can substantially reduce violence among these same, male offenders. Given today's increased atmosphere of violence and the public's continued feeling of vulnerability in this regard, this finding is especially timely. It means that long-term lockup is not the only way to address such crime.

3. The above reductions can occur in highly as well as moderately urbanized environments, and with each major ethnic group. Together with point #6, below, this suggests that individualized intervention in the community is applicable to a wide spectrum of society.

4. These reductions can be achieved at a long-term savings of several thousand dollars per youth, *i.e.*, Experimental *vs.* Control youth. Given today's increasing financial constraints, the importance of these savings is self-evident. Such savings would probably be even larger if, in response to today's pressure for ever-harsher punishment, length-of-incarceration were increased.

5. The above-mentioned reductions can be achieved without increasing—in fact, while decreasing—the *intermediate- and long-term* (though not the *short-term*) risk to communities. In this respect long-term lockup (the present alternative to CTP's approach) need not be considered the only viable approach, perhaps not even the best overall approach, to community protection,

relative to numerous multiple offenders. This applies regardless of how humane the alternative (the institutional environment) might be and despite the possible fairness and acceptability of each individual's (institutional) sentence. At base, the reductions in question indicate that some community programs can be more effective than, not just *as* effective as, traditional programming.

6. Multiple offenders under 16 years of age at intake are no less amenable to a community-based approach than those 16 and over. This and other findings suggest that "maturation" or "simply growing up" is not, in itself, the critical or even primary ingredient in reducing their illegal behavior. In this respect it would probably be ill-advised to "wait-these-individuals-out" and simply hope their behavior will decisively change within a few years without considerable input from given individuals. Though a "hands off" or perhaps "minimal involvement" policy may well be appropriate for certain individuals, *e.g.*, many first-time offenders, such an approach would probably be inadequate for almost all multiple offenders, relative to reducing illegal behavior.

7. Community-based programming can successfully address goals other than those of community-protection and cost-reduction. More specifically, it can involve less labeling and stigmatization and less external control than traditional programming, and, as such, can bear on offender-centered, not just societal-centered goals.

8. Humane, personal interactions between sensitive, concerned adults (parole agents) and troubled or troublesome youths can play a major role in helping the latter (a) deal with internal problems and environmental pressures or expectations that bear on illegal behavior in general, and in many cases, (b) work-out feelings and attitudes that sometimes lead to violent behavior in particular.

NOTES

1. Under certain conditions, hypnosis and some drug therapies (*e.g.*, those not producing pain) may be considered adjuncts to PTP's.
2. PTP's would also exclude public and non-public whippings and related approaches—combinations of physical punishment and DRA's.
3. Virtually identical percentages were obtained whether one examined experiments whose scientific quality was considered acceptable-to-high (*i.e.*, including the acceptable *as well as* high) or only those whose quality was considered high. (Palmer, 1978; Lipton, Martinson, and Wilks, 1975)
4. For example, some recidivism measures involved a simple success/failure dichotomy (*e.g.*, no offenses *vs.* one or more offenses) whereas others focused on rate-of-offending per unit of time (whatever the number of offenses). Sometimes, the offenses that were counted excluded minor and technical violations; on other occasions they did not. In addition, while some researchers focused on arrests or convictions others measured actions such as revocation, re-institutionalization, and discharge. These differences can sometimes determine whether a study's research results are positive or negative.
5. This procedure made it possible to study the components of various programs plus the features of the latters' target groups, and to especially study the relationship between those components/features and *recidivism* (or reduced illegal behavior), regardless of whether the programs themselves – in the case of a different procedure – might have been categorized as individual therapy, group counseling, skill development, etc. In short, by combining all such categories in the present procedure, the programs' primary treatment was in effect disregarded and the focus of attention therefore fell on the program-components themselves.
6. Chief among the former observers is the National Academy of Sciences Panel on Research on Rehabilitative Techniques. (Sechrest, White, and Brown, 1979; Martin, Sechrest, and Redner, 1981) The latter observers generally include what may be called "differential treatment" or "differential intervention" proponents. (Warren, 1971; Hunt, 1971;

Palmer, 1975; Ross and Gendreau, 1980)

7. For studies that measured vocational adjustment the figures were: strong positive results or clearcut gains—46%; mixed positive results or moderate overall gains—23%; no positive results—31%. For educational achievement the respective figures were 40%, 50%, and 10%, and for community adjustment they were 42%, 17%, and 42%. Though some such programs contained no operational components or features for dealing specifically with a given area, *e.g.*, vocational training, these programs were nevertheless included in the survey and therefore in the above figures if they *measured* offender-outcome within that area. If those programs had been designed to focus specifically on the given area, the figures in question might have been somewhat different.
8. Experiments and Controls both spent 4 to 6 weeks at the Youth Authority's Northern Reception Center and Clinic, immediately after having been committed to the Youth Authority. This period of "routine processing" consisted of necessary medical and dental work, standard diagnostic workups and related achievement testing, appearance before the YA Board, etc.
9. A. Thus, the findings reflect *illegal activities* and are not a function of policy-based ("discretionary" or "differential") decision-making by Youth Authority staff—CTP, regular parole, Board, or other. (Policy-based decision-making, which influenced such actions as parole revocation, reinstitutionalization, and unfavorable discharge from the YA, are reflected in a separate analysis: the analysis of "parole failure," often referred to as "recidivism.") Also, though minor offenses, status offenses, and technical violations of parole are excluded from these findings, the results are essentially unchanged when such offenses/infractions are included.

   B. Other indices of effectiveness also favored CTP. Among them were: (1) 24-months *recidivism*; (2) rate-of-favorable-discharge from the Youth Authority; and (3) rate-of-offending as compared to a pre-YA time-period.

APPENDIX A: Maturity Levels and Youth-Types

Part 1: Maturity Levels

The following are brief descriptions of the three main levels of inter-personal maturity (integration or "I" levels) that are observed in juvenile justice settings. (Warren *et al*, 1966)

Level 2 (I_2): An individual whose overall development has reached this level but has not gone beyond it views events and objects mainly as sources of short-term pleasure, or else frustration. He distinguishes among individuals largely in terms of their being either "givers" or "withholders," and he seems to have few ideas of interpersonal refinement beyond this. His level of frustration-tolerance is very low and he has a poor ability to understand basic reasons for the behavior or attitudes of others toward him.

Level 3 (I_3): More than the I_2, an individual at this "middle maturity" level recognizes that certain aspects of his own behavior have much to do with whether or not he will get what he wants from others. Such an individual interacts mainly in terms of oversimplified rules and formulas rather than from a set of relatively firm, and generally more complex, internalized standards or ideals. He understands few of the feelings and motives of individuals whose personalities are rather different than his own. More often than the I_4 (see below), he assumes that peers and adults operate mostly on a rule-oriented or intimidation/manipulation basis.

Level 4 (I_4): More than the I_3, an individual at this level has internalized one or more "sets" of standards which he often uses as a basis for either accepting or rejecting the behavior and attitudes of himself as well as others. (These standards are sometimes mutually inconsistent or inconsistently applied.) He recognizes interpersonal interactions in which individuals try to influence each other by means other than compliance, manipulation, promises of hedonistic or monetary reward, etc. He has a fair ability to understand underlying reasons for behavior, and he displays some ability to respond on a fairly long-term basis to moderately complex expectations of peers and adults.

Part 2: Youth Types

The three main groups of youth that were observed at CTP were as follows (Palmer, 1974; Warren *et al*, 1966):

1. Passive Conformist: This youth-type usually fears, and responds with strong compliance to, peers and adults who he thinks have the "upper hand" or who seem more adequate and assertive than himself. He feels he is lacking in social "know-how" and usually expects to eventually be rejected by others despite his efforts to please them.

2. Power Oriented: This category contains two somewhat different types of individuals—who, nevertheless, share several important features with each other. The first likes to consider himself a delinquent—and tough. He is often entirely willing to "go along" with others (delinquents), or with a gang, in order to acquire some status and acceptance and to later maintain his "reputation." The second type, or "subtype," often tries to undermine or circumvent the efforts and directions of authority-figures. Typically, he does not wish to conform to peers or adults. Not infrequently, he will try to acquire a leading "power role."

Passive Conformists and Power Oriented youths have reached Level 3. The group which is next described has reached Level 4.

3. Conflicted: Here, again, we find two separate personality types which share certain important characteristics with each other. The first type often tries to deny—to himself and others—his conscious feelings of inadequacy, rejection, or self-condemnation. Not infrequently, he does this by verbally attacking *others* and/or *via* boisterous distractions and various "games." The second type often shows symptoms of emotional disturbance, *e.g.*, chronic or intense depression, or psychosomatic complaints. His tensions and fears usually stem from conflicts produced by feelings of failure, inadequacy, or underlying guilt.

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SECTION 2: PARTICIPANTS' PAPERS

An Outline of Existing Juvenile Justice System in the Socialist Republic of the Union of Burma

*by U Tin Aung**

Introduction

Crime is as old as history of mankind. It might even be appropriate to presume that crime started with the appearance of mankind with all its weaknesses and frailties. Since then crime has come to stay and spread, and the world does not seem to have reached anywhere nearer a solution to counter the upsurge of crime.

When we say crime we envisage an unshaven man dressed shabbily burning with anger and malice. That is the criminal as he is pictured and understood by all. But when a boy, a teenager, is reported as a criminal, it seems incredible for us that so young a person is capable of such an inhumane act and we tend to forget that crime has no age barrier and that crime invades both young and old. This naturally leads criminologists to believe that adult criminals are the projections of juvenile delinquents. Should we therefore pay more attention to juvenile delinquency as a source of adult crime? We are of the opinion that the answer should be in the affirmative. Moreover such a study would indeed throw a flood of light on juvenile delinquency.

We in Burma are happy to note that a comparison with other countries yielded results which indicate less juvenile delinquency here. One of the probable reasons may be that we have a cultural and religious heritage rich in love, respect and forgiveness. Young boys and girls do indeed commit acts which in the eyes of law may amount to a crime. But we regard these acts as a youthful outburst of a mischievous child which we feel competent to deal with within our own time-honoured ways. When, however, a juvenile commits an act that amounts to a criminal offence which we could and should not ignore we ourselves would set the law into motion and send him or her up for trial.

Historical Background

As our juvenile legal system has been inherited from the British, we should look into the legal history of the West and understand how and why special treatment of juvenile delinquents found a place in the laws of the Socialist Republic of the Union of Burma now.

The prevention of crime among the youthful population of Burma had been envisaged since the colonial days. That fact was reflected in the enactment of the Young Offenders Act 1930. It was enacted to introduce humane methods of treatment to juvenile offenders in Burma. But there was no provisions in it for the establishment of juvenile courts as in other countries. Magistrates and benches of magistrates were empowered to handle juvenile cases under the Act. Attempts, however, were made in the past to replace it by a new one as it was found to be inadequate to meet the demands of the time.

After attainment of Burma's independence, a new act called the Children's Act 1955 was brought on the statue book in partial fulfillment of the demands of changing circumstances. This Act, as a matter of fact, in no way has thrown out the former entirely. The former Act has not been repealed yet and is still in operation. But since the 1955 Act was new to us, its operation was carried out on a trial

* Law Officer Grade II, Central Law Office, Rangoon, Burma

basis during the first stage. It was applicable only to a limited area. By order of the President of the Union, a Juvenile Court was established at Rangoon in March, 1958, with jurisdiction over the city of Rangoon and the Hanthawaddy and Insein districts. Later in 1973, the Government being desirous of preventing juvenile delinquency problems in the country with a particular reference to the requirements of building a socialist society now underway and in general to the treatment of juvenile problems, the Ministry of Social Welfare of the Government of the Socialist Republic of the Union of Burma had proclaimed the Children's Act of 1955 Act No. 60 to be effective and in force throughout the entire Union with effect from July 1, 1973.

Under the Act, the juvenile court is constituted as an independent court to which all cases in which juveniles were involved are sent up for enquiry or trial direct by the police or other interested persons. Offences punishable with death or transportation for life were tried as warrant cases while all other offences are triable summarily or as appealable summon cases and all appeals lie to the High Court.

The legal setup of the court is based on the assumption that a juvenile court must recognize children who appear before it not as criminal but as misguided or misdirected youngsters needing not punishment but aid, sympathy, assistance, understanding and encouragement. The old theme of punishment and retribution find no place in a juvenile court. Juvenile delinquency being a social problem, each child who appears before the court must be studied as a social case.

Children's Act of 1955

The Children's Act of 1955 was enacted with the following objectives:

a) To protect and provide youthful generation with care so as to prevent them from becoming juvenile delinquents.
b) To try young offenders and pass orders of positive and constructive nature which would facilitate their rehabilitation.
c) To try and sentence adults whose action is detrimental to the moral character of young persons.

Juvenile Court

The Juvenile Court is one of the special courts which has developed within the system of summary courts. It is distinct from other adult courts in jurisdiction, procedure and triable age of offenders. The function of Juvenile Courts in Burma, however, is carried out by township adult courts administered by Township Peoples' Judges Committee. The bench is composed of three members one of whom must be a lady. The trial of a juvenile does not go into elaborate and cumbersome procedure as in the case of the adults. Most of the cases in such juvenile hearing are disposed of on the strength of the admissions of guilt made by the juvenile offenders who appear before the bench of the juvenile court. The Juvenile Court tries the offender and not the offence. A juvenile offender may have committed a very serious offence. But he is not normally sent to the jail unless there are some other correctional steps to be decided. The court looks into his antecedents and surroundings and tries to confront him with a structure of what he should do to redeem him from the follies he has committed. The structure need not be rigid but it has the design to improve his behaviour and conduct in the future.

Procedure

When a juvenile is arrested, the offence is investigated by a police officer in the usual way and the evidence is considered by the police officer-in-charge of the police station as to whether or not the young offender should be prosecuted. Either a warning or a reprimand is given particularly for the very young first offenders with stable background by the chief of the police station when the offender admits the offence and the parents or guardians

agree that the child be cautioned and the aggrieved party is willing to leave the matter to the police.

When the juvenile case is sent up before the court, the medical report relating to the age of the young offender must be examined. In the absence of the medical report, the juvenile offender accompanied by a police officer must be sent to a civil hospital where his age would be ascertained. If the medical opinion mentions the age as about 15-16, years, the court shall continue the trial. If the opinion for the age is 16-17, the court will treat the offender as an adult.

Ordinarily if any person under arrest appears to the court before which he is brought to be under 16, he shall be released on bail on surety furnished by parent or guardian unless the court believes that such release would defeat the ends of justice or would bring such juvenile into association with any reputed criminal. In case bail is not granted for reasons mentioned above, he would be remanded in a juvenile remand home which is a separate accommodation provided in a Youth Training School. If no suitable remand accommodation is readily available, the juvenile offender would be placed under the care and supervision of a police officer. Juveniles are not to be handcuffed nor be conveyed in a prison van. Such expressions like "conviction" and "sentence" are not to be used at the trial.

In case where the young offender is brought before the juvenile court, the court allows his parent or guardian to be present and even assist him in conducting his defence and cross-examining witnesses for the prosecution. The court then explains to the juvenile offender the substance and nature of the charge and the young offender admits or denies the charge. Only on his denial of the charge, the court starts to hear the evidences in support of the charge.

Upon conviction of a juvenile offender, the court may further adjourn the case either releasing him on bail or remanding him in a juvenile remand home for observation. In the meantime the court may, before passing sentence, call for reports from probation officers as the sentence will depend on the juvenile's socio-economic, family and other background.

When the juvenile person is found guilty of an offence, the offender as well as the parents or guardians are informed of the report concerning the conduct, behaviour, surroundings and health of the child or young person and about the manner the court proposes to deal with the case.

When information is not fully available in respect of the juvenile offender, the court will send the young offender to a remand home which is in fact a separate accommodation in a Boys Training School. In the meantime, enquiry is conducted on the social status of the offender by the probation officer and upon his written report, the court finally dispose of the case.

The courtroom is so designed as to create a less formal and solemn atmosphere with a touch of homely setting where unrelated and unauthorized persons are not permitted to attend the hearing. The name and particulars of the young offender are also not allowed to be made public by the mass media.

If any person under 16 is convicted by the juvenile court of an offence punishable with death, transportation or imprisonment but not sentenced to imprisonment, the court may,

a) discharge him after due admonition;
b) sentence him to fine if he has any income and the age is over 14;
c) commit him to the custody of his parent or guardian or an adult relative or to the custody of any trustworthy person provided that the custodian shall, if the court so orders, execute a bond to be responsible for the good behaviour of the juvenile so entrusted to him for a period not exceeding three years; or
d) order him to be sent to a training school normally for a period not less than three years. However, he can be detained in the training school until he reaches the age of 19.

As for the protection of a juvenile under 16 from circumstances conducive to crime,

if any court has reason to believe that any juvenile under 16 within the local limit of its jurisdiction—

a) has neither parent nor guardian nor home,
b) has no legitimate means of subsistence,
c) has a parent or guardian who, by reason of criminal or drunken habits or insanity or disease or other cause, is unfit to exercise proper guardianship,
d) frequents the company of any reputed criminal, prostitute or brothel keeper, or
e) is otherwise likely to fall into bad association or to be exposed to moral danger or to enter upon a life of crime,

the court may cause such juvenile to be produced in court and it shall inquire into the case and if satisfied by evidence of repute or otherwise that such juvenile is indeed in circumstances mentioned above, the court may order him to be sent to a Juvenile Training School or make a custody order for him to be detained in custody for any period up to the age of 16 or to entrust him with a suitable guardian upon execution of a surety bond as the court may think fit.

If the parent or guardian of a juvenile under 16 proves to a court that he is unable to control such juvenile and satisfies the court that he desires such juvenile to be sent to a Juvenile Training School, the court may, if after enquiry it thinks fit so to deal with such juvenile, order him to be sent to a Juvenile Training School.

In any juvenile trial, the court may cause the parent or guardian of such juvenile or both the parent or the guardian to attend at all stages of the trial. No order shall be made against any parent, guardian or other persons without giving him an opportunity of being heard unless his absence is due to failure without reasonable cause. If a court convicting a juvenile under 16 years of age of any offence is of opinion that a fine would be suitable punishment, the court may order that the fine shall be paid by the parent or guardian or direct the parent or guardian of such juvenile to pay compensation for any loss or damage caused in the commission of the offence.

Every order sending a juvenile to a Training School shall specify the school by name being such as in the opinion of the court is best suited to the age, religion and the social background of the juvenile and the period of his detention.

In Burma, there were a few juvenile courts as mentioned before with a juvenile judge sitting on fixed days at the courts within his jurisdiction. A single judge system was in operation then, though his judgement heavily depended upon the reports by probation officers. Probation service in Burma is not as developed nor is it as systematic as in other developed countries. But its development plan is in the making by the Government.

Now after the reorganization of the judicial system in Burma, the function of juvenile courts is now performed by Township Courts under the management of Township Peoples' Judges Committee with three member bench which must include a lady for the trial of juvenile cases.

Age of Criminal Responsibility

According to the Children Act of 1955, the age of criminal responsibility is 7 in Burma and any act committed by a young person below that age is therefore not a crime. Only young offenders above the age of seven are brought before the juvenile court. Children below seven are regarded as too immature to know the consequences of the crime committed.

Boys Training Schools

The Directorate of Social Welfare has established training schools for juvenile delinquents known as Boys Training School (BTS) at the following places in Burma:

a) Nygat-Awe-San Boys Training School —the school can accommodate 500 boys. They must be boys above the age of 12 who have committed

various crimes.

b) Kaba Aye Boys Training School—the school can accommodate 230 boys from Rangoon Division who have committed petty criminal offences or those sent under the Young Offenders' Act.
c) Inya Boys Training School, Rangoon Division—it can accommodate 150 boys under 12 years of age sent under the Young Offenders' Act or those boys who have committed crimes along with adults.
d) Mayangone Girls' Training School—it can accommodate 150 girls. It is the only girls' training school in Burma. Girls who need guidance under the Young Offenders' Act and those who had committed petty criminal offences are sent here.
e) Mandalay Boys Training School—this school can accommodate 100 boys from various townships of upper Burma who have committed petty criminal offences as well as offences under Young Offenders' Act.
f) Moulmein Boys Training School—it can house 100 boys from various townships in Mon State who have committed petty criminal offences as well as offences under Young Offenders' Act.

It will be seen that the Government has given its full attention to the well-being of the juvenile delinquents so that the young delinquents become law abiding and useful citizens.

Probation Service

The concept of probation is based upon the recognition of one of the profoundest of practical ethical truths. No man and no power can compel a man to be good. Basically the system has been built upon the ideal conception of cooperation between the probation officer and the probationer. It is one of the cardinal features of the system that it starts not with compulsion but with the offender's undertaking to cooperate.

Probation was thought of, in its inception, as a means of saving certain offenders from imprisonment. But the positive functions emerging in the course of operation of the probation system constitute mainly the possibility of constructive work with offenders towards the eradication of those factors in the personality which has made for delinquent behaviour.

Probation service is provided with the aims of preventing offenders from committing further offences thus protecting the society and helping to solve the personal problems of probationers or rather coping with them better and thus providing for the welfare of individual offender.

For a decision to be made, the judge heavily relies upon the social enquiry reports by the probation officers. The report includes, among other things, essential details of the offender's home environments and family background; his attitude to his family and their reaction to him; his school and work record and spare time activities; his attitude to his employment if any; his attitude to his present offence; detailed history about relevant physical and mental condition; and assessment of personality and character and finally their assessment and recommendation which the judge considers as the basis for his judgement or decision. The probation officer's social investigation report is given a place of importance in our courts in Burma when juvenile cases are under consideration.

Probation officers, over and above pre-conviction investigation, have other statutory and non-statutory duties to perform. Among those are supervision over offenders placed on probation either adult or juvenile *i.e.*, to advise, assist and befriend the probationers; keeping in touch with families of persons on probation or under supervision from detention centers, etc. The probation officer is responsible to see that the probationer is making every effort to comply with all the requirements as specified in the probation order.

Conclusion

In the Burmese community, it is customary that the parents are mainly responsible for the maintenance, care and upbringing of their children. The father is held more responsible, if seen in the light of a court ruling that even if he may be a Buddhist monk who has severed himself from all worldly affairs, yet he is still bound to maintain his children. Section 488 of the Code of Criminal Procedure is quite clear that fathers are exclusively responsible for the maintenance of their children. The maintenance measures include general education, health supervision of infants and school children, medical attention, hospital treatment and care of physically or mentally handicapped children.

The purpose of the relevant care is to ensure that children and young people grow up under conditions likely to promote a sound mental and physical development. Burma needs human dynamo on collective basis. Her people must be mentally sound and physically fit so that they might build up a nation, healthy, wealthy and wise. In brief, welfare state is the end and the law is one of the means to meet the desired setting.

So far as children and young people are concerned, the following laws have been promulgated in Burma:

1. The Young Offenders' Act;
2. The Children's Act;
3. Guardians and Wards Act;
4. The Majority Act;
5. Child Marriage Restraint Act;
6. Apprentices Act;
7. Children (Pledging of Labour) Act; and
8. certain Sections of (a) Penal Code and Code of Criminal Procedure (b) Mines Act and (c) Factories Act.

Frankly speaking, the main directive governing the care of children and young people is as envisaged in the above laws. They deal generally with courts which try juvenile delinquents and young people. To be more particular, some Acts provide for the prevention of crime only and nothing further than correctional measures while most of them generally are intended solely for the purpose of safeguarding the interest of the minors.

As for instance, there are some laws which deal with measures to defy the probable risks likely to be suffered by the children. They also prevent the children and young people from falling prey to the machinations and the wiles of the wicked and the cruel exploitation of the greedy. They are, however, not exhaustive in the matter of treatment as far as the maintenance, care and upbringing of the children and young people are concerned. We need more legislation to embrace measures that would foster the welfare of the children in the fields mentioned above.

Every effort must be made for the rising generation. We are living in a world fully alive to its dimensions when technical triumphs and highly developed means of communications and information have brought it within reach of the individual. The dynamic nature of our world demands of us and will demand, to an even greater extent of our sons and daughters, an equally dynamic culture. The children of today are the pillars of tomorrow. They are a happy reality for today, firm hope for tomorrow. This concept has already received a universal recognition. Our laws calculated to regulate human conduct and behaviour must necessarily call for a radical review. The Acts enumerated above are not exception to the general trend.

Since Burma is now following the Burmese Way to Socialism, the maintenance, care and upbringing of the children and young people are not solely the responsibility of the parents but must extend to the sphere of the State's obligation. On principle, the parents should now be relieved to a certain extent, if not entirely, of their charge in those respects and the Government jointly hold itself responsible for the general welfare of the children and the young people.

In a variety of fields, however, it has now become opportune for the Government to assume to itself the responsibility required for the general well-being of the children and the young people. The Acts

shown above may no longer be consistent with the changing period that is being experienced in the Socialist Republic of the Union of Burma and therefore has to be reviewed and new Acts redrafted.

Appendix

Trends in Juvenile Delinquency and Anti-Social Behaviour

Type of Offence	Number of Cases			Number of Juveniles Having Committed		
	1980	1981	1982	1980	1981	1982
Murder and attempted murder	75	81	61	62	84	45
Rape and attempted rape	48	43	63	50	28	43
Armed robbery and/or theft with physical violence to person	7	14	26	3	3	40
Other types of aggravated theft	225	210	473	230	124	528
Simple or minor theft	541	331	669	467	322	748
Motor vehicle theft	1	1	10	1	1	10
Unauthorized use and subsequent abandonment of motor vehicles	3	1	3	3	2	3
Assault causing serious injuries	98	138	206	59	98	84
Assault causing minor injuries	334	350	555	282	335	485
Extortion and/or other threatening behaviour not covered by any other item listed	14	7	12	13	4	–
Drug trafficking	5	19	21	7	21	11
Possession and/or use of drugs	10	12	150	29	15	189
Possession and/or carrying of arms	2	2	1	2	2	1
Possession and/or carrying of prohibited weapons	10	8	6	9	8	6
Violation of road traffic laws and regulations	42	19	3	36	17	10
Vandalism	–	–	–	–	–	–
Vagrancy	47	20	100	30	20	364
Running away from home	–	–	101	–	–	101
Begging (all kinds)	1	1	1	1	1	1
Prostitution	28	26	269	27	31	301
Public drunkenness	5	5	37	6	7	37
Gambling	54	47	101	70	46	635
Unauthorized occupation of public or private place	33	35	65	32	30	172
Other cases	1,878	1,763	2,371	1,469	1,375	1,942
Total	3,461	3,133	5,304	2,888	2,574	4,786
Remarks	Age: 7 – 16					

The Quest for a Better System and Administration of Juvenile Justice – The Case of Fiji

*by Etuate Vugakoto Tavai**

Introduction

In this paper I intend to outline the existing juvenile justice system in Fiji and also discuss the general trends in juvenile delinquency and specific problems of the system and its administration in Fiji, in particular:

a) problems related to investigations and prosecution;
b) problems related to adjudication;
c) problems related to treatment after adjudication;
d) problems related to the prevention of juvenile delinquency and the roles of citizens and agencies.

Fiji's Courts System

The Fiji Islands were ceded by some chiefs to the British Crown on 10 October 1874, and was a British Crown Colony until 10 October 1970 when it gained political independence. The British Colonial Government naturally introduced into Fiji the English system of justice administration. The Constitution of Fiji which came into being on Independence Day guaranteed the continuation of the common law system together with the Westminster type of parliamentary government.

The principal courts in Fiji are the Fiji Court of Appeal, the Supreme Court and the magistrate courts. Appeals from the Fiji Court of Appeal lie to the Judicial Committee of the Privy Council in London as of right in the following cases:

a) from final decisions in any appeal to the Fiji Court of Appeal—(i) in any proceedings on questions as to the interpretation of the Constitution; or (ii) in any application for redress or relief in respect of an alleged contravention of the fundamental rights and freedoms or the interests of a person under the Constitution,

b) from final decisions in any civil proceedings where the matter in dispute on appeal is of the value of F$1,000 or upwards.

In criminal matters an appeal lies to the Privy Council by special leave of the Judicial Committee of the Privy Council. Appeals lie to the Fiji Court of Appeal from the decisions of the Supreme Court in the exercise of its original criminal and civil jurisdiction. In addition, appeals lie on a point of law alone from the decisions of the Supreme Court in the exercise of its appellate jurisdiction.

The Supreme Court is a court of unlimited jurisdiction in which both Common Law and Equity are administered concurrently. It has a special original jurisdiction in Constitutional questions as well as its original and appellate jurisdiction in civil and criminal matters which in most cases lie outside the jurisdiction of the magistrates courts. The Supreme Court comprises of a Chief Justice and a Constitutionally-prescribed number of justices.

Resident magistrates exercise the very wide jurisdiction conferred upon them by the Magistrates Court Act and the Criminal Procedure Code. All criminal offences (save murder and 14 other very serious crimes) are triable by resident magistrates although in respect of the graver offences the accused has the right to elect trial by the Supreme Court in which case a preliminary inquiry is held in the magistrates court.

A resident magistrate may generally impose the following maximum sentences where authorised by law:

a) imprisonment for any one offence of not more than 5 years;
b) imprisonment for two or more distinct offences of not more than 10

* Crown Counsel, Office of the Director of Public Prosecutions, Fiji

years;
c) a fine not exceeding F$1,000.
d) corporal punishment not exceeding twelve strokes.

Resident magistrates have jurisdiction in most areas of family law including separation, maintenance, affiliation etc., and additionally have the power to hear petitions for dissolution of marriage and judicial separation. In these matters, magistrates sit as domestic courts. They also have jurisdiction arising out of the Juveniles Act under which, when dealing with juvenile cases, become the juvenile courts.

Outline of the Existing Juvenile Justice System

In Fiji, the law relating to juveniles is governed by the Juveniles Act, Cap 56 (hereinafter referred to as the Act). It was enacted in 1974 and revised in 1977. The Act's long title reads as follows:

> "An Act to make provision for the custody and protection of juveniles in need of care, protection or control, and for the correction of juvenile delinquents and young offenders."

The following words are defined in Section 2 of the Act:

> "Child" means a person who has not attained the age of 14 years.
>
> "Young person" means a person who attained the age of 14 years, but who has not attained the age of 17 years.
>
> "Juvenile" means a person who has not attained the age of 17 years, and includes a child and a young person.

Age of Criminal Responsibility

Section 29 of the Act is worded in the same manner as Section 14 of our Penal Code, Cap 17. Both sections provide as follows:

a) that no child under the age of 10 years can be guilty of an offence;

b) that a person of or over the age of 10 and under the age of 12 years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission he had capacity to know that he ought not do the act or make the omission.

c) that a male person under the age of 12 years is presumed to be incapable of having carnal knowledge.

Investigation

In 1979, the Police Department in Fiji established the juvenile bureau within the Department. It is now in operation throughout Fiji with its headquarters in Suva. Each police division has an officer responsible for coordinating the juvenile bureau centres at all police stations within the division. At each police station, a number of police officers are specially assigned and made responsible for all complaints relating to juveniles.

The aim of the bureau is to offer juvenile offenders "Caution" or "No Further Action" as an alternative to appearing before a court. It relies upon the principle that a second chance be given to juvenile offenders and to offer them an opportunity to correct themselves. The bureau also aims to ensure a uniform system of dealing with juveniles who have been arrested or reported for commission of any offence.

The practical steps that are now taken by the police in relation to juvenile offenders are:

1) On report of any commission of any offence the juvenile concerned is brought to the police station. At the station he would either be released on bail pending investigation, or if it considered having regard to the seriousness of the offence, the special circumstance of the offence or the special circumstances of the juvenile it is not prudent to release the juvenile after his arrest, the officer in charge of the police station may in his discretion order that the juvenile be charged and brought before a court. Once before a court, the court may in its discretion release the juvenile on bail.

Where a juvenile having been arrested is not released on recognizance, the officer in charge of the police station to which the juvenile is brought is required to have the juvenile detained in a place of safety until he can be brought before a court, unless

the officer certifies—

a) that it is impracticable to do so; or

b) the juvenile is of so unruly or depraved a character that he cannot safely be so detained; or

c) that by reason of the state of health or the mental or physical condition of the juvenile it is inadvisable to so detain him,

and such certificate is produced to the court before which the juvenile is brought. A "place of safety" is defined by the Act to include any institution established by the Minister for Social Welfare, any police station, any hospital or clinic, or any other suitable place the occupier of which is willing temporarily to receive a juvenile, but does not include a prison.

2) If, however, the offence committed by the juvenile is not serious, the officer in charge of the police station is required to release the juvenile on bail. The following steps are then taken:

a) Submission of offence docket: An offence docket is prepared and forwarded to the juvenile bureau for decision whether to prosecute or not and for statistical purposes.

b) Actions to be taken by the bureau: On receipt of the docket, the bureau records the details and informs the Social Welfare Department seeking a report on the juvenile concerned.

c) Notice to parent/guardian: The parent or guardian of the juvenile is informed that their child or ward has been reported or arrested for an offence and are given a leaflet explaining the operation of the bureau. They are invited to have a discussion with an officer of the bureau together with the child.

d) After discussion with the parent or guardian of the child and upon receipt of the Social Welfare report on the juvenile offender, the officer-in-charge of the local bureau may take any of the following actions: (i) decide that the juvenile be cautioned; or (ii) decide that the juvenile be prosecuted for the offence he is alleged to have committed; or (iii) decide that no further action against the juvenile is required.

e) If the officer-in-charge of the bureau decides that the juvenile is to be cautioned, then the divisional police commander arranges for the caution to be administered at a police station by an officer not below the rank of an inspector of police who would be given the "offence docket" and any other file with the bureau that is related to the juvenile. The caution is signed by the young offender, his parent or guardian and the officer administering the caution. The caution form shows the offence(s) for which an unconditional admission of guilt has been made by the juvenile. The caution form is retained in the bureau for future reference.

If an offender or his parent/guardian declines to sign the caution, then the juvenile is prosecuted.

The juvenile bureau officer responsible for the investigation of any particular complaint against a juvenile is expected to prepare a report covering the following aspects: offence, family background, previous findings of guilt or cautions administered, educational background of the juvenile, his health, home environment, associations, social activities, details of any interviews, and the officer's recommendations.

Prosecution

If the police juvenile bureau, in dealing with a specific juvenile offender, decides that the offender should be prosecuted, the police docket is forwarded to the police prosecution section for action and result. A police prosecutor is then assigned to prosecute the case in the juvenile court. It is noted that the prosecutor may not have had any experience with the juvenile bureau.

It is stressed here, however, that the decision whether to prosecute or not taken at the initial stage by the juvenile bureau, and the discretion by the police prosecution whether to discontinue prosecution, are subject to the powers vested by the Constitution of Fiji in the Director of Public Prosecutions (hereinafter referred to

as the DPP).

Under Section 85 of the Constitution, the DPP has exclusive authority over all criminal prosecutions in Fiji. In particular, the following provisions are pertinent:

S. 85(1) – There shall be a DPP whose office shall be a public office

S. 85(4) – The DPP shall have power in any case in which he considers it desirable so to do: a) to institute and undertake criminal proceedings before any court of law (not being a court established by a disciplinary law); b) to take over and continue any such criminal proceedings that may have been instituted by any other person or authority; and c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.

S. 85(5) – The powers of the DPP under the preceding subsection may be exercised by him in person or through other persons acting in accordance with general or specific instructions.

S. 85(6) – The powers conferred upon the DPP by paragraphs b) and c) of subsection (4) of this section shall be vested in him to the exclusion of any other person or authority.

S. 85(7) – In the exercise of the powers conferred upon him by this section the DPP shall not be subject to the direction or control of any other person or authority.

Section 75 of the Criminal Procedure Code allows for prosecutions to be conducted by police officers in minor cases before the magistrates courts including the juvenile courts. This is, however, subject to Section 76 which reads as follows:

"Every police officer conducting a prosecution under the provisions of section 75 and every police prosecutor shall be subject to the express direction of the DPP."

A total of 509 cases involving juvenile offenders were referred to the juvenile bureau in 1981. A summary of activities of the bureau is shown in Table 1.

Table 1

	1980	1981
No. of offenders referred to the bureau	538	509
No. of offenders cautioned	272	306
No. of offenders prosecuted	229	198
No. of offenders re-offended after being cautioned	19	19
No. of offenders re-offended after being prosecuted	88	30
Cases under review	28	5

Adjudication

Part IV of the Act provides for the establishment of juvenile courts. Section 16 specifically provides that a magistrates court sitting for the purpose of i) hearing any change against a juvenile, or ii) exercising any other jurisdiction conferred on juvenile courts by or under the Act is referred to as a juvenile court.

In relation to any proceedings in court, Section 12 decrees that no newspaper report or radio broadcast of the proceedings should reveal the name, address or school of the young accused and no picture should be published of any juvenile concerned in the proceedings. Anyone who contravenes the above provisions is liable on conviction to a fine not exceeding F$100 in respect of each offence.

A juvenile court is required, so far as practicable, to sit either in a different building or room from that in which the sittings of courts are held. Apart from members and officers of the court, parties to the case and parents or guardian of the offender, no person is permitted to be present at any sitting of the juvenile court.

A significant requirement of the Act (S. 19) is that every court, in dealing with a juvenile who is brought before it, is to have regard to his welfare and, if it thinks fit, to take steps for removing him from undesirable surroundings and for securing that proper provision be made for the maintenance, education and training of the offender.

The words "conviction" and "sentence" are prohibited (S. 20) from being used in

relation to juveniles.

After explaining the substance of the alleged offence, the court is required to ask the juvenile whether he admits the offence. Notwithstanding that the juvenile admits the offence, the court in its discretion may hear evidence it considers necessary in the best interests of justice and of the juvenile. This is more so if the juvenile is not legally represented. At the close of the evidence of each witness, and if the juvenile is not represented by counsel, the court may ask the juvenile and his parent/guardian (if present) whether they or either of them wish to put any question to the witness.

If the court is satisfied that a *prima facie* case is made out, any evidence from any defense witness may be heard and the juvenile offender is allowed to give evidence or to make a statement.

If the court is satisfied that the offence is proved, the juvenile is then asked if he desires to say anything in extenuation or mitigation of the offence or otherwise. Before deciding how to deal with him, the court is required to obtain such information as to his general conduct, home surroundings, school and work record, and medical history as may enable the court to deal with the case in the best interests of the juvenile, and put to him any questions arising out of such information.

A charge made jointly against a juvenile and a person who has attained the age of 17 years is required by the Act to be heard by the magistrates court not being a juvenile court. Where a juvenile is charged with an offence the charge may be heard by the magistrates court not being a juvenile court if a person who has attained the age of 17 years is charged at the same time with aiding and abetting that offence. Where in the case of proceedings before any magistrates court other than a juvenile court, it appears that the person so charged is a juvenile, nothing prevents the court, if it thinks fit to do so, from proceeding with the hearing and determination of those proceedings.

Any court by which a juvenile is found guilty of an offence other than murder or attempted murder may, if it thinks fit, transfer the case to a juvenile court and that court may deal with him in any way in which it might have dealt with him if he had been tried and found guilty by that court.

Where a juvenile is charged with an offence, his parent or guardian is required by the Act to attend the court before which the case is heard or determined during all stages of the proceedings unless he or she cannot be found. If any parent or guardian who has been warned to attend, having received reasonable notice of the time and place, fails to attend accordingly, and does not give a satisfactory excuse to the court, is guilty of an offence and is liable on conviction to a fine not exceeding F$20.

It is stipulated in the Act that

a) no child shall be ordered to be imprisoned for any offence.

b) no young person shall be ordered to be imprisoned unless the court certifies that he is of so unruly a character that he cannot be detained in an approved institution or that he is of so depraved a character that he is not a fit person to be so detained.

c) a young person is not to be ordered to imprisonment for more than 2 years for any offence.

Where a juvenile is found guilty of murder, attempted murder or manslaughter, or of wounding with intent to do grievous bodily harm, and the court is of the opinion that none of the other methods by which the case may legally be dealt with is suitable, the court may order the offender to be detained for such period as may be specified in the order, and where such an order has been made, the juvenile is detained in a place and on conditions directed by the Minister for Social Welfare.

Where a juvenile is tried for an offence and the court finds him guilty, it may deal with him in any of the following manner:

a) discharge the offender under Section 44 of the Penal Code;
b) order the offender to pay a fine, compensation or costs;
c) order the parent or guardian to pay the fine, compensation or costs;

d) order the parent or guardian to give security for the good behaviour of the offender;
e) make a care order in respect of the offender;
f) make a probation order in respect of the offender;
g) make an order of imprisonment if the offender is a young person;
h) deal with the case in any other lawful manner, except that no juvenile is to be ordered to undergo corporal punishment.

Where the court makes an order under d), it may do so with or without proceeding to a finding of guilt in respect of the juvenile.

Treatment after Adjudication

Any society or voluntary institution may apply to the Minister for Social Welfare for it to be approved as a society or institution working for the care, protection or control of juveniles, and the Minister, after making enquiries, may approve the society or voluntary instituton for that purpose and issue a certificate of approval accordingly. The Minister is required to keep a register of approved societies and voluntary institutions. The Act provides for the de-registration of any society or institution. The Director of Social Welfare or any welfare officer is empowered to enter, at all reasonable hours, any premises used by any approved society or institution in oreer to satisfy himself as to the adequacy of such premises and as to the way it is managed and conducted.

Any juvenile who is considered to be in need of care, protection or control is committed to the care of the Director who is responsible for his supervision whether he remains with his parents or guardian or is removed to an institution or to a third person. The Director may delegate any of the powers and duties vested in him to be exercised or performed by a welfare officer.

A juvenile is in need of care, protection or control if:

a) he has no parent or guardian or has been abandoned by his parent/guardian and is destitute; or

b) his parent or guardian does not or is unable to or is unfit to exercise proper care and guardianship and he is either falling into bad association or is exposed to moral or physical danger or is beyond control; or

c) the lack of care, protection and guidance is likely to cause him unnecessary suffering or seriously affect his health or proper development; or

d) any scheduled offence has been committed in respect of him or in respect of a juvenile who is a member of the same household; or

e) he is a member of the same household as a person who has been convicted of a scheduled offence in respect of a juvenile; or

f) the juvenile is a female member of a household a member of which has committed or attempted to commit an offence sexual in nature.

The number of juveniles in the care of the Director of Social Welfare in 1980 (latest figures available) was 115 of which 106 were offenders, the rest were non-offenders but in need of care, protection or control.

In dealing with children who are in need of care, the welfare officers as far as practicable work with the parents or guardian of these children and try to keep the children within the community. Chidlren's residential institutions are used only as a last resort when all other alternatives are not available or have failed. For those juveniles who are committed to care and placed with individual families or institutions, the Social Welfare Department pays an average monthly allowance of $15 for each juvenile towards his maintenance. During 1980 some of the younger juveniles temporarily committed to the Director who could not be placed in the community were sent to either the St. Christopher's Home (Catholic church) or the Methodist Church Home. A total of 31 were placed in these two Homes during the year. There are two juvenile institutions run by the Social Welfare Department which provide residential care for juveniles between the age of 10 to 17 years. The juveniles court may commit a juvenile to the Director's care, and if

the Director considers it appropriate, the juvenile can be sent to one of the juveniles institutions. There is an institution which caters for the boys and one for females. The underlying purposes for the juveniles institutions are to provide a home where love and care is given, to provide opportunities for re-training and education of the juveniles to enable them to fit back into the community and to develop identifiable latent potentials of the juveniles to enhance and facilitate further personal development thus increasing their chance for coping, leading to a fuller and satisfying life. Another important role of the juveniles institutions is to detain children and young persons while they are on remand in custody before the court disposes with their cases.

Probation Service

This is governed by the Probation Act, Cap. 16. Whenever a court requires a report on the socio-economic background of an offender, a probation officer (alternatively known as welfare officer) is assigned to investigate and provide the court with the relevant information to assist the bench in deciding which form of sentence is appropriate for a particular case. If the court, after considering all the factors concerning a particular case, releases the offender on probation, the probation officer becomes responsible for the supervision of the probationer. The period of probation according to law has a minimum of one year and a maximum of 3 years. The responsibility of the probation officer stipulated in the Probation Act is to befriend, advise and assist the probationer in his rehabilitation back into the community.

General Trends in Juvenile Delinquency and Contributing Factors

Figures concerning juvenile offenders over the past years are shown in Tables 2-5:

Although the statistics shown above indicate that since 1979 the number of juvenile offenders arrested, the number of Penal Code offences committed by juveniles and the number of juveniles found guilty by the juveniles courts have been on the decrease, the situation in Fiji is however far from healthy. It is to be stressed that these figures represent only the

Table 2: Juvenile Offenders Arrested

1977	-	569
1978	-	547
1979	-	784
1980	-	614
1981	-	532

Table 3:
Detection of Penal Code Offences

	1980	1981	1982
Total Penal Code offences detected	12,479	12,399	12,829
Offences committed by juveniles	614	532	480
In percentage	4.9%	4.29%	3.74%

Table 4: Juvenile Courts
—Juveniles Found Guilty in 1978

Offences	Juveniles Found Guilty
Against property	364
Against person	85
Against morality	27
Other offences	113
Total	589

Table 5: Juvenile Courts
—Juveniles Found Guilty in 1981

Offences	Juveniles Found Guilty
Against property	177
Against person	38
Against morality	22
Other offences	64
Total	381

number of cases that are detected and disposed of by the courts. It is predicted that the number of juvenile delinquents, both detected and undetected, will be on the increase.

Contributing factors to an increasing trend of juvenile delinquency are many, and it is not my intention to enumerate them all here. I intend however merely to highlight some factors which I believe have their respective parts to play in the process of decay amongst our juvenile population.

There is the gradual loosening of parental control. The family has always been looked upon traditionally to provide a child or young person with the necessary care, protection and control. In this day and age, however, pressures are continually being placed upon the family to the extent that it no longer possessed the capacity to provide even the basic care and control of its younger members. The number of single-parent families are continually on the increase due to the rising rate of divorce and child bearing amongst single women. Juvenile delinquency has become a problem child that society has forced it upon itself to babysit as a result of its own permissiveness.

In Fiji, the increase in the number of mothers enterning the labour force is a new phenomenon. The housewife, who traditionally was required to see to the proper development of the child, is being forced to look for employment or engage in other money-earning activity which removes her from the home.

An education system which has placed emphasis on academia needs looking at. Perhaps this is a legacy of our colonial past which has continued to linger on despite more than 12 years of political independence. With a system that continues to place emphasis on academic subjects, some children who are not able to cope with begin to identify themselves, and be identified by others (not least the parents) as failures. Seeing himself as a misfit in an education system, and seeing society as identifying itself with that education system, the child at that age begins to develop within himself a feeling of resentment towards any orderly system, believes he is a misfit in society, and behaves accordingly. It is very encouraging that the Carriculum Development Unit in our Education Department is now doing its best in the diversification programme regarding school curriculum.

One other significant social factor ought to be discussed here. Although under our laws a young man is not considered old enough to enter and drink alcohol in public bars until he is 18 and cannot participate in elections until he is 21, amongst Fijians, the puberty stage in males, around 12-15 years, is the turning point in the relationship between the young man and his parents. At that stage also, the boy is given some freedom from parental control. In essence, the boy begins to be treated as a young adult. Explanation for such a custom in traditional Fijian society is simple if seen in the light of economic activities in the pre-European contact era. At the age of 12-15, a young male was able to do things that adults did and indeed participated in activities which were the domain of adults. Thus at that relatively early age the boy was no longer treated as a juvenile and would have begun spending more with his older mates than with his parents. This continues to be the case today, even subconsciously, among some families with the result that an unemployed school-leaver with little parental control tends to find himself with company that often leads him astray.

Specific Problems of the Juvenile Justice System and Its Administration

Problems Related to Investigation and Prosecution

One significant problem that besets our police juvenile bureau is the lack of specialised training. Desirous as we are to provide such training to all personnel involved in the field of juvenile justice, the lack of financial resources forces us to be content with what we have at present. Without such training, however, it is difficult to have a more meaningful role than

what is presently the case of police officers in the juvenile bureau system who are barely trained in the specialised fields, doing their best to play the role of psychologists when dealing with a juvenile offender and his parent or guardian.

A main problem relating to special proceedings for juvenile cases during the investigation stage is the exercise of discretion regarding disposition by the police. There is a need for clarity in the discretion undertaken by police officers in the juvenile bureau when deciding, even when a young offender has confessed to the commission of the offence for which he was arrested, that a caution should be administered instead of prosecution.

Problems Related to Adjudication

It is quite a difficult task for a magistrate having been used to hearing and dealing with adult offenders in the magistrates court to change approach when it comes to dealing with a juvenile case. Although it is a requirement in the Act, most magistrates find it impossible to remove a juvenile case to a separate building as most centres in Fiji have a single courthouse. A magistrate, in dealing with a juvenile case, is required to have regard to the juvenile's welfare. Under subsection (3) of to Section 21 of the Act, the magistrate, sitting as a juvenile court, is required to hear evidence as he considers necessary in the best interests of justice and of the juvenile. In practice, there may be cases where the interests of justice may not be parrallel with the interests of the juvenile. The Act unfortunately is silent on which is to be of paramount consideration in such a situation. One can at least predict the leanings, subconsciously at least, of a magistrate who in 99% of the cases that come before him in a day *i.e.*, adult offenders, the interests of justice, placing emphasis on punishment, are paramount consideration. Many a magistrate does not have the time to meticulously consider every aspect of a juvenile offender's life and gather as much information and professional advice as possible before he can adjudicate on what is to be in the best interest of the juvenile offender. Perhaps the answer to that could be the setting up of courts with full-time presiding officers possessed with specialised training.

Problems in the Co-ordination of Agencies

As has been mentioned above, there is a need under the present system in Fiji for the role of the police juvenile bureau to be clearly defined. It is interesting to note that a police officer in charge of a juvenile bureau office has the discretion, where a juvenile offender has been arrested for an offence, not to refer the case for prosecution but to merely issue a caution. The bureau's practice at present may be said to be usurping, to some extent, the function of the court which is the agency appointed by law to decide the best form of treatment to be meted out to a young offender who has been found guilty of, or pleaded guilty to, a criminal offence.

It may be said that disposition by police at the investigation stage saves time for the court to deal with relatively major matters. Or it may be that such a practice subscribes to the notion that a young offender should be prevented as far as practicable from being introduced to the rigorous court procedure, being subjected to prosecution and beginning to have a criminal record at such an early stage of life.

It is suggested that the solution to that problem lies not in the assumption by the police of a discretion which the Constitution has vested in the DPP alone, but in the decriminalisation of the juvenile justice system, placing emphasis on the interests of the young offender rather than the interests of justice.

Problems Related to Treatment

The main question here is how best can the quality of treatment that is given to juvenile offenders be raised.

With only 26 welfare officers who also perform the responsibilities as office of probation officers simultaneously, and with the shortage of personnel with specialised training, coupled with limited financial resources and expertise, the quality of treatment still leaves much to be

desired. The philosophy in Fiji's system is that institutional treatment should be resorted to only when all else have failed. But the allowance that is provided to institutions or individuals that volunteer to take in juveniles in need of case is not attractive enough to generate increased community involvement.

The role of citizens in the treatment process is of paramount importance. In a developing country such as ours, resources can be best utilised in educating the community on the primary responsibility of the family and the supportive role that government agencies are only able to play.

Conclusion

In Fiji there is perhaps a need to adopt a total change of emphasis in how the young offender is to be dealt with. The present justice system places emphasis on the paramountcy of justice calling for punishment whereas the juvenile court is also required to have regard to the welfare of the juvenile offender. A system that places paramountcy on the welfare of the young offender with a dicriminalised court procedure that will effectively uphold such a philosophy is called for.

A probation system such as we have can only operate effectively if emphasis is placed on educating the community to assume a greater role in the care, protection, and control of young offenders.

Fiji is a young, developing country made up of insignificant-sized islands. We do not possess the advantages of resources, technology and professionalism available to developed countries such as Japan. In the same view, we do not, as yet, have to deal with problems of sophisticated crime and drug abuse. The present system of juvenile justice has been serving as well and coping with its workload. Like any machinery, however, it will have to have some oiling and changing of parts to make it more adaptable to the rapidly changing world in which we live in.

Existing Juvenile Justice System in Singapore

*by Ng Bie Hah**

Introduction

The term 'juvenile' is defined in the Children and Young Persons Act, Cap. 110, as a "male or female person, who, in the opinion of any court, is seven years of age or upwards and under the age of sixteen years." The term 'delinquency' is not defined in law. The concept of juvenile delinquency as can be inferred from the types of cases that are subject to official action include:

a) juveniles in need of care and protection;
b) juveniles whose behaviour is refractory, e.g. beyond parental control; and
c) juveniles whose offences would be considered criminal, if committed by adults.

General Consideration

In considering the type of treatment for delinquent behaviour, we bear in mind the effect of labelling. Very often, the labelling of a child and young person as a pre-delinquent or delinquent has the effect of aggravating deviant behaviour.

A distinction is made between those who are mildly out of control, whose behaviour may be the result of emotional difficulties or a reaction to authority or simply boredom, and those whose behaviour is symptomatic of deep-rooted maladjustment and personality disorder. We try to differentiate between a simple delinquent act committed by a juvenile and the more persistent type of anti-social behaviour which assumes a repetitive pattern to resemble a career of delinquency. We recognise that many of those who commit minor delinquent conducts once or twice grow out of the pattern of behaviour as they move to adult maturity.

We therefore exercise some prudence in distinguishing the cases of pre-delinquency and delinquency which should be dealt with informally by social service agencies from repetitive delinquency cases. Indeed, doing nothing for some of these former cases may be more beneficial than active intervention of the wrong type. We try to minimise official intervention whenever possible to avoid the labelling of the juvenile as a pre-delinquent or a delinquent in the eyes of family members, neighbours, school and peer group, thus making it easier for him to respond to treatment.

Refractory Children and Young Persons (Pre-delinquents)

The usual refractory conducts are truancy, running away from home, telling lies, stealing, defiance of parental authority, bullying and undesirable social habits and behaviour—behaviour which is considered morally harmful and capable of developing into criminal tendencies, if uncorrected.

When refractory and maladjustment problems appear, juvenile pre-delinquents are, as far as possible, dealt with outside the ambit of the Juvenile Court, unless such persons show no improvement after a period of non-statutory supervision within the community or within the institutions.

Cases of refractory children and young persons are referred by parents or guardians, school principals or teachers, the police and social workers. The Children and Young Persons (Residential & Aftercare) and the Children and Young Persons (Protection & Welfare) Sections of

* Probation Officer, Probation and Aftercare Service, Rehabilitative Services Branch, Ministry of Social Affairs, Singapore

the Welfare Services Branch provide both supervisory and institutional services for these persons.

Given an adequate number of professionally trained staff, the effectiveness of voluntary supervision depends largely on two main factors. Firstly, the co-operation of the child and the parents is essential. The supervision being voluntary can be terminated at any time at the request of the parents. There is a tendency on the part of the parents to terminate supervision prematurely once the child has shown some superficial improvement. Secondly, it is important that a refractory child be referred for help as soon as he shows signs of difficult behaviour. Very often parents have waited too long before seeking help and only realise the urgency of the problem when things go out of hand, or reach the crisis stage, which makes the effective supervision more difficult.

In cases where voluntary supervision is not considered appropriate or where a child or young person has not shown improvement after a period of supervision, it may be necessary to admit him to a Social Welfare Home.

Under the Children and Young Persons Act (Cap. 110), a child or young person can be admitted to a Social Welfare Home on the following grounds:

a) destitution (Section 8),
b) ill-treatment (Section 7 and Section 19(2)),
c) breach of bond (Section 16(4)), and
d) at request of parents/guardians.

Under the Women's Charter (Cap. 47), girls can be admitted to a Social Welfare Home on the following grounds:

a) at the request of parents (Section 145(i)(a)),
b) needing protection but lawful guardian cannot be found (Section 145(i)(b)),
c) ill-treatment (Section 145(i)(c)), and
d) in moral danger (Section 145(i)(d)).

Other government agencies which provide non-statutory, supervisory and specialised services for refractory children and young persons are the Child Psychiatric Clinic of the Ministry of Health and the Social Work Unit of the Ministry of Education, and the Singapore Children's Society, a voluntary organisation.

We recognise, however, that it is a matter of urgency that we should devise some means for the early identification of pre-delinquency. We have yet to develop an effective system to distinguish between those who are heading for criminal careers (who require early and adequate treatment) from those whose "childish peccadillos will be outgrown along with water-pistols and chewing gum."

Where pre-delinquents do not respond to non-statutory measures, they can be referred to the Juvenile Court. Under the provisions of Section 64 of the Children and Young Persons Act, if the parent or guardian of a child or young person can prove to the Juvenile Court that he is unable to control the child or young person, the court, if satisfied:

a) that it is expedient so to deal with the child or young person; and
b) that the parent or guardian understands the results which will follow from, and consents to the making of the order;

may order the child or young person to be sent to an approved home, or may order him to be placed for a specific period, not exceeding three years, under the supervision of a probation officer or of some other person appointed for the purpose of the court.

Juvenile Offenders

The police are the first point of contact between the juvenile offender and the Juvenile Court. Police action determines the types and number of cases that come to the attention of the Juvenile Court. Police discretion is necessary not to proceed with a case with or without a caution and return the juvenile to his parents, to refer the juvenile offender to appropriate social agencies or to institute proceedings in the Juvenile Court against the offender. Though police discretion is not institutionalised in practice, the police do use certain amount of discretion and, more

Table 1: Juvenile Offenders Arrested/Charged in Court/Released by Sex: 1978 to 1981

Year	No. of Juveniles Arrested			No. of Juveniles Charged in Court			No. of Juveniles Released		
	Male	Female	Total	Male	Female	Total	Male	Female	Total
1978	313	12	325	175	4	179	138	8	146
1979	673	46	719	387	18	405	286	28	314
1980	642	49	691	424	28	452	218	21	239
1981	966	48	1,014	443	24	467	523	24	547

Note: This table excludes juvenile offenders who were not arrested by police, *e.g.*, illegal hawking, parents' complaints, etc.

significantly, children under 10 years are generally not prosecuted unless the offence is serious or of public concern. The age of criminal responsibility is 7 years.

Table 1 shows that an average of 45.3% of juvenile offenders arrested by police were subsequently released between 1978 to 1981 without further action being taken on them.

The Juvenile Court will not order a child under the age of 10 years to be sent to an approved school or remand home or place of detention unless for any reason, including the want of a fit person of his own religions persuasion who is willing to undertake the care of him, the court is satisfied that he cannot suitably be dealt with otherwise.

Concept of Treatment-Orientation

In the treatment of juvenile offenders, the Children and Young Persons Act makes a differentiation between a child and a young person on the grounds that age is a correlate of increased responsibility. A child means a person under 14 years old. A young person means a person 14 years of age or upwards and under 16 years.

The focal point of the treatment of the juvenile offenders is the Juvenile Court. The Juvenile Court assumes the principle of guardianship where it is satisfied that a child or young person has committed an offence or is in danger or deviant behaviour. But its guiding principle is not to administer punishment in accordance with the nature and seriousness of the offence but to provide guidance, care and protection. The determination and degree of guilt is not so important as it is in the criminal court. Nor is the rules of evidence followed strictly. The welfare and well-being of the juvenile is the primary consideration. Punishment should be positive and it should not be regarded as retributive or deterrent. Corporal punishment, however, can only be ordered by the High Court. The lower courts have no powers to order a child or young person to be caned.

The concept of treatment orientation is further enhanced by the Panel of Advisers to the Magistrate, Juvenile Court. The members of the panel are appointed by the President of the Republic and are drawn from various walks of life. The present composition of 14 members includes an associate professor of social work, sociologist, medical doctors, social workers, community workers, volunteer probation officers and retired police officers. The function of the advisers is to advise the court with respect to any consideration affecting the treatment of any juvenile(s) brought before it. The panel brings in the human touch in the legal framework of the Juvenile Court.

Protection of the Child and Young Person

The law further facilitates the rehabilitation of the child and young person by various ways. For example, no child or young person, while detained in a police station or while being conveyed to or from the court, or while waiting before or after attending in any criminal court, shall be permitted to associate with an adult (not being a relative) who is charged with an offence other than an offence with which the child or young person is jointly charged. This is to avoid contamination of the child or young person by the adult criminal.

The law provides that a Juvenile Court should sit in a different building or room from that in which sittings of courts other than Juvenile Courts are held, or on different days from those on which sittings of such other courts are held. The law further provides that no person shall be present at any sitting of a Juvenile Court except:

a) members of the court;
b) parties to the case before the court, their solicitors and counsel, and witnesses and other persons directly concerned in that case;
c) bona fide representatives of newspapers or news agencies; and
d) such other persons as the Court may specially authorise to be present.

It is always desirable that the probation officer seeks the prior approval of the court if he wishes his visitors or social work students to observe court proceedings.

No newspaper report on any proceedings of a Juvenile Court may reveal the name, address or school, or include any particulars calculated to lead to the identification of any child or young person concerned in those proceedings either as being the person against or in respect of whom the proceedings are taken or as being a witness. No picture may be published in any newspaper as being or including a picture of any child or young person so concerned in any such proceedings. Only the court or the Minister, if satisfied in the interests of justice to do so, by order dispense with the requirements to such an extent as may be specified in the order. It is therefore wise for the probation officer not to discuss any aspect of the proceedings of the court with a reporter or any other persons who have no interest in the case. A contravention of this provision will result in a fine not exceeding $500/-.

One of the pertinent provisions of the law is the removal of disqualification or disability on conviction of a child or young person. A conviction or finding of guilt of a child or young person is to be disregarded for the purposes of any Act by or under which any disqualification or disability is imposed upon convicted persons.

Powers of the Juvenile Court

The Juvenile Court can deal with the juvenile offender in the following manner. Where the Juvenile Court is satisfied that an offence has been proved or where the child or young person admits its facts constituting the offence, the court can:

a) acquit and discharge the offender or to discharge him in circumstances not amounting to an acquittal;

b) discharge the offender upon his entering into a bond to be of good behaviour and to comply with such order as may be imposed;

c) commit the offender to the care of relative or other fit person;

d) order his parent or guardian to execute a bond to exercise proper care and guardianship;

e) without making any other order, or in addition to a bond, committal to a fit person, order his parent to execute a bond or order the offender to pay fine, damages or costs, to make a probation order for a period between one to three years;

f) order the offender to be detained in a place of detention or remand home for a period not exceeding six months;

g) order the offender to be sent to

an approved school for a period of not less than three, and not more than five years;

h) to order the offender to pay a fine, damages or costs; and

where the offender is a young person (14-16 years old), the offender can be sent to a young offenders section in the prison for such length of time as could be awarded by a District Court in respect to a term of imprisonment, if in the opinion of the court, he is so unruly a character that he cannot be detained in a remand home and other juvenile institutions. Where the Juvenile Court is satisfied on the representations of the manager of a juvenile institution that a young person detained in the institution is not a fit person to be so detained the Juvenile Court can transfer such a person to a young offenders section of the prisons and if he still does not reform, remit the case to a District Court for sentence to reformative training. Reformative trainees will be detained in the reformative training centre for a period of maximum period of three years and followed by one year of statutory supervision. In practice, they spend about 24 months under detention and the remaining of the four-year period under statutory supervision and aftercare.

Procedure in Juvenile Court

Where a child or young person is brought before the Juvenile Court for any offence, the Magistrate is to explain to him in simple language suitable to his age and understanding the substance of the alleged offence.

After explaining the substance of the alleged offence, the court will ask the child or young person whether he admits the facts. If he does not admit the facts constituting the offence, the court will then hear the evidence of witnesses. At the close of the evidence in chief of each witness, he may crossexamine the witness. If the child or young person is not represented by a counsel, the court will allow his parents or guardian or, in their absence, any relation or other responsible person to assist him in conducting his defence, if the child or young person is not legally represented or assisted in his defence, the court will assist him in order to bring out or clear up any point arising out of any assertions he makes.

Usually, in the Juvenile Court, the police prosecutor is a woman who is trained to handle children and young persons.

It is important to note that before deciding how to deal with the offender, the court may obtain such information as his general conduct, home surroundings, school record and medical history, as may enable it to deal with the case in the best interest of the child or young person, and may put to him any question arising out of such information. Such information may include any written report of a probation officer or registered medical practitioners and may be received and considered by the court without being read aloud. For the purpose of obtaining such information, or for special medical examination or observation, the court may from time to time remand the child or young person on bail or to a place of detention.

Probation Report

The Juvenile Court relies on the probation officer to furnish it with a probation report on the offender. Where the court has received and considered a written report of a probation officer or a registered medical practitioner:

a) the child or young person will be told the substance of any part of the report bearing on his character or conduct which the court considers to be material to the manner in which he should be dealt with;

b) the parent or guardian, if present, will be told the substance of any part of the report which the court considers to be material and which has reference to his character and conduct or the character, conduct, home surroundings, or health of the child or young person;

and

c) if the child or young person or his parent or guardian having been told the substance of any part of any such report, desires to produce evidence with reference thereto, the court, if it thinks the evidence material, will adjourn the proceedings for the production of further evidence, and will, if necessary, require the attendance at the adjourned hearing of the person who made the report.

The probation report is to be despatched to the Magistrate and the two Panel of Advisers at least two days prior to the day of sentencing. This is to enable the court to scrutinise the reports and if necessary to request the probation officer to clarify and doubts.

In court presentation, the clarity, accuracy and effectiveness with which the probation officer presents or orally reviews the most significant aspects and facts about the offender and his family have a profound effect on the court's decision in the case. It is necessary for him to be thoroughly prepared and familiar with his case as he has to withstand the crossexaminations of the prosecutor and defence counsel. In these circumstances, the probation officer has to be as objective and thoughtful as possible about mentioning painful information and alert to the constitutional rights of individuals.

The courts rely on the prosecuting officer to inform them on the circumstances leading to the offence and on the probation officer for the character of the offender. In the case of juvenile offenders, the Juvenile Court considers the nature of the offence, but is not the only factor by which the court decides to place an offender on probation. The Juvenile Court considers the social background, the reasons for the offence, the problems facing the offender and his current state of affairs. Therefore, no matter how serious the nature of the offence is, if the Juvenile Court has the reassurance that it can be attributed to other social, psychological and environmental factors, then probation may be accorded. If the Juvenile Court does not place an offender on probation, there would be other reasons than just an emphasis on the nature of the offence.

Between 1976 and 1981, a total number of 3,438 juvenile offenders was disposed off by the Juvenile Court.

The proportion of offenders placed on probation was very much higher than any other form of treatment employed by the Juvenile Court. Probation alone accounted for 1,608 cases or 46.8% of the total cases dealt with. Table 2 below gives a breakdown of the number of juvenile offenders appeared in the Juvenile Court between 1976 to 1981 and number of offenders placed on probation.

Table 2: Number of Juvenile Offenders who Appeared in the Juvenile Court and Number Placed on Probation, 1976-1981

Year	No. of Juvenile Offenders who Appeared in the Juvenile Court	No. of Probation Reports Submitted	No. of Juveniles on Probation	% of Juvenile Offenders Placed on Probation
1976	684	479	307	44.9
1977	467	311	218	46.7
1978	327	244	160	48.9
1979	615	330	261	42.4
1980	671	456	363	54.1
1981	674	419	299	44.4

Table 2 shows that an average of 46.8% of juvenile offenders charged in court were subsequently given probation. This reflects the acceptance by the court of the value of probation as an effective method of dealing with selected juvenile offenders. The Juvenile Court also imposed probation with condition of residence at probation hostels. The attached orders were for periods varying from six to 12 months.

Besides probation, disposition of juvenile offenders including discharge, fine, approved school and reformative training centre committals, transfer to other courts, charges withdrawn etc.

The success rates for juvenile offenders have been generally high. Success in this instance means, the ability of the offender to complete his probation period satisfactorily without any further offences or breach of probation orders.

Non-Institutional Forms of Treatment

Probation continues to be the most favoured form of non-institutional treatment of juvenile offenders.

Section 5, subsection (1) of the Probation of Offenders Act, Cap 117 states that:

> "Where a court by or which a person is convicted of an offence (not being an offence the sentence for which is fixed by law) is of the opinion that having regard to the circumstances, including the nature of the offence and the character of the offender, it is expedient to do so, the court may, instead of sentencing him, make a probation order, that is to say, an order requiring him to be under the supervision of a Probation Officer for a period to be specified in the order of not less than one year nor more than three years."

The probation could apply to any offence except for crimes like murder or treason where the sentence is fixed by law. There are no conditions with regard to the offender's age or sex or the number of times he may be placed on probation.

A probation order imposes certain conditions which must be observed by the probationer during his period of probation. Failure to comply with any of the conditions specified in the probation order constitutes a breach of the order and renders the probationer liable to be brought back to the court to receive sentence on the offence for which he was placed on probation.

To be effective, probation depends on a careful selection of offenders for treatment as well as on the quality of supervision and personal care provided to the offender whilst he is on probation. The aim of supervision is not merely to keep the offender from further trouble during his probation period but also to ensure his continued good adjustment after the termination of his probation order. Success in probation involves more than abiding by the rules of supervision, refraining from further offences and satisfactory completion of probation period. It includes the inculcation of character values consistent with the norms of society, acceptable social conduct, improvement of personal attributes and sense of value which provide respect for the personal and property rights of others.

The probation system has an advantage over other methods in that it does not precipitate a catastrophic break-up of the offender's social and economic obligations to his family and community. It is less costly and more humane than any other form of treatment.

Institutional Form of Treatment for Juvenile Offenders

Approved Schools

The decision to commit a juvenile offender to an institution is taken with judicious care. The Juvenile Court is normally reluctant to remove an offender from his home environment for a long period, but when probation has failed or when the home conditions are not condusive for the offender's rehabilitation, it may commit the offender to an institution for a period of not less than three

years and not more than five years. In practice, however, the average period of committal has been three years.

An approved school is defined as any school or institution or part thereof, for the reception, education and vocational training of children or young persons appointed or established under the provisions of the Children and Young Persons Act, Chapter 110.

The rehabilitation programme is geared towards providing the juvenile with the necessary facilities and opportunity to enable healthy growth and normal development.

The rehabilitation programmes in the various juvenile institutions are centred around the following areas:

a) vocational training
b) education programme
c) recreational activities
d) community services
e) religious guidance
f) counselling.

There is no special home for female juvenile delinquents because the number of female offenders is too small to warrant the setting up of a separate home. Female delinquents are admitted to approved homes which cater for pre-delinquents. They undergo the same rehabilitation process as the latter.

Parole and Aftercare

A juvenile offender can be considered for release on parole licence if he has stayed in an institution for 12 months and has made sufficient progress in his training. In practice, however, the average period a juvenile offender spends in an institution is 18 months.

Juvenile offenders released on parole licence are being placed under the supervision and personal care of an aftercare officer. The aftercare for parolees from approved schools comes under the Rehabilitative Services Branch. The aftercare officer helps the parolee to re-establish himself in the community as a socially useful and law-abiding citizen.

The Parole Board

The Parole Board, appointed under Section 92(3) of the Children and Young Persons Act, performs the following functions:

a) review and make recommendations to the Director of Social Welfare on the discharge and aftercare of juvenile offenders under detention; and

b) review the progress of the juvenile offenders released on licence and make recommendations to the Director of Social Welfare to revoke the licence issued and recall the juvenile offender to serve the unexpired portion of his original period of detention if he failed to abide to the conditions stipulated in the parole order.

Where the juvenile offender completes his period of parole without committing a breach of the requirements or further offence(s), his case will be closed and classified as 'success.'

Juvenile Institutions in Singapore under Welfare Services Branch

Residential facilities for boys and girls are administered by the Welfare Services Branch. They are:

a) Hostels—Namely the Bukit Batok Boys' Hostel for probation cases and Pasir Pasir Boys' Hostel for young probation cases, orphaned, destitute and refractory juveniles.

b) Perak House—An approved school/home and a place of safety established under the Children and Young Persons Act. The home caters for pre-delinquent or boys with behavioural problems in the age group of 6 to 16 years and offenders committed by the Juvenile Court preferably under 12 years old and schooling.

c) Toa Payoh Girls' Home—This home is gazetted as a place of safety under Part X of the Women's Charter. It also serves as a remand home, approved school/home and place of detention under the provision of the Children and Young Persons' Act. This home receives in its care, girls up to the age of 16 on remand or committed

by the Juvenile Court, involved in offences or delinquent behaviour. It also caters for those engaged in prostitution or very difficult or promiscuous behaviour.

d) Singapore Boys' Home—The home is gazetted under the Children and Young Persons' Act (Cap 110) as an approved school/home, remand home, a place of detention and a place of safety. It provides rehabilitative training for boys under 16 years of age at the time of their committal to the home.

e) Katong Children's Home and Wilkie Road Children's Home cater for female and male children under 16 years of age because of unfit parents/guardians/unsuitable home environment, ill-treated, abandoned, destitute and orphaned.

f) Jalan Eunos Girls' Hostel—This hostel is gazetted as an approved institution. It caters for girls between 14 years to 21 years of age who are orphaned, destitute, ill treated and who have no homes to return on their discharge from girls' home or children's home or in conflict with their families and require a place of shelter pending their differences; and girls placed on probation with a condition of residence in a hostel.

Community Probation Service

The community probation service was introduced in 1971. It was aimed at bringing the work of probation and aftercare to greater public notice since the system of probation and aftercare works best in a community which understands and accepts the objectives, principles and methods of probation. The community probation service takes the form of a Volunteer Service Programme whereby talented citizens are recruited, trained and deployed to assist the full-time probation and aftercare officers in the supervision and personal care of offenders.

The Probation of Offenders (Amendment) Act 1975 brought into operation on 1 March 1976 entrusts volunteer probation officers with the legal responsibility for supervising probationers.

There are three categories of volunteer probation officers:

Table 3: Length of Service of VPOs

Length of Service	VPO			Total
	GVPOs	RVPOs	TVPOs	
> 12 mos.	–	–	36	36
1 – 2 yrs.	4	44	–	48
2 – 3 yrs.	8	36	–	44
3 – 4 yrs.	11	4	–	15
4 – 5 yrs.	23	12	–	35
5 – 6 yrs.	44	35	–	79
6 – 7 yrs.	12	5	–	17
7 – 8 yrs.	29	15	–	44
8 – 9 yrs.	–	–	–	–
9 – 10 yrs.	1	1	–	2
10 yrs. <	15	3	–	18
Total	147	155	36	338

Note: 160 VPOs or 47.3 percent had more than 5 years' service in the Community Probation Service as at 31.12.82.

a) Trainee volunteer probation officers—they are under practical training after undergoing classroom training. They are eligible for registration after 6 months of practical or fieldwork attachment.

b) Registered volunteer probation officers—These officers qualify for gazetting after one year's service. They help in enhancing the effectiveness of supervision by supplementing the work of full-time probation and aftercare officer.

c) Gazetted volunteer probation officers—Registered volunteers who perform extremely well may be selected to take on the legal responsibilities for the supervision of probationers placed under their personal care.

The gazetted volunteer probation officers complement the work of the full-time probation and aftercare officers. By assigning the less problematic cases to gazetted volunteer probation officers, the full-time probation officers can concentrate better on problematic cases whose delinquency stems from deep-rooted problems.

The membership of the Community Probation Service at the end of 1982 stood at 338 volunteer probation officers, made up of 147 gazetted, 155 registered and 36 trainee probation officers. They come from all walks of life. Many have been with the Community Probation Service for more than 10 to 5 years. Table 3 below shows the length of service of VPOs. It shows that 160 VPOs or 47.3 percent had more than five years of service in the Community Probation Service as at 31.12.82.

The volunteer probation officers assist in the supervision of 226 cases or 35 percent of the probation caseload of the Rehabilitative Services Branch.

SECTION 3: GROUP WORKSHOPS

WORKSHOP I: Role of the Police in Dealing with Juvenile Delinquency

Summary Report of the Rapporteur

Chairman: *Mr. Shiro Hirohata*
Rapporteur: *Mr. Mohan Lall Kalia*
Advisors: *Mr. Masaharu Hino*
Mr. Toshihiko Tanaka

Titles of the Papers Presented

1. The Responsibility of the Police in the Quest for a Better System and Administration of Juvenile Justice in Burma
   by Mr. U Kyaw Myint (Burma)
2. Fight Crime Campaign in 1983/84 in Hong Kong
   by Miss Wong Kwai-lan, Verena (Hong Kong)
3. Reflexions on the Adequate Means to Prevent Juvenile Delinquency in Developing Countries
   by Mr. Ahmed Seddiki (Morocco)
4. Role of Police in Controlling Juvenile Delinquency in India
   by Mr. Mohan Lall Kalia (India)
5. Prevention of Crime in Relation to Juvenile Delinquency
   by Mr. Yahaya Isa (Malaysia)
6. Comprehensive Countermeasures against Hot-Rodders (*Bōsōzoku*)
   by Mr. Shiro Hirohata (Japan)

Introduction

The group consisted of all the police officers attending the course from six different countries. The participants had the same professional background, training and expertise. The detailed discussions were marked by an approach and afforded an opportunity, for sharing knowledge and experiences about strategies and methodologies being adopted to cope with the problems of juvenile delinquency in the backdrop of varied, though almost similar, causes of criminality, as also for a better appreciation of the role of the police in this context. The homogeneity of the group led to the development of a high constructive consensus in depth and the members had a clearer perception of the police problems and police work in a broader framework of their special discipline. In this report are incorporated the summaries of participants' papers, followed by a brief gist to discussions, and conceptual understanding.

The workshop was privileged to have the benefit of attendance by Professor Dr. Günther Kaiser, the visiting expert, who took active interest in the proceedings.

The Responsibility of the Police in the Quest for a Better System and Administration of Juvenile Justice in Burma

Mr. Myint at the outset referred to the increase in juvenile delinquency in recent years in Burma as in other countries, for example, armed and unarmed robbery increased from 7 in 1980 to 14 in 1981 and to 26 in 1982. Aggravated thefts were recorded 225 in 1980, 210 in 1981 and 423 in 1982. Simple theft data is 541 in 1980, 331 in 1981 and 669 in 1982. Cases of assault causing serious injuries were 98 in 1980, 138 in 1981 and 206 in 1982, while assaults leading to minor injuries were 334 in 1980, 350 in 1981 and 555 in 1982.

Possessions and/or use of drugs cases rose from 10 in 1980 to 12 in 1981 to 150 in 1982. Rape and attempted rape cases were 48 in 1980, 43 in 1981 and 63 in

1982. Murders and attempted murders were 75 in 1980, 81 in 1981 and 61 in 1982 indicating a decrease recently. Vagrancy cases were 47 in 1980, 20 in 1981 and 100 in 1982. Prostitution cases' figures were 28 in 1980, 26 in 1981 and 269 in 1982 and gambling cases were 54 in 1980, 47 in 1981 and 101 in 1982. Consequently the number of juvenile delinquents involved has also increased manifold.

The basic cause for this criminality is poverty which leads to the lowering of standard of living, unhealthy environment and less attention to moral values and character. In addition, poor families cannot afford proper education of their children.

Mr. Myint brought out the role assigned to the police by the British Colonial Masters as their hand stick to oppress and suppress the working people and thus the people usually had bitter experiences with police behaviour, emphasis of the British being on the maintenance of law and order. After the annexation of Burma by the British in 1885, the police officer corps was provided by the colonial military officers and the lower ranks by the Indian Sepoys. Burmese nationals were appointed only after the patriotic rebellions had subsided.

No wonder, the popular attitude remained unchanged towards the police even after independence of Burma in 1948, and the police force has to take new initiatives to organize friendships among the citizens. Quality of recruits to police was improved and degree-holder educated young men are being recruited in larger numbers. In addition, it was decided to introduce proper training facilities in the training institutions. For playing an effective role as an essential component of the criminal justice system, the police have to be firm and efficient on the one hand and unfailingly patient and courteous towards the people. At the same time they must also treat all offenders fairly and justly.

According to Mr. Myint, police bear a very important responsibility in prevention and treatment of juvenile delinquency and would perform the following duties according to laws and rules: (a) to send the delinquent to a medical officer to determine his age and to present such medical report to the court; (b) not to threaten or torture the offender; (c) to release an offender on bail with sureties normally and to refuse bail for offender's own security from criminals; (d) to send an offender to a remand home and if that is not possible, then to treat him at his own home with care and sympathy; (e) not to use handcuffs or other such restraints at all, and use a police car for transportation instead of a prison van; (f) not to wear uniform when handling such cases in court; (g) not to prosecute an escapee from police stations or remand homes, but to search and restore him to institution, etc.

Normally an adult and a juvenile offender, having committed an offence jointly, will be dealt with separately in the respective courts; but if separate trial may not be possible, due to insufficiency of evidence etc., then both will be charged in the adult court. In case of an offence punishable with death committed jointly, the trial shall be in an adult court.

Mr. Myint brought out that a police officer of the minimum rank of sub-inspector must produce before the court a child in the following circumstances:

If he is without parent, guardian or home and has no legitimate means of subsistence or is a beggar; if the parent or guardian is unfit or unwilling or incapable of exercising proper care by reason of criminal habits, insanity, disease, depravity, etc.; if he is living in an environment of prostitution or of criminals; if he refuses to obey reasonable directions and admonition of parents or guardian; if he is in need of medical or custodial care being afflicted with some serious and contagious diseases; etc.

Mr. Myint concluded by observing that the Burmese Government in its concern for the youth has introduced comprehensive programmes and training courses in

youth affairs to canalize their energies in the nation building projects and thus prevention of juvenile delinquency is also achieved as a side effect. The government also appreciates the need for improving the efficiency of the police by providing increased numerical strength and modern equipment.

Fight Crime Campaign in 1983-84 in Hong Kong

Miss Wong presented the proposals on the publicity and community involvement strategy to be adopted for the 1983-84 Fight Crime Campaign as prepared by the Community Relations and Publicity Bureau of the Police Public Relations Wing, Hong Kong. These proposals have already been endorsed by the Fight Crime Committee, Hong Kong and the campaign has been launched w.e.f. 1.7.1983. The Hong Kong Police were encouraged to launch this campaign targetted at the 16-20 age group, as the earlier Fight Youth Crime Campaigns conducted in 1981-82 and targetted at under the 16 age group had brought about a significant decline in prosecutions in 1982 for robbery by 41.4%, for burglary by 36.2%, for theft by 34.5%, for criminal damage by 26%, and there was an overall drop of 22.8% in the prosecution of juveniles. This achievement could be ascribed to the forces of the Government and the community harnessed together to tackle a complicated problem with commitment, enthusiasm and professionalism.

Miss Wong explained that the earlier campaigns, spearheaded by the Junior Police Call and supported by the other youth clubs and agencies, featured the launching of the Stars Against Crime Committee, extensive use of T.V., radio and print media, community activity and involvement in all regions, a Four-Day Fight Youth Crime Camp Seminar for 800 young persons, a major JPC recruitment exercise (with JPC membership of 337,400 and 11,557 JPC leaders on 1.7.1983), the formation of 294 JPC School Clubs (213 in secondary schools and 81 in primary schools) and widespread use of innovative posters and other media publicity material.

Statistical analysis has led to the inference that between 1980 and 1982 young men of the 16-20 age group were responsible for 23% of all criminal prosecutions in Hong Kong and that the young men of this age group pose the biggest threat to law and order which would be evident from the prosecution percentage for violent and key crimes in the last three years:

Violent & Key Crime	1980	1981	1982
Murder and manslaugther	32	29	33
Serious assault	23	23	23
Robbery	32	33	37
Blackmail	29	24	24
Damage to property	17	23	22
Kidnapping	30	38	14
Burglary	26	29	30
Theft from vehicle	23	29	31
Taking conveyance w/o authority	44	50	51

The primary target audience of the campaign will be 291,600 males aged between 16-20 as the female prosecutions were relatively insignificant. According to the Correctional Services data, those most likely to be involved in crime could be labourers or other mannual workers (52%), workers of service industries (12%), clerical and salesmen (11%) and the unemployed (10%). They generally belong to less educated classes and are liable to be living under severe domestic, financial or employment pressures and do not normally join organized bodies or community-related activities (71.7% are unmarried and they are mostly Chinese).

The secondary target audience will be people like parents, wives, girl friends, relatives, friends, workmates, social workers, teachers, regular and auxiliary police officers, JPC and other youth leaders, etc., who can guide and influence the

primary target audience positively.

The main objectives have been listed as dissuading primary target audience from involvement in crime and to persuade them to lead better lives, keeping in mind that the public were aware and prepared to report their criminal activities with police, persuading the secondary target audience to use its guidance and influence to stop the primary target audience from becoming involved in crime, making the public aware of the harm and trouble caused by this small group vastly disproportionate to its size and enlisting the public to co-operate in adopting practical crime prevention and security measures at home and at work and by reporting crime and supplying information to police and by becoming witnesses against criminals.

The strategy will mean a carefully balanced mix of strong media publicity and community-related activities by involving Government Departments, Junior Police Call and its leaders, youth organizations, District Fight Crime Committees, Mutual Aid Committees, Owners' Incorporations, etc.

The profile of a young criminal will be depicted by identifying the average young male criminal in Hong Kong and to expose him with a telling and dramatic effect in media publicity and localized activities for all the public to recognize, primarily in the Chinese language and using English also in the production of material related to crime prevention, security and anti-drugs messages.

Miss Wong explained that maximum media resources will be mobilized to reach the widest targeted audiences. and the general public. Current police T.V. programmes, the weekly "Police 15" show and the annual "On the Beat" series already draw over 2 million audience on the Chinese channels and plans have been chalked out for providing a short "On the Beat" T.V. series directed specifically at the young male audience. Such material will also be specially included in the "Junior Police Call" weekly programme. Four to five T.V. publicities (Announcement of Public Interest) featuring selected members of the Stars against Crime Committee highlighting various facets of the campaign will be produced and featured regularly on T.V. Radio will be used to complement this effort at the times of the day when it attracts larger audiences than T.V. Members of Fight Crime Committees at different levels will be encouraged to make speeches and announcements.

Newspapers will be supplied stories and articles regularly and posters aimed directly at young people and at the general audience will be issued and even a member of the Stars Against Crime Committee may be displayed on them. To attract young people, sponsors will be sought for distribution of lapel badges, T-shirts, etc. The Government Information Services Mobile Theatre, the new Police Mobile Exhibition Unit and Police Static Exhibition Stands will be utilized extensively in the campaign.

Miss Wong explained that while much of the community involvement programme will be directed at the major campaigns—anti-drugs and issue of identity card—all efforts will be made to promote the Fight Youth Crime Campaign at central and district levels.

JPC will continue to spearhead the campaign with an emphasis on the role of JPC leaders who at district levels will be tasked to seek out young men "at risk" and encourage them to become involved. A membership drive of JPC will be further intensified and leaders will establish close ties with other youth organizations for ensuring widest coverage. Funds will be provided to JPC District Councils who will devise their own activities.

Stars against Crime is proposed to be made a compact body and its members should be the most popular figures in films, T.V., sports, willing to play an active role in promoting the campaign. The District Fight Crime Committee are proposed to be briefed by Police Community Relations Officers/District Liaison Officers to rekindle the interest of Mutual

Aid Committees and Owners Incorporations for playing a meaningful role in the campaign.

The JPC Office of the Police Public Relations Wing will organize the "Fight Youth Crime Camp" Seminar to accommodate 300 male participants, comprising of JPC leaders and members, other youth organizations and a number of young men "at risk." The Prison Preventer's Organization will be invited to utilize its members to give talks to young offenders and others about their experiences regarding their own damaged lives and also on how to steer clear of being involved in crime.

During the last ten years, 1,365 citizens have been awarded a sum of H.K.$1.5 million under the Good Citizen Award Scheme, jointly organized by the police and the Hong Kong General Chamber of Commerce, and to widen the scope of the scheme, it is proposed to institute Good Citizens of the Year Awards with greater monetary benefits and publicity to further enthuse the public in general and young men in particular to be more willing to make citizen arrest and actively assist the police in fighting crime.

Reflexions on the Adequate Means to Prevent Juvenile Delinquency in Developing Countries

Mr. Seddiki, in his paper, focussed his observations on juvenile delinquency in the context of economic and socio-cultural problems in developing countries.

For a long time various national and international authorities have been examining the phenomenon of juvenile delinquency. This phenomenon particularly cristalized after the Second World War, due to its aftereffects, especially on children and adolescents. The developed countries which were the first concerned by this problem then started to search for the causes of this evil and for solutions to remedy it. During the sixties, marked by affluence of these developed countries, a new kind of unadapted childhood developed due to other reasons. The authorities and experts of the said countries tackled the problem in the same way and methodically.

The sixties were also characterized by the decolonization of a very large number of Third World countries or developing countries; very quickly these countries became aware of an uneasiness with their children and adolescents, which rapidly developed into a criminal phenomenon.

The impact of the massmedia has introduced the bad behaviour of youngsters of developed countries to those of developing countries.

Developed countries have analyzed the phenomenon and defined solutions, taking their own context as a starting point. They had at their disposal the economic, financial and human resources allowing them to decree and apply appropriate solutions. They also had a certain organizational infrastructure through the various public and private organizations dealing with the protection of childhood and which had been operating for a long time.

Which then was the attitude of the developing countries? Most of them committed the error of following suit. This was a serious mistake since incomparable elements can not be compared. Life in one country and another differs completely.

Analyses which had been elaborated elsewhere could not be fully applied to their situation for the aforementioned reasons.

The solutions proposed elsewhere could not objectively suit them. Moreover, they are inapplicable through lack of financial and human means. Solutions of their own should be developed.

It is obvious that these countries should benefit from the positive experiences of developed countries whilst taking into account the real data of each country. They should also take advantage of the scientific methods to approach such problems.

With regard to this problem, it is beyond doubt that the present situation of developing countries is very worrying indeed. This situation progressively becomes worse to the point of constituting a danger

for all the countries concerned. Hence it is necessary to identify the real causes and to attack patiently the roots. Prevention of and measures to fight juvenile delinquency should be the concern of the entire nation and not only of a few specialized organizations.

Economic problems entailing juvenile delinquency in under-developed countries can be identified through the demographic growth. We must not leave the galloping demographic growth, preceding by far the economic growth, as a misfortune for developing countries. Action should be taken in this field for various reasons.

1) Demographic growth creates large and poor families. Consequently it is impossible for the parents to exercise material and moral control over their children. As a consequence juvenile delinquency develops.

2) An over-populated country is a country of unemployment. The parents' feeling of insecurity inevitably triggers that of the children and results in maladjustment and delinquency.

3) Developing countries are materially unable to organize school attendance for all children. Idleness will entail delinquency.

4) In such a situation school attendance is more or less scamped because of overcrowding. Hence dropouts leave school. Being without any professional qualifications, they will be unemployed and drift into delinquency.

5) In such a situation it is also impossible to decently accommodate everyone in towns. Youngsters will be traumatized by disgust and will be led to delinquency.

These are a few striking examples of the effects of demographic growth on juvenile delinquency. Countries who are anxious to prevent this kind of delinquency are objectively obliged to stop the overpopulation. Thus they will create a situation which can be dealt with and controlled both at family and state levels.

Developing countries should seriously examine certain data concerning sociocultural problems.

It is certain that all developing countries at present have known brilliant civilizations characterized by so-called traditional values which ruled social life. These traditional practices are not inconsistent with the emancipation of the individual and of human progress. Two aspects of efforts to be made for the preservation of these values may be pointed out as follows: (a) education which makes the child assume responsibility with regard to himself, to others and to public matters, and (b) solidarity of families, neighbourhood and villages in the education, protection and supervision of the children.

The situation of rural depopulation being as it is, everything should be done to prevent it from worsening. The developing countries should promote a policy of rural fixation.

It is a fact that, in developing countries, State is relied upon for everything, so much so that people forget their own duties: State is considered as an inexhaustible treasure. Everyone should be reminded of their duties towards their offspring. Families should become conscious of the dangers they are exposed to.

The massmedia should undergo a judicious and careful control in order to avoid that bad behaviour, identified elsewhere, be imported.

Health is also to play an important role in this sector. Practices to envisage the screening of venereal diseases which are responsible for numerous misfortunes to children, seem to be particularly advisable.

Urbanization also deserves particular attention so as to thwart unscrupulous speculators and promoters who produce the soil of delinquency through the creation of certain popular neighbourhood in the towns.

Juvenile delinquency in developing countries is a real scourge which everyday spreads further into the social substructure. For this reason, it is essential to attack the roots, and at the same time, to take traditional preventive measures using available means.

Role of Police in Controlling Juvenile Delinquency

Mr. Kalia explained that prior to India achieving independence in 1947, the alien rulers used the police as their arm of oppression, terror and torture of the people who, including young men and women, fought the tyranny, defied all draconian laws and overthrew the foreign yoke by offering supreme sacrifices.

Impelled by momentous movements of spiritual, social and moral reform and problems thrown up by industrialization, economic development and improvement in communications, the British and Indian princely rulers, under the impact of the ideas and knowledge of the United Kingdom and the Western world, framed laws for the care of the children, prevention of juvenile delinquency, safeguarding juveniles' interests during detention and trial and for providing education, probation and rehabilitation. Some illustrations are: the Indian Penal Code of 1860, the Reformatory Schools Act of 1897, the Code of Criminal Procedure of 1898, the Childrens' Acts of Madras 1920, of Bengal 1922, of Cochin 1936, of Travancore 1945; the Borstal Schools Acts of Madhya Pradesh 1920, of Madras 1926, of Bengal 1928, of Bombay 1929; Juvenile Smoking Acts of Assam 1920, of Cochin 1920, of Madhya Pradesh 1929; the Bombay Probation of Offenders Act 1938, the Jammu and Kashmir Children's Court Act of 1946.

Further detailing the legal development after independence, Mr. Kalia referred to the Constitution of India of 1950 which guarantees to its citizens social and economic justice and enjoins upon the state, as a directive principle of state policy, to ensure "that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment." The Union Parliament and State legislatures codified these humanistic, liberal and compassionate aspirations to provide for modern and progressive methods, procedures and institutional framework for dealing with child neglect and abuse, increasing juvenile delinquency and immoral exploitation of girls and for making provision for the care, protection, maintenance, welfare, training, education, rehabilitation, probation, aftercare services, etc. Some illustrations of such laws are: the Suppression of Traffic in Women's and Girls' Act (1956), the Probation of Offenders Act (1958), the Children Acts (framed by Parliament and almost all of India), the Young Persons (Harmful Publications) Act (1956), the Women's and Children's Institution (Licensing) Act (1956), the Orphanages and Other Charitable Homes (Supervision and Control) Act (1960).

Referring to the police as the principal and prepondarant agency for effective law enforcement, Mr. Kalia stated that the Indian laws had allotted to the police its primary functions of maintenance of law and order, protection of life and property, collection of criminal intelligence investigation and apprehension of offenders leading to their prosecution and maintenance of criminal records and the same role was to be performed by the police in the application of social defence legislation with some curtailment of police powers considered conducive to achieve the aims of the laws. Under the Children Act, if a police officer arrests a delinquent child, the parent or guardian will be informed of the arrest with the direction to be present at the children's court where the child will be produced and the probation officer will also be informed immediately to enable him to conduct necessary social inquiry for consideration by the court.

The officer in-charge of the police station will produce the child before the children court as soon as possible, within twenty-four hours, and the court will consider his release on surety or otherwise and may send him to a remand home, if his release may not be desirable in the child's interest. The police officer also at his own level may consider releasing

the child on sureties or may send him to a remand home for safe custody till the orders of the court are received, but in no case he will send the child to a jail or keep him at the police station. In the case of a neglected child, the police officer will either take charge of him and produce him before the child welfare board for appropriate disposition within twenty-four hours, with simultaneous information to parents and guardians to appear before the board, or may let the child off on surety by parent or guardian to produce the child before the board or send him to an observation home, but will not keep him at the police station or send him to prison, until he can be produced before the board. The child shall not be handcuffed, fettered or kept under the close guard. Except the time of arrest, the police officer should wear plain clothes and not the uniform. The police officer will assist the court or board during a hearing for the child's disposition. The police shall trace and return the absconding juveniles to the children's institutions.

Mr. Kalia referred to the recommendation of the National Police Commission for amending section 173 of the Code of Criminal Procedure for requiring "the investigating police officer to collect some information and data relevant to probation work even at the stage of investigation and refer to them in appropriate columns in the charge sheet" to be presented to the court. Under the Probation of Offenders Act, the police will trace and apprehend or take charge of the absconding offender and inform the probation officer and produce the absconder before the court or board. On release of an offender on probation supervision, the police need to work in co-ordination with the probation officer. The police officers should not arrest the probationers on simple suspicion and if a probationer commits a fresh offence, the police should inform the probation officer and the court accordingly. The police need to help the probation officer in the tasks of follow-up, aftercare and rehabilitation of probationers, when references for character verification are received, the police should not give advice remarks to probationers without any justifiable causes. Mr. Kalia briefly dwelt upon the role of the police in implementation of Suppression of Immoral Traffic in Women and Girls Act and the Anti-Beggary Act.

Developing this theme, Mr. Kalia referred to the direction of the General Assembly of the International Criminal Police Organization in 1949 to its National Bureaus for increasing their initiative in the prevention of juvenile delinquency. The ICPO restressed in 1953 that in their role as protectors of youth and not as the arm of law, the police should be able to exert decisive influence to keep the young people out of trouble. The First United Nations Congress on the Prevention of Crime and the Treatment of Offenders at Geneva in 1955 resolved that the institution of special police services for juveniles within the general organization of the police should be encouraged. The Conference of Central and State Senior Officers of Criminal Investigation Department in 1954 in India took note of the urgent need for the police to play this social service role and look deeper into police methods for improving the same. There have been honest doubts and disputes among social defence specialists and policemen as to whether the police should strictly stick to its time-honoured role or should contribute its mite in preventing juvenile criminality to a significant extent by playing a service role in a more meaningful manner. This dilemma was beautifully summed up by Chief of Social Defence Action of the UN, at the UN Seminar at Frascati, Italy, in 1962, as under: '(a) There seems to be a consensus of opinion that where the police are inevitably in contact with youth, they should have the special capacity and special training concerning youthful behaviour; (b) The controversial area is the one in which the police enter to take on individual group services, not normally identified with police functions and on the contrary, generally identified with agencies running social services, guidance

programmes and constructive use of leisure time; (c) the consideration which should guide the evaluation in whether the programme fits into the larger picture of the community's general policy regarding the character of police functions." In 1965, the National Seminar at New Delhi on Juvenile Delinquency and the Role of the Police was attended by members of Government, high ranking administrators and police officers, eminent social scientists and criminologists, senior officers of the correctional services and well-known academicians. Its important recommendations were (a) that the police must take the positive role in preventing juvenile delinquency and handle the problem with firmness and sympathy, but before the role is adopted, the lower ranks particularly should be suitably trained for appropriate and efficient discharge of duties; (b) that in preventing delinquency, the police must identify specially crime-prone areas and intensify its patrolling and efforts and study and examine causes which produce delinquency in these areas; (c) that the police should secure the co-operation of parents, schools and teachers and public institutions interested in the problem; (d) that all concerned agencies, including police, should organize recreational activities: (e) that the provision of specialized units to deal with juveniles should be improvised and exanded with larger involvement of women police; (f) that the states should adopt methods of coordinating the efforts of all concerned juvenile justice system agencies and institutions, and (g) that a special attempt should be made by the police to help children on probation and persons coming out of correctional institutions to adjust themselves to normal life.

The handicap of initial resistence to adopt new methods and approach, in the background of colonial-era legacy and attitude, is being gradually overcome through intensive training of all ranks and the process has been accelerated with the induction of highly educated and idealistic young men and women at all levels. The guidance and encouragement by national leaders like Jawaharlal Nehru and successor prime ministers, who were imbued by the Gandhian spirit, has been highly valuable in making the police aware of their responsibilities towards the society and its weaker and vulnerable sections including women, children and potential delinquents in the context of a welfare state. Juvenile aid units/bureaux have been opened in metropolitan areas and taking note of the performance of these specialised groups. The National Police Commission has recommended the extension of the service to all the urban areas initially, to be followed by the rural areas in due course and the association of these units in investigations of cases conjointly against adults and juveniles. In addition, juvenile recreation clubs have also been established in some urban areas and there is a need to expand this scheme too.

Looking to the magnitude of the problem, there is an urgent need for organizing training for the staff at lower levels on a much larger scale for ensuring better appreciation and assimilation of the modern sociological and criminological concepts and promotion and motivation for their enthusiastic participation in dealing with juvenile delinquency in a more constructive, humane and meaningful manner. The trust of the citizenry will have to be won in a greater measure with a radically transformed image of the police through constant display of sympathy, kindness and persuasive firmness towards the juveniles, and in a fresh climate the police may be entrusted with playing bigger and non-traditional roles.

The police are strategically so placed in the legal and social setting that, with their vast network, they are in constant contact with people, including juveniles. During patrolling, investigations, etc., they are always receiving vital information about criminals and potential juvenile delinquents. This intelligence can be utilized to identify problematic situation and to render counsel to parents, teachers and school authorities, community elders and interested public workers in the

normal course of police-community contacts. A policeman cautioning or guiding erring urchins is appreciated by the public. The authority, influence and information available with the police is of invaluable aid to probation officers, social and community workers and all authorities dealing with juveniles.

The role of the police, probation officers, correctional and other social defence services, whether official or voluntary, are distinct and demarcated but none of them can afford to act in isolation, as that can only injure the common cause. Their close co-operation and collaboration, while respecting and appreciating each other's role, is absolutely essential to tackle the multi-dimensional problems of juvenile delinquency and juvenile welfare and the police are dedicated to make their contribution with a devoted spirit of service to the society and the State.

Prevention of Crime in Relation to Juvenile Delinquency

Emphasising the importance of prevention, Mr. Yahaya mentioned the adage: "Prevention is better than cure"; and if preventive measures are dealt with effectively, fund could be saved by the relevant authorities in providing such as correctional training or aftercare facilities and various other expenses. The police, however, is often criticised by the general public when crimes frequently occur. Nevertheless, police preventive action alone is not sufficient without the support and co-operation from others. Consideration has to be given regarding the magnitude of the police responsibility and the various constraint such as the limitation of manpower resources, insufficient authoritative power and the lack of support and co-operation.

Certain category of crime will occur no matter what preventive action is taken. Therefore, preventive measures can only be taken against the preventable type of crime; the rise and fall of which indicates the effectiveness or otherwise of the action taken.

It is also difficult to determine what category of incidents is considered a crime and what is not. It depends on the police and the perception of the people. However, juveniles do get involved in minor cases.

Mr. Yahaya went on to add that the contributing factors towards crime may be taken into consideration in planning for preventive action. However, some of the contributing factors are poverty, joblessness, temptation, curiosity, etc., but though known, such as poverty, only little can be done within a short time to remedy it.

Crime preventive scheme could be a short or a long-term project, or both, depending largely on the gravity of the problems, the types and the frequency of the crimes being committed. A short-term project has also its advantages, especially when it can be of great impact instantly, moreover extra efforts can be obtained from participating groups through their intensified action. In addition, crime preventive measures may be dealt with as a direct or an indirect approach.

Elaborating the role of the police, Mr. Yahaya explained that one of the tasks of the police is to prevent and detect crime, and to apprehend offenders. To this end, the police maintains regular beats and patrols which are crime prevention. However, when crime increases, the need of special measures becomes more apparent. To intensify action, police normally steps up beats and/or patrols and set up road-blocks at strategic spots. They also carry out check on "red" areas, bars, night clubs, etc.

Informing the general public, banks, firms, etc., through personal contact, massmedia and over T.V. or radio networks regarding the precautionary safety measures, holding exhibitions showing the various types of equipment used to prevent crime and holding crime-prevention week are efforts on crime prevention. The police should deliver lectures to schools and youth clubs; warn or advice juveniles or through their parents when and where necessary. The police should also advice

and coordinate with any voluntary body or agency on crime prevention.

The society should also have a role to play in crime prevention, especially when the causes of crime are the negligence on their part for taking in sufficient safety precaution, such as exposing valuable articles unguarded, usage of inferior quality locks, iron grills or fence.

In addition to the above, the public can also assist by way of forming association which could be multi-purpose with crime prevention as one of its aims. They may in turn patrol in their locality in coordination with the police.

Detailing the public participation in this process, Mr. Yahaya informed the group that in Malaysia, the Community Self Reliance Scheme (Rukun Tertangga) compels every male between 18 years of age and 54 residing in the Third Category of the Scheme to patrol in his area by turn and this has assisted in crime prevention. Vigilante corps has also contributed towards that end.

Other societies or associations too, such as the Red Crescent, the St. John Ambulance, the Boys Brigade and the 4B Youth Clubs which may not necessarily contribute directly towards crime prevention, but juvenile members of such bodies are taught self-discipline and other virtues to be good future adults, thus preventing them being involved in delinquency.

Education Department and schools have also a fundamental role to play in crime prevention both as a direct and indirect approach. Amongst other things, the students are to be taught moral and religious values. Promoting recreational, cultural and sporting activities would certainly help them to develop willpower, self-confidence, a kind of leadership quality and thus preventing them from mixing with the wrong company. Formation of Cadet Corps (the Military or Police), the Boys Scouts or the Girl Guides movement, will promote discipline and self-control. Coordination between parents or guardian and other agencies will also have a useful purpose.

Speedy action against any wrong-doer will be a deterrent not only to the student concerned but also to the others.

The parents/guardian are in fact the persons who are largely responsible for their children's behaviour and conduct, and therefore much to be blamed for any wrong-doing committed by the children. Therefore, parents/guardian should exercise proper care and control of their children; and provide them with good education, including religious education. A regular contact with the school to check the children's progress in school is of significant importance. A definite and appropriate action should be taken against the child if he commits breach of law or discipline.

Mr. Yahaya concluded with the observation that to achieve more meaningful and effective result, preventive measures have to be taken seriously by all parties concerned.

Comprehensive Countermeasures against Hot-rodders in Japan

Mr. Hirohata dealt with the special problem of the hot-rodders (so-called *Bōsōzoku* in Japan) who drive a large number of vehicles or motorcycles in such manners as speeding, disregarding traffic signals and illegally overtaking other vehicles. These young drivers organize groups and are active mainly from Saturday night to Sunday dawn under the direction of the leaders, relying on the power of the numbers. In other words, the term "hot-rodders" means those who drive recklessly and illegally in swarms, which causes considerable danger to the traffic of the general public and much trouble of other people. Regarding the age-breakdown of hot-rodders, juveniles (less than 20 years of age) amount nearly to 80 percent. As to their level of education, about half of the employed and unemployed are the dropouts from senior high school, and those who are employed and unemployed occupy about 80 percent among the hot-rodders.

Since the Road Traffic Law (as amended in 1978) prohibiting concurrent hazard-

ous acts came into effect, the disturbing and reckless activities of the hot-rodders calmed down for some time. After 1979, however, their reckless activities were activated again, and an emergency meeting was held in 1980 attended by the representatives of the related ministries and agencies. At this meeting, they discussed matters relating to:

a) the promotion of comprehensive and organizational measures against hot-rodders;
b) the creation of anti-hot-rodders atmosphere among the general public;
c) the guidance of youths at home as well as in the communities;
d) the creation of a social environment which does not allow their reckless acts;
e) the strengthening of the control and prevention of repeated reckless acts; and
f) the prevention of illegal furnishing of vehicles.

As the result of this meeting, strong measures against reckless youths have been taken in close cooperation with the related organs and organizations.

Analysing the situation, Mr. Hirohata explained that some of their members are senior high school students, and considerable part of them are dropouts from schools. So it seems that their low achievement in schools and unadaptation to their educational environment tend to cause such delinquent behaviour. In order to make it possible for schools to provide education responding to the ability and aptitude of each student, fundamental and appropriate measures should be taken.

Mr. Hirohata concluded with the observation that in order not to allow youths to commit any violent act, the police and other related organs in the community have been making every efforts. But further greater variety of efforts to solve this problem must be continued for the time being.

Gist of Discussions

(1) The causes of juvenile crime, such as increase in population, indifference or over-indulgence by parents due to comparative poverty or affluence, insufficient supervision and influence of school authorities, loosening cohesion of communities due to industrialization and urbanization leading to cultural alienation, increasing permissiveness in social mores and morals, diminishing regard for the family/community elders and all authority, are common to countries with differences of their degrees.

(2) The ever increasing numbers of juvenile crimes are causing concern to all police forces. To meet the situation, the police should take the greater initiative in preventing crime by establishing closer contact with parents, teachers, community elders, social workers, as well as youth groups in an organized systematic and sustained manner. From time to time, special campaigns for a sufficiently prolonged period should be undertaken in an intensive manner to achieve viable results.

(3) Looking to the progress in ideas and the actual experience and the preparedness of the police as a result of extensive and intensive training and the desired attitudinal adaptation, coupled with the measure of trust, the society may repose in the police in this regard. The possibilities of the police being allocated a non-traditional role of service in dealing with juvenile delinquency in due course, depending upon the need of the juvenile justice system of a country, could be visualized and considered, particularly in a situation where the judicial arrears may tend to mount due to various reasons and the correctional and probation services may not be able to cope up with the situation adequately.

(4) Close co-operation and collaboration of different agencies of juvenile justice system, both official and unofficial in the common endeavour of combating juvenile delinquency, is absolutely essential and the police should enthusiastically take part in co-ordination of activities.

(5) All modern mass media including TV, radio, cinema and the press should

be utilised to project to the youngsters and the public the increasing dimensions of juvenile delinquency causing consequential harm and to educate and inspire them to play an active role in weaning away the endangered young men and women from the perilous path, as also to exercise parental and social control and engage in moral and spiritual guidance in an effective manner. The people should also be enthused to assist the law enforcement agencies as a matter of social responsibility, although it may entail some inconvenience and expense to them and the police should go out of their routine way in ensuring necessary protection and help the public in this regard.

(6) With the approval of the government and the support of the people, the cadet corps, the self-help community and voluntary organizations, etc., should be involved in playing a meaningful role in combating juvenile delinquency.

WORKSHOP II: Issues Related to Prosecution

Summary Report of the Rapporteur

Chairman: *Mr. Toshihisa Asao*
Rapporteur: *Mr. Kim, Jin Gwan*
Advisor: *Mr. Shu Sugita*

Titles of the Papers Presented

1. Extent and Use of Discretion in the Prosecution Process in Fiji
   by Mr. Etuate V. Tavai
2. System of Suspension of Indictment on Condition of Judicious Guidance
   by Mr. Kim, Jin Gwan (Korea)
3. Specific Problems of Juvenile Justice System in Relation to Investigation, Prosecution and Adjudication of Offences of Youthful Offenders
   by Miss Perlita J. Tria Tirona (Philippines)
4. More Meaningful Role for Public Prosecutors in Juvenile Justice System
   by Mr. Pongsakon Chantarasapt (Thailand)
5. Recommendation of Punishment Made by Prosecutor
   by Mr. Toshihisa Asao (Japan)
6. The Role of Public Prosecutors in Juvenile Cases in Japan
   by Mr. Akira Nakata (Japan)

Introduction

This group consisted exclusively of public prosecutors. The main theme of the group discussions was the part that the public prosecution sector does and can play in the field of juvenile justice.

Extent and Use of Discretion in the Prosecution Process in Fiji

If the prosecution agency has to be involved in diverting a juvenile delinquent from the formal justice system, it is imperative that it should first possess the discretion to do so. This was stressed by Mr. Tavai of Fiji in his presentation.

Mr. Tavai began by observing that in his country, no less than the Constitution of Fiji itself creates the office of the Director of Public Prosecutions and vests in that office the widest possible discretion to institute, undertake, take over and continue or discontinue any criminal proceedings before any court of law. Such wide discretion is accompanied by the protection of independence of office, ensuring freedom from any possible interference, political or otherwise. The Constitution specifically stipulates that a person shall not be qualified to hold or act in the office of Director of Public Prosecutions unless he is qualified for appointment as a judge of the Supreme Court.

Mr. Tavai said that in Fiji, public prosecutors advise the police and government departments on the desirability of prosecutions and they conduct prosecutions and appeals before the various courts throughout the country. The bulk of their work naturally emanates from the police. Police files which are forwarded to the public prosecutors fall into one of two categories: (a) files requesting advice on sufficiency of evidence or whether or not charges should be laid; and (b) files requesting prosecution assistance from Crown Counsel. In addition, the public prosecutors office receives representations from solicitors or members of the public regarding charges pending before the courts. On receipt of such representations, the public prosecutor may call for the relevant police docket for review.

In any of the above cases, the public prosecutor may make any of the following recommendations:

(a) that prosecution should be in-

stituted or continued,

(b) that prosecution should not be instituted,

(c) that nolle prosequi (stay of proceedings) should be entered,

(d) that the charges should be withdrawn, and

(e) if the charges are in the alternative, that the more serious charge should be withdrawn or nolle prosequi entered in respect of it.

In deciding whether or not to institute proceedings, the first point which a Crown Counsel considers is whether on the evidence collected, there is a case to be put before a trial at all. In cases where the law is not so clear, the prosecutor has to take a hard decision whether to proceed or not. Mr. Tavai pointed to the difficulty in that there are at least two standards of satisfaction which a prosecutor may apply. The first is the *prima facie* test, whether or not there is a mere *prima facie* case. Then there is the somewhat more stringent *"51 percent" test*, whether there is more likely that there would be a conviction than an acquittal. The decision on which test to apply depends largely on such considerations as the youth or mental age of the offender, the relationship between the offender and the victim, etc., and the weight attached to them by the attitude and make-up of the particular Crown Counsel responsible for the case.

Mr. Tavai presented a case study as an example where an advice of no prosecution was given in a case of indecent assault involving a juvenile offender even though a *prima facie* case had been established. He also discussed the authority of the public prosecutor to stay proceedings in court without giving reasons, to withdraw complaints, and to accept a guilty plea to the lesser charge and discontinue proceeding on the greater charge.

Mr. Tavai then discussed the difficulty faced by public prosecutors in relying totally on police initiation of criminal proceedings. Although the public prosecutor may exercise his discretion by either entering nolle prosequi or withdrawing the charges, by that stage the accused has been subjected to the stigmatizing effect of arrest, criminal charge, pre-trial detention, etc. Where the public prosecution is consulted by police prior to the laying of the charge, it is limited to charges of complex crimes or questions of law, and is conditional on the police decision to seek advice. At times, police eagerness to proceed with a case may be so overwhelming that the public prosecutor has to continually remind himself that as a minister of justice he must exercise his discretion dispassionately and with perfect fairness.

Mr. Tavai concluded that the existence of wide discretionary powers in the prosecuting authority is of particular significance in the prosecution of juvenile cases when the exercise of discretion can be made not only from the standpoint of the public interest but more particularly the interest of the juvenile.

System of Suspension of Indictment on Condition of Judicious Guidance in Korea

Mr. Kim, Jin Gwan in commencing the presentation of his paper, stated that juveniles are more vulnerable to infection with social evils than adults because the personalities of juveniles are not yet mature. However, they may, for the same reason, be judiciously guided out of such infection more easily than adults, if proper measures are taken. Accordingly, the system of suspension of indictment on condition of judicious guidance was created in Korea in 1978.

This system is peculiar to the Korean criminal procedure. The term "suspension of indictment on condition of judicious guidance" indicates a decision by a prosecutor to suspend an indictment of a juvenile offender on the condition that the said juvenile is given protection for judicious guidance purposes by a guidance committee member. From a legal standpoint, suspension of indictment on condition of judicious guidance may be viewed as a sort of suspension of indictment to which protective supervision is attached

as an incidental condition.

Guidance committee members, who undertake the principal role of the system of protection for judicious guidance purposes, are classified into two categories depending upon the methods in which they are appointed. One is a standing member and the other is a non-standing member. The former is appointed by the Minister of Justice and serves as such during a fixed term of office. The latter is appointed by the prosecutor who deals with a certain juvenile delinquent and is to play the role of a guidance committee member concerning that juvenile delinquent case only. Guidance committee members serve on a voluntary basis.

The suitable subject of a decision tc suspend indictment on condition of judicious guidance would principally be a juvenile offender who is less than 18 years of age and who appears unlikely to commit a crime again. The seriousness of the delinquency in question should not be taken into consideration. However, those who have committed public security offences, crimes involving narcotics, heinous offences, organized or habitual violence, pickpocketing, and conspicuously infamous crimes are excluded as subjects.

The prosecutor in charge of a certain juvenile case decides whether or not to suspend indictment of juvenile on condition of judicious guidance after viewing the seriousness of the crime and circumstances under which the crime has been committed. In making such decision, the prosecutor examines two documents entitled, "Table of Data Concerning Pre-estimation of Likelihood of Misconducts" and "Survey of Environment of a Juvenile Criminal." In addition, the prosecutor may take into account;

i) the opinion of the parents, teacher, or superior at the workplace of the juvenile,

ii) whether the juvenile has compensated the victim,

iii) the feelings of the victim,

iv) documentation of the behaviour of the juvenile during the period of detention, and

v) any other appropriate factors.

If the prosecutor intends to suspend the indictment of a juvenile delinquent, the prosecutor should have the juvenile execute a written oath that the juvenile will observe certain rules. The period for judicious guidance is 6 months, although it may be extended twice, 3 months each time.

If the juvenile commits another crime or violates the rules or if his whereabouts become unknown during the period of supervision, the prosecutor in charge may revoke a suspension of indictment on condition of judicious guidance after hearing the opinion of the relevant guidance committee member. The prosecutor who has revoked such a suspension of indictment should investigate the relevant case again and make a fresh decision. Since the above-mentioned system came into effect, 12,352 juveniles have been granted suspension of indictment on condition of judicious guidance. Among them, 250 juveniles have committed offences again, and the rate of recidivism is approximately 2%, which may be deemed quite low.

Specific Problems of Juvenile Justice System in Relation to Investigation, Prosecution, and Adjudication of Offences of Juvenile Offenders in the Philippines

Miss Perlita J. Tria Tirona of the Philippines preceded her presentation by saying the situation of criminality in general, and juvenile delinquency in particular in her country is no different from other Asian countries. The crime rate in 1982 increased by 4% from that of the preceding year due primarily to continuing economic crises and industrialization, among other factors.

The primary causes cited in the growing problem of juvenile delinquency are unemployment, poverty, family disintegration, vice and crime, and urbanization and modernization which are inherent in every city.

The specific problems confronting the juvenile justice system at the level of the

police are the lack of specially trained police officers or personnel to investigate juvenile offenders. This problem, however, can be solved by the proper selection, training and development of necessary personnel who will be responsible for the training, treatment and discharge of their duties related to juvenile offenders. Likewise, while the Integrated National Police has training programmes, the same does not include courses on juvenile control. There is a need for a wider training programme to include a basic course on juvenile control in order to provide juvenile affairs officers with the knowledge of principles in juvenile delinquency, administration and management, procedures and policies on the prevention, treatment and control of juvenile delinquency.

Another problem is the absence of specific juvenile units in some City/Municipal Integrated National Police (INP) Stations, or if there are juvenile units, there is lack of competent staff which possesses the aptitude and temperament suited for handling problems of the youth, and with sufficient knowledge of behavioural science. In the City of Manila, however, there is a youth aid center in the police headquarters charged with the duty of investigating youthful offenders who are 15 years of age or below.

From the point of view of the prosecution, the role of the prosecutor in the criminal justice system is provided for in Presidential Decree 911 the pertinent provision of which provides that "if a *prima facie* case is established by the evidence, the Investigating Fiscal or State Prosecutor shall immediately file the corresponding information in court. If he feels that there is no *prima facie* case, he shall dismiss the case."

The prosecutor or the fiscal therefore, on the basis of the said provision is not free to divert from the court cases in which a *prima facie* evidence against the accused exists. If the prosecutors were to be given this authority to divert cases affecting juvenile offenders from the courts, it would greatly diminish the burden of the courts. And for the minors involved, they could avoid the trauma or possible stigma of having a case filed against them.

As regards adjudication, before the reorganization of the judiciary in the Philippines, there were juvenile courts existing which had jurisdiction over juvenile offenders who were under 16 years of age at the time of the trial. The court social services were part of the juvenile courts and were manned by social workers who conduct an intake interview on minors and/or his parents or guardian. From the information gathered during the intake, the social workers can determine the services needed by the minor. The social workers also provided emotional support to those minor offenders by informing them of their legal rights in layman's language, as well as by interpreting to them the court's objectives, procedures and services to lessen their anxiety.

With the reorganization of the judiciary under Batas Pambansa Bilang 129, the Juvenile and Domestic Relations Courts and other specialized courts were abolished and all such courts were converted into regular Regional Trial Courts.

The Supreme Court, however, may designate certain branches of the Regional Trial Courts to handle exclusively criminal cases, juvenile and domestic relations cases, agrarian cases and such other special cases as the Supreme Court of the Philippines may determine in the interest of a speedy and efficient administration of justice.

The Regional Trial Courts as presently constituted, therefore, are not provided with the specialized professional staff which can readily determine and evaluate what direction each case of a juvenile offender should take.

However, in spite of all the foregoing problems, Miss Tria Tirona confirmed the children and youth in the Philippines are assured of juvenile justice. The rights of the children are amply protected under Presidential Decree 603 otherwise known as the Child and Youth Welfare Code.

Moreover, the Council for the Welfare of Children was created, charged with the duty to coordinate the implementation

and enforcement of all laws related to the promotion of child and youth welfare.

More Meaningful Role for Public Prosecutors in Juvenile Justice System

In his presentation, Mr. Pongsakon Chantarasapt also spoke on the discretionary powers of public prosecutors in Thailand, and he firstly noted that a Thai public prosecutor may not commence criminal proceedings by himself. During the period when a criminal offence is reported up to the time of completion of investigation by the police, the public prosecutor has no legal role to play. His involvement begins only when the investigation file is referred to him by the police.

The public prosecutor may issue a prosecution or non-prosecution order after having considered the file of investigation submitted to him. His authority to issue a prosecution or non-prosecution order is not restricted by law. Even when he believes that the alleged offender has committed the offence and there is sufficient evidence to support the prosecution, he may issue a non-prosecution order if he has sufficient ground for doing so. Normally, the public prosecutor will base his decision to prosecute or not to prosecute on the evidence collected and contained in the investigation file and on his anticipation as to what would be the result of the prosecution.

It is very strange that the public prosecutor may direct the police to make further investigation while he may not initiate or commence or carry out the investigation himself. Under this system, the public prosecutor normally exercises his discretion by relying almost wholly on the file prepared by the police investigator. Naturally, the police investigator tends to make his file as much convincing as possible that the alleged offender arrested by the police is the actual offender. On the other hand, where malpractice is involved, the file can be arranged in favour of the alleged offender.

Mr. Chantarasapt pointed out another difficulty in that the police personnel who deal with juveniles are actually the ones who work regularly on adult cases without any special training in juvenile justice. So most of such personnel always tend to concentrate on establishing the guilt of the offenders rather than being interested in the backgrounds and the existing environments of delinquent juveniles in question.

On the part of the public prosecutors, even though special divisions and offices have been set up to deal exclusively with juvenile cases, most of the personnel assigned to these divisions and offices are the ordinary public prosecutors being transferred from one place to another from time to time without any special training in juvenile justice.

The juvenile justice system in Thailand fully operates only in the Bangkok Metropolis and five other major provinces of the whole country. In all other centres, juvenile offenders are subject to the regular criminal procedure of the ordinary provincial courts. According to Mr. Chantarasapt, this must be viewed as the most significant shortcoming of the juvenile justice system in Thailand.

Mr. Chantarasapt then referred to situations when a public prosecutor feels that prosecution of a particular case is impossible because of insufficient evidence but he is convinced that the juveniles in question are delinquents who should be closely observed and supervised by the appropriate officials. Under the existing juvenile procedural law he may not direct anything of such manner but simply release the particular youth without any condition whatsoever. In this respect, Mr. Chantarasapt believes a provision of law should be enacted so as to authorize the public prosecutor to issue an order directing the particular juvenile to be placed under the supervision of the Juvenile Observation and Protection Centre or, at least, to report to the probation officer periodically for a certain duration of time.

Recommendation of Punishment Made by Prosecutor

Mr. Toshihisa Asao of the Osaka District Public Prosecutors Office in Japan enlightened the group with his paper on how a public prosecutor in Japan comes to determine the form of punishment which he recommends to the court in a particular case.

Mr. Asao commenced by stating that in the Japanese criminal procedure, although the court has the final say in how an offender should be treated, the public prosecutor takes an important part in arriving at that decision. In the course of a trial, the prosecutor must make his closing argument which consists of his opinion on the facts and his recommendation of what he believes to be the proper form of disposition.

Generally speaking, the prosecutor's recommendation is highly respected by the court since the recommendation is made after very careful consideration of the nature and gravity of the offence, the circumstances of the offender, and judicial precedents of similar cases. It is also certified by having the consent of the prosecutor's superior colleagues.

Mr. Asao noted that the prosecutor's efforts to find out the most appropriate form of disposition in each case has been made more difficult due mainly to two factors. Firstly, judicial precedents are not always available, and secondly, the standard on which the prosecutor's consideration is based has been changing in conformity with the situation in society. Mr. Asao cited as an example the case of *Norio Nagayama* in the Supreme Court as illustrative of the difficulty in finding out the most suitable disposition, especially in heinous cases.

Mr. Asao said that in the Osaka District Public Prosecutors Office, there are committees in the trial department to discuss the assessment of dispositions regarding several types of offences, such as homicide, violent crimes, and offences against the Stimulant Drugs Control Law. In these committees, prosecutors analyse previous sentences in order to provide available data on which they can base their recommentations in present cases.

Mr. Asao observed that the *Norio Nagayama* judgment by the Supreme Court had a great influence on society so that today the problem relating to the assessment of penalty, especially in heinous offences, is a subject of great interest not only to lawyers but also to the general public. Therefore, Mr. Asao concluded, the prosecutor as a representative of the public interest has the great responsibility to see to it that the court metes out appropriate dispositions in particular cases.

The Role of Public Prosecutor in Juvenile Cases in Japan

Mr. Akira Nakata of Japan wrote about the role of the public prosecutors in juvenile cases in Japan.

Under the present Japanese juvenile law, all the juvenile cases are referred to the Family Court which is to make a decision as to whether criminal proceedings or protective measures should be taken against a juvenile offender. A juvenile case may as an exception be sent to the public prosecutor by the Family Court in accordance with Article 20 of the Juvenile Law only when the court deems it appropriate that criminal proceedings be taken against the juvenile.

Thus, under the present juvenile law of Japan, the public prosecutor has limited powers concerning juvenile cases. The public prosecutor cannot participate in the hearing before the Family Court and what he is empowered to do is to submit his recommendation or opinion as to the decision to be made by the court only when the case involves an offence punishable by imprisonment or death.

It is essential therefore for the public prosecutor in Japan to make a criminal investigation as detailed and as exhaustible as possible not only of the offence itself but also of the related factors, to enable him to submit a suitable opinion when he refers the case to the Family Court.

It was further pointed out by Mr.

Nakata that most often, the opinion of the public prosecutor in juvenile cases is reflected in the decision of the Family Court.

It is possible, however, that the decision of the Family Court may be more severe or more lenient than the recommendation or opinion of the public prosecutor as in the cases cited by him where he recommended probation for a 19-year-old juvenile offender for bodily injury but the Family Court referred the case to the public prosecutor for criminal proceedings. In another case involving a female juvenile arrested for using stimulant drugs, he recommended criminal proceedings but the Family Court decided to place her on probation.

In these cases, while the public prosecutor is required by law to submit his opinion or recommendation in every case referred by him to the Family Court, the prosecutor cannot, however, appeal against the decision of the Family Court even if the decision differs from the opinion of the public prosecutor.

Mr. Nakata therefore believes that it is also necessary to co-operate with the juvenile classification home in order that the public prosecutor can recommend the appropriate action to the Family Court.

With respect to the method of investigation, under Article 48 of the Juvenile Law, a warrant of detention shall not be issued in a juvenile case except when an unavoidable circumstance exists. Therefore there is a need to examine carefully the juvenile's role in the commission of the offence and the surrounding circumstances of the offence to enable the public prosecutor to determine whether a warrant of detention is necessary.

Finally, Mr. Nakata stated that because of the importance of the role played by the public prosecutor in promoting the rehabilitation of juveniles, the public prosecutor should always take this into account whenever he conducts an investigation involving juvenile offenders.

Conclusion

The papers presented by the group members were most edifying and the discussions that ensued were lively and enlightening, drawing together the experiences of the respective members with regards to their roles as public prosecutors while encountering juvenile cases in their respective places of work.

One of the concluding themes that came out clearly in the discussions was that public prosecutors, generally, needed to be more aware of the need to treat juvenile offenders differently from adult cases. This involves constant alertness which may mean the consideration of factors which lie beyond the mere examination of sufficiency of evidence. In that regard, the public prosecutor, it was recognized, plays a vital role in deciding how a juvenile offender is to be dealt with by the justice system, or whether he should be dealt with at all.

WORKSHOP III: Court System and Proceedings of Juvenile Cases

Summary Report of the Rapporteur

Chairman: *Mr. Ramji Prasad Tripathi*
Rapporteur: *Mr. Ranjit Bandara Ranaraja*
Advisor: *Mr. Hidetsugu Kato*

Titles of the Papers Presented

1. Special Treatment in Juvenile Session in Indonesia and the Problem of Juvenile Delinquency and the Handling thereof in Indonesia
   by Miss Andi Djawiah Amiruddin SH. (Indonesia)
2. Some Countermeasures to Enforce the Effective Disposal of Juvenile Cases in a Family Court
   by Mr. Minoru Okamura (Japan)
3. The Judicial System in Nepal
   by Mr. Ramji Prasad Tripathi (Nepal)
4. Suggestions for Improving Juvenile Justice System in Pakistan
   by Mr. Nasrullah Khan Chattha (Pakistan)
5. Defence of Children's Rights as a Way to Prevent Delinquency
   by Mrs. Helen Esther Salguero Fernandez (Peru)
6. Legal Representation of Juveniles with Special Reference to Sri Lanka
   by Mr. Ranjit Bandara Ranaraja

Introduction

The group comprised of three district judges, one juvenile judge, one magistrate and one senior public prosecutor. Mr. Omata, family court probation officer from Japan, participated in the workshop as an observer. The group discussed many matters which fell outside the subjects covered by the papers read by the participants. However, what is being presented is not a report of the proceedings in the strict sense, but a summary of each paper and includes only such parts of the discussions relevant to clarify points in each paper.

The Problem of Juvenile Delinquency and the Handling thereof in Indonesia

Miss Amiruddin commenced her paper by describing the judicial structure in her country. In Indonesia there are four kinds of jurisdiction each with its own authority to adjudicate, under the Law No. 14 of 1970. They are: the general jurisdiction, the religious jurisdiction, the military jurisdiction and the state administrative jurisdiction. All four jurisdictions are under the Supreme Court which is the highest court.

The courts of general jurisdiction are the courts of first instance located in the capital of each district and the High Courts located in the capital of each province.

In Indonesia there is no law which provides for the creation of juvenile courts. A judge of the court of first instance at special juvenile sessions tries and sentences juveniles below the age of 16 years who come into conflict with the law. The Penal Code (Criminal Law of Indonesia) sets out the manner in which juveniles are to be dealt with. A judge could choose any of the following dispositions; return the child to the parents/guardian without punishment, place the child under the custody of the state without punishment, or impose punishment.

If the order is to place the child under the custody of the state, he may be sent to a youth training institute under the supervision of a person, family, an organization or foundation.

If the order is one of punishments, the sentence that could be imposed on a juvenile should not exceed 2/3rd the

maximum sentence that could be imposed on an adult for the same offence. In the event the offence carries a penalty of death in case of an adult, a juvenile who commits the same offence is subjected to a maximum period of 15 years imprisonment.

It was revealed however that in Indonesia a juvenile who commits a crime is not generally regarded as a criminal but as a delinquent needing treatment. Hence, from the commencement of proceedings in the juvenile sessions provision is made to create a family atmosphere in court. The juvenile sessions are held in a room other than that in which adults are tried. The judge and the prosecutor shed their gowns. Sessions are closed to the public. In every juvenile case a report of the probation officer is called for.

Explaining the rights enjoyed by juvenile offenders in Indonesia, Miss Amiruddin said a juvenile has the right to be immediately interrogated by a prosecutor, the right to counsel, right to contact and be visited by his relatives while in detention, the right to call witnesses to give evidence on his behalf and the right to cross-examine witnesses for the prosecution.

Miss Amiruddin added that besides juvenile delinquents, pre-delinquent juveniles prone to deviant behaviour such as disobeying the just orders of parents or guardians or foster parents, leaving the house without the permission or knowledge of his parents, guardians or foster parents, associating with criminal or immoral people, visiting place which are prohibited to juveniles, often using foul language, committing acts that have an undesirable effect on the personal, social, spiritual and physical development of children, are liable to be committed to a youth training school for further education and care and to undergo courses in vocational training with the aim of preventing the child from committing punishable acts and to enable him to readapt himself to his family and his environment.

Miss Amiruddin, explaining the measures taken by the government of Indonesia to protect the youth from negative influences, said strict censorship of movies, literature, illustrations depicting acts of violence, sex and crime has been imposed. All forms of gambling, gang activities among youth are prohibited. Drug offences carry a penalty of life imprisonment. She added that the government has taken further positive measures with the same objective such as strengthening religious and social norms in societal life and through the five principles of the *Pancasila*, namely, the belief in one almighty God, a just and civilized humanity, the unity of Indonesia, democracy led by the wisdom of unanimity arising from deliveration among representatives, and social justice for the entire Indonesian nation.

Finally Miss Amiruddin stressed the need for greater cooperation and coordination between the law enforcing and social welfare authorities in her country.

Arising from matters referred to in Miss Amiruddin's presentation, the advisor proposed that the group discuss the punitive aspect of juvenile justice. As the group unanimously accepted the proposal he went on to explain the different aspects which could be considered. A discussion followed along the guidelines suggested by the advisor. In Indonesia it was the exclusive duty of the police to conduct investigations into offences. On the completion of investigations a dossier of the case was forwarded to the public prosecutor who upon being satisfied that sufficient evidence to prove the charge was available filed formal charges in court. If he was not so satisfied he had the right to enter an order of non-prosecution. Once a charge was filed the right to punish was exclusively in the hands of the appropriate court. In Japan a public prosecutor is obliged to forward all cases to the family court. The family court could thereafter deal with the juvenile with the object of "treatment" or rehabilitation. Where the family court is of opinion that punishment is an appropriate disposition, if the offender had attained the age of 16 years, the case is referred back to the public prosecutor so that appropriate steps can be

taken by him to initiate criminal proceedings against the juvenile in the district court, which then has the power to punish the juvenile. It was disclosed that in Pakistan and Sri Lanka the public prosecutor had no powers of diversion under normal circumstances, all juvenile cases being dealt with by juvenile courts on rehabilitative or punitive dispositions. The position was similar in Nepal while in Peru the concept of punishment of juveniles was unknown.

Discussing the question of punishment the advisor drew the attention of the group to the different forms of sentencing and nature of imprisonment imposed in different countries such as life, determinate and indeterminate periods of imprisonment. In Japan, for example, an indeterminate prison sentence could be imposed provided the upper and lower limits of the period were specified. In Indonesia, Sri Lanka and Japan if the juvenile is under the age of 18 years, no death sentence could be imposed on him. Fines as a method of punishment was available in Nepal, Pakistan, Sri Lanka and Japan. Corporal punishment could be imposed both in Pakistan and Sri Lanka.

Though Mrs. Salguero Fernandez opposed any form of punishment being imposed on juveniles, the majorities felt punishment was the only alternative where, for example, repeated rehabilitative measures had failed to achieve the desired effect or where the offence was of such a serious nature or the offender was of such a vicious charactor that interests of society required the imposition of punishment.

Some Countermeasures to Ensure the Effective Disposal of Juvenile Cases in a Family Court

Mr. Minoru Okamura explained broadly the procedure followed by the family courts of Japan in juvenile cases and stressed that family court probation officers who are responsible for the investigation of juvenile cases under the direction of the judge are facing great difficulty in carrying out their functions speedily, due to the rapid increase in juvenile cases. The problem has been further aggravated by the shortage of court staff brought about by the retirement of experienced officers. For these reasons, he submitted, the time had come to review the present disposal procedures prevalent in family courts of Japan. In this regard he offered the valuable experience of the family court of Osaka to dispose of cases fairly and speedily with the available resources, as an example which could be emulated.

He then explained the measures taken by the Osaka Family Court since June 1981. Firstly, all newly received cases, except *kan-i* (very minor) cases, are categorized into three groups, namely, *keii* (minor), *jun keii* (quasi minor) and ordinary cases, in accordance with prescribed criteria for which similar rehabilitative dispositions would be imposed. Secondly, the available court staff was taken into account in assigning each group of cases to them in such a manner as to ensure their systematic impartial and uniform disposal.

Mr. Okamura, describing the measures adopted by the Osaka Family Court, said the earlier practice of allocating cases to each judge by turn had been discontinued. Instead, the Osaka Family Court has organized the judge's unit system composed of three judges. Newly received cases are allotted to each unit instead of each judge. The most experienced judge presides over the "intake unit" to which all newly instituted cases are referred. *Kan-i* cases are disposed of by the judges in the intake unit summarily, most of them being dismissed without hearing. *Keii* cases and *jun keii* cases are referred to a probation officer's screening unit specially established comprising of the most senior family court probation officer and two other probation officers. All *keii* and *jun keii* cases are investigated by probation officers in this unit. After investigation, these cases are sent back to the judge's intake unit which disposes of them mostly by dismissal without hearing.

The cases categorized as ordinary cases are referred to other judge's units which refer them to the screening unit of the probation officers. In addition to this unit there are a number of probation officers' units equivalent to the number of judges' units. The screening unit of the probation officers refer all ordinary cases to such probation officers' units according to the efficiency, ability and case load. Once the probation officers' units have completed investigations the cases are referred to the respective judges' units which made the order for investigation, through the screening unit.

Mr. Okamura stated that as a result of the new procedure adopted by the Osaka Family Court *keii* and *jun keii* cases are being disposed of without delay thereby reducing the burden placed on the juvenile, his parents and others concerned. He added, at present approximately 56% of all cases are being disposed of at an early stage of the proceedings which has helped to shorten the roll of pending cases to a great extent. Further, the probation officers, freed from the task of investigating very minor cases, are able to spare more time to investigate the ordinary cases more thoroughly. Besides, each probation officers' unit could work as a team to investigate more difficult or important cases, rather than individually and thereby pool their experience and knowledge.

Finally, insisting that the counter-measures taken at the Osaka Family Court had brought favourable results, Mr. Okamura suggested that the same measures be adopted by other family courts throughout Japan.

The group discussed the mode of dismissing cases without hearing by the family courts of Japan. It was disclosed the judge after perusing the reports of the police and public prosecutor requests the family court probation officer to conduct social enquiry. On the basis of the report the judge decides whether to proceed any further or not. The judge normally has no direct contact with the juvenile when he dismisses the case without hearing. The group was of opinion that such a system may be conducive to safeguarding the interests of the juvenile as well as reducing the burden of work placed on family courts.

It was revealed during the course of the discussions that in Pakistan a complainant could "compound" or settle a case with the accused with the permission of court. In which event the accused stood acquitted of the charge. A complainant in Sri Lanka in addition to the same right granted under Pakistani Law has the right to arrive at a compromise with the accused even at the investigative stage.

Discussion was then focussed on the reasons for the large-scale retirements of family court staff and family court probation officers. Mr. Okamura explained that the family court structure was introduced soon after the Second World War. Staff recruited at that time had now reached the age of retirement. However, he added that steps have been taken to train an adequate number of court officials. The group agreed that training of family court probation officers and court staff on a continuing basis was essential for the efficient functioning of the court while at the same time appreciating the steps taken to introduce innovations to overcome the immediate shortage of staff. Mention was also made of the steps taken by the judicial service commission to train staff during court vacations in Sri Lanka.

The Judicial System in Nepal

Mr. Tripathi describing the judicial system of Nepal informed the group that it consists of the Supreme Court, five Regional Courts, 14 Zonal Courts and 75 District Courts. The Supreme Court was established by the Supreme Court Act of 1956 which was later repealed and superseded by the Supreme Court Act of 1963. The Constitution of Nepal sets out the powers and functions of the Supreme Court which include both original and appellate jurisdiction. The Regional Court is also a court of original and appellate jurisdiction mainly functioning as a court

of appeal to entertain second appeals from orders and judgments of Zonal Courts and in certain instances it acts as a court of first appeal from judgments and orders of the District Court. The Zonal court is the first appellate court, but it also exercises original jurisdiction. The District Courts are courts of first instance forming the base of the judicial hierarchy. It is the District Court which has jurisdiction over juveniles.

Describing the law profession Mr. Tripathi stated there are two categories of lawyers, *i.e.*, state and private lawyers. The Attorney General is the Chief Law Officer of the state and is appointed by His Majesty the King. The other law officers are the senior government advocate, government advocates, additional government advocates, government pleaders, public prosecutors, assistant government pleaders and assistant public prosecutors whose functions are set out in the Government Cases Act of 1961.

Mr. Tripathi added that the law distinguishes between two types of criminal cases, namely crimes against the state and the individual. In crimes against the state, the prosecutions are conducted by the government prosecutor in the name of the state in accordance with the provisions of the Government Cases Act of 1961. The individual has to move court in the other category of cases. Under the Government Cases Act any aggrieved person can register a complaint with the police if the offence is considered one against the state. On registration of the compiaint the criminal process is set in motion by the arrest of the offender by the police. The preliminary investigations are carried out jointly by the police and the district attorney. In the absence of the district attorney the public prosecutor directs the chief of village or town *Panchayat* to assist the police in completing the investigations speedily. The charges are framed jointly by the police and the public prosecutor. The accused is read the charges in open court whereupon he pleads guilty or not guilty. In the latter event evidence is led to prove the charge. In Nepal neither the police nor the public prosecutor has the right to dispose of a case, which right is exercised solely by the judges. In disposing of a case the judge has the option of imposing a fine and/or imprisonment. However, no juvenile between the ages of 8 and 12 could be imprisoned for more than two months. In the case of juveniles between the ages of 12 and 16, they may be sentenced to half the maximum period of imprisonment which could be imposed on adults. Capital punishment is available only in the case of attempts on the life of His Majesty the King or Queen, and attempts to defile the chastity of the Queen. But no capital punishment may be imposed on a juvenile who instead will be sentenced to a maximum of 12 years' imprisonment.

The group felt an individual citizen against whom an offence not falling within the category of offences against the state had been committed, had an onerous burden in proving the charges against the offender. In this context Mr. Chattha explained the system of private prosecutions prevalent in his country. A slightly varied procedure was also available to a private individual in Sri Lanka. In Japan private referrals are permitted only in juvenile cases.

In discussing the transfer of judicial officers from one court to another, it was clear that substantially similar practices are adopted in Nepal, Pakistan, Sri Lanka and Japan. In these countries judges, especially relatively young judges, serve at a station normally for a period of between 2 to 3 years. Transfers, it was noted, were necessary to assume the independence and impartiality of the judiciary.

The Director of UNAFEI, after commenting on the independence of the judiciary in Japan, informed the group of the move by the United Nations to prepare guidelines to preserve the independence of the judiciary.

Suggestions for Improving the Juvenile Justice System in Pakistan

Mr. Nasrullah Khan Chattha at the very outset stressed that in Pakistan the problem of juvenile delinquency is less serious when compared with th. situation in other industrialized countries due to the religious and social background of the Pakistani people. However, he added, due to the lack of reliable up-to-date statistics an accurate assessment of the extent of juvenile delinquency was difficult. He cited industrialization, urbanization, lack of discipline amongst juveniles due to one or both parents seeking employment abroad, lack of education, tropical climate, nomadic life of the people in certain areas as some of the causes for the incidence of juvenile delinquency. He then went on to enumerate the proposals he had in mind to improve the juvenile justice system in Pakistan.

1. Legal Reforms
   a) The term juvenile delinquency should be defined in clear terms.
   b) The age of criminal responsibility should be amended in sections 82 and 83 in the Pakistan Penal Code to read as 10 years and 16 years respectively.
   c) Special police should deal with juveniles and they should be given special training for the purpose.
   d) In ordinary cases juveniles should not be subjected to arrest or remand.
   d) In serious offences which necessitate the arrest of juveniles they should be kept in lock-ups other than those in which adults are kept.
   f) Investigations into offences in which juveniles are involved should be conducted only during daytime and in the presence of parents or guardians.
   g) The presiding officers of the courts hearing juvenile cases should be well-versed in law and have special training in human psychology and behavioural sciences.
   h) The proceedings should be held in camera without publicity and the young offender should be provided legal assistance at state expense if needed.
   i) The trial should be conducted in the language of the delinquent.
   j) There should be unified laws dealing with delinquents in the entire country.
   k) There should be no imprisonment of offenders under the age of 21 years as a matter of normal policy.
   l) There should be no convictions and sentences, but after a finding of guilt a juvenile should be treated, trained and reformed, both morally, socially and educationally for which purpose the services of Ulemas could be availed.
   m) The amount of fines imposed on a juvenile must be according to the personal capacity of the delinquent.
   n) All ordinary cases involving juveniles should be "compoundable" and non-cognizable.
   o) The record of all the cases pertaining to juveniles should be kept separately, and the police should not be allowed to maintain the record of cases committed by the juvenile.
   p) In all trials against juveniles the local authority should be made a party to watch the interests of the delinquent.
   q) Whenever a juvenile is required to give evidence before any court of law, the proceedings should be held in camera at the time.

Mr. Chattha also went on to propose certain administrative reforms.

2. Administrative Reforms
   a) Each local authority should keep, maintain and run:
      1) Remand centres for juveniles awaiting trial;
      2) Detention centres for undertrial juveniles, who could be detained in these centres for a maximum period of three months;
      3) Attendance centres for attendance up to a total of 12 hours on different dates;
      4) Approved schools where spoil-

ed children could be given custodial teaching;

5) Borstal training schools and community science centres.

b) All local authorities must have a children's department with child care officers, probation officer and social workers.

c) All district headquarters hospitals should have special words for the mental, physical, psychological and social treatment of juveniles.

d) In case of broken families and unfit parents, the state acting through local authorities should be the legal and natural guardian as welfare of the child should be the paramount consideration.

e) A full time instructor to teach religion should be appointed to all the institutions established by the local authority.

f) The need of all children for recreation must be satisfied by the local authority by the provision of such facilities as a means of personality development and character building.

g) The local authority should always try to clear slums and build houses for low income groups.

h) Guide homes should be established for the proper guidance, counselling and education of parents.

Mr. Chattha then went on to propose certain judicial reforms.

3. Judicial Reforms

a) There should be a national institute for the training of juvenile bench members, court officials, probation officers, social workers, doctors, paramedical staff who have to deal with juvenile offenders.

b) Juvenile offenders should have the right to legal assistance and a lawyer of his choice at state expense.

c) The juvenile court should serve the best interests of the child and the best interests of society in equal measure and avoid sacrifice of one or the other for expedience.

d) The juvenile court should impress upon the children the need for responsible and mature behaviour and prepare children for adulthood.

e) The juvenile court should not allow/permit suspected delinquents to make any statement about the case being investigated by the police and his confession should not be accepted for his conviction.

f) The juvenile court should require that oral testimony by parents or children which is detrimental to the parent-child relationship be restricted to closed sessions in which the other party is not present but is represented by counsel.

Discussing the need for secrecy in juvenile proceedings Mr. Chattha expressed the opinion that no publicity should be given in the media to juvenile cases. If the purpose of the publicity was deterrence, he added, publicity in adult criminal proceedings adequately served the purpose.

The group went on to discuss the question of who should be entitled to access to probation reports. In Japan, it was disclosed, probation reports are not shown to juveniles as they contain very sensitive information including opinions of parents, teachers and the comments of the probation officers themselves. Mr. Omata who participated as an observer cited two examples where irreparable harm had been caused to the juveniles by the irresponsible disclosure of the contents of such reports and other information to the juveniles concerned. He added that confidentiality is essential to preserve the sources of information as well as to maintain stable relationships between the juvenile and his parents, teachers and the family court probation officers.

In Pakistan, Mr. Chattha disclosed, a juvenile cannot be convicted on an admission of guilt. In Japan too evidence to prove a charge against a juvenile is necessary despite the fact that he has confessed to committing an offence. In Sri Lanka, a court could proceed to deal with a juvenile upon his admitting guild in court.

Defence of Children's Rights as a Way to Prevent Delinquency

Mrs. Helen Esther Salguero Fernandez drew the attention of the group to the fact that children's rights have been recognized through different national and international organizations concerned with the problems of children. As far back as 1924, the League of Nations by its declaration of Geneva unanimously approved the charter of children's rights whereby all member nations recognized that humanity should give the child the best that it possesses, independent of his race, nationality or creed. By the universal declaration of rights of the child adopted by the United Nations at Geneva in 1959 the following rights of the child were recognized; Rights to equality, life, an education, freedom, priority, physical intellectual spiritual and moral health, understanding and affection, professional and social life, civil formation, benefit from technical information and publications, play and to be productive. In 1982 the child's opportunities declaration adopted in Washington recognized the child's opportunity to a family life, necessary means for a healthy life, opportunity to have an education recreation and hobbies, to participate in community development and social development. Mrs. Salguero Fernandez affirmed that the principles enunciated by these international documents have been incorporated in the legislation of Peru.

The problem of juvenile delinquency besides being a family and social problem, she stressed, is also related to education work and justice. It is necessary to develop in the child a deep sense of desire for truth and justice. However, it has been revealed that truancy, idleness, lack of recreation and the present trend in the cinema, television and the press to place too much emphasis on violence and sex besides other factors tend to contribute to delinquency. She added therefore, it is of utmost importance to identify these contributory factors and find means of eradicating them.

Mrs. Salguero Fernandez stated that in Peru some progress has been made in this direction and as direct measures to combat juvenile delinquency attempts have been made to change existing values of juveniles, promote their emotional stability and personality formation, formulate programmes to prevent anti-social conduct at local and national level taking into account the realities and circumstances of time and place in society and finally carry out an efficient policy of family welfare.

As indirect measures which attempt to improve the general welfare of society, she said, the government of Peru is taking steps to provide cheap and sufficient nourishments, cheap and hygenic housing, adequate salaries, proper education and modify cultural, social and moral values.

Mrs. Salguero Fernandez, speaking from her personal experience as a juvenile judge, expressed the view that the main cause for juvenile delinquency was the violation of the rights of children. It was her view that it was necessary for all countries to assume the responsibility of guaranteeing children's rights and improving the status of children. It was necessary to extend legal and social assistance to children whose parents violate their rights. It was her contention that there must be effective co-ordination among juvenile justice agencies in charge of investigation, prosecution and treatment of juvenile offenders. The governments must establish a special judicial system for minors, special police and other facilities. Finally she stressed it was necessary to adopt a programme of care, control and treatment of juvenile offenders with the participation of both the government and the community.

The group discussed the work load of juvenile courts of the countries of its members. In Peru an average of three months was necessary to dispose of a case, while more serious cases took up to six months to be concluded. However, hardship to juveniles was minimized as their custody was given over to the parents or guardians till the final disposal. In Japan

delay in disposals was due to the increase in the number of new cases as well as the shortage of staff. In Nepal, Pakistan and Sri Lanka administrative machinery has been set up to monitor the disposal rate of cases by each court. In Peru a panel of judges hear juvenile cases in rotation. They also have the responsibility of inspecting the conditions prevailing in institutions to ensure correct treatment is meted out to juveniles.

Legal Representation of Juveniles with Special Reference to Sri Lanka

The final paper to be presented at the group workshop was that of Mr. Ranaraja from Sri Lanka, on legal representation of juveniles with special reference to Sri Lanka. Describing the functions of a lawyer he said a lawyer acts as the articulate and reassuring agent of his client primarily for the purpose of safeguarding his freedom. Just as an adult a juvenile should be entitled to the services of counsel. This right has been guaranteed by the Constitution of Sri Lanka and also the Children and Young Person's Act which provides the basis for juvenile justice in Sri Lanka.

The role of a lawyer depends on the nature of the procedure adopted in a particular juvenile court. Under the inquisitorial system the lawyer is considered an unnecessary and undesirable intruder on the basis that the court is the protector of the juvenile. Since most lawyers have little or no training in social and psychiatric fields, their role is reduced to expressing opinions on matters of a legal nature. Whereas in the adversarial system it is the lawyer who assumes the principal role as the guardian of the juvenile.

In Sri Lanka the procedure adopted by the Children and Young Person's Act is a hybrid of both systems.

At the investigation stage of an offence, in which the accused is a juvenile, the presence of a lawyer will no doubt make it difficult for the investigating officer to extract "confessions" by the use of threats, promises or inducements.

Counsel plays an important role in preventing the police from having their way when the question of releasing juvenile suspects on bail comes up in court. A juvenile should not be kept on remand unless it is likely that he will abscond or tamper with evidence. Where the police seek to keep a juvenile on remand adducing such reasons, counsel could very often counter such objections successfully. Even when bail is refused counsel could move court to grant an early trial date, as delay in disposal of a case is always unsatisfactory.

The Criminal Procedure Code of Sri Lanka has made provision for certain types of offences to be settled without proceeding to a prosecution where the aggrieved party consents. In such an event counsel for the delinquent juvenile could impress on the aggrieved party the futility of further proceeding with the case on the ground of inadequate proof, or the advantage of settling the case on the acceptance of reasonable compensation or restitution.

Once a charge is levelled against a juvenile in court he could either choose to plead guilty or not to the charge. When the juvenile wishes to plead guilty, it is the function of counsel to advise him of the possible consequences using his mature judgment.

Where a juvenile chooses to face a trial the lawyer's function is to test the facts and the law presented against the juvenile and to establish that these two elements are deficient in some respect to prove guilt beyond reasonable doubt, whilst at the same time ensuring fairness prevails especially by shutting out inadmissible evidence.

Once a juvenile is judged to be guilty of an offence usually the court relies on a probation report to decide which form of disposition is most suitable to rehabilitate the offender. Probation reports often portray juvenile offenders in an unfavourable light. It is the duty of counsel to test such information by cross-examination in order to convince the judge that such information should not be given the weight it would otherwise have. When

the reports refer to broken homes, poverty, etc., counsel should use such information to get more favourable treatment for the juvenile.

Counsel should always be aware of the dispositional options available to a judge. If the choice is between institutional and non-institutional treatment, it is the duty of counsel to convince the judge of the futility of detention by drawing attention to the deficiencies in the available institutional treatment.

A counsel may use technicalities to seek a discharge of a juvenile even where the juvenile may need help as neither the question of delinquency nor treatment is a matter for counsel. Such decisions are best left to court. Besides, counsel could always advise the parents or guardian of the juvenile to seek treatment, where it is felt to be necessary, outside the judicial system.

The juvenile's right to counsel has validity only if he could afford it, where legal assistance is beyond his reach the state should as far as possible make available free legal aid.

There is a tendency by their peers, including juvenile judges under the guise of treatment to deny juveniles their due rights. In this context lawyers have a great responsibility in preserving the interests of juveniles. Hence, not only ability in advocacy but also integrity of counsel matter a great deal.

Discussing the right of juveniles to statements of prosecution witnesses, it was disclosed that in Pakistan copies of the first complaint is made available to the defence. In Sri Lanka, in addition to the first complaint the statement made by the victim of the offence to the police is also made available on request. Further the court may at its discretion allow the defence counsel the privilege of perusing the statements made by witnesses to the police, when they are called to testify in court.

Discussions revealed that in Nepal and Pakistan a copy of the judgments is given free of charge to accused juveniles. In Japan dispositional orders given by the family court could be made orally or in writing. In Sri Lanka a juvenile could apply for certified copies of the proceedings in a case where he has been tried.

When the group considered legal aid to juveniles, it was revealed that Indonesia and Peru provided free legal aid on request. Under the Legal Aid Law No. 27 of 1978 persons satisfying criteria laid down by the law are entitled to free legal aid in Sri Lanka. In Japan free legal aid could be requested in the case of trial of juveniles in the district court.

The group workshop afforded the participants an opportunity to discuss many matters of common interest in a frank and friendly atmosphere.

WORKSHOP IV: Treatment of Juvenile Delinquents

Summary Report of the Rapporteur

Chairman: *Mr. Toshiho Sawai*
Rapporteur: *Miss Ng Bie Hah*
Advisors: *Mr. Peter Rogers*
Mr. Masakane Suzuki
Mr. Yoshio Noda

Titles of the Papers Presented

1. Juvenile Delinquency
   by Miss Ng Bie Hah (Singapore)
2. Community-Based Treatment for Juveniles in Sri Lanka
   by Mr. Hewaussaramba Tilakawardena (Sri Lanka)
3. Treatment of Stimulant Drug Offenders in Japan
   by Mr. Hiroyuki Ito (Japan)
4. Civilians' Involvement in Rehabilitation of Offenders and Delinquents
   by Mr. Naoya Konishi (Japan)
5. Current Trends and Backgrounds of Juvenile Delinquency in Japan
   by Mr. Toshiho Sawai (Japan)
6. The Role of Psychologist in the Juvenile Classification Home
   by Mr. Hajime Tada (Japan)

Introduction

The group consisted of four probation officers, one family court probation officer and a psychologist. All of them were directly involved in the juvenile justice system working with the common goal of prevention of juvenile delinquency and its treatment. The papers focused mainly on the issues relating to the recent trends of juvenile delinquency and the treatment of juvenile offenders in their respective countries and improvement of community-based treatment.

Juvenile Delinquency

The first paper was presented by Miss Ng Bie Hah from Singapore. Miss Ng's paper was summarized as follows:

A juvenile in the Singapore context is a male or a female who is under 16 years of age. The protection, care and welfare of children and young persons are provided for in the Singapore Children and Young Persons Act. The concept of delinquency within the context of the Act can be inferred from the type of cases that are subjected to official action. It includes: a) juveniles in need of care and protection, b) juveniles whose behaviour is refractory, and c) juveniles whose offences would be considered criminal, if committed by adults.

1. Some Main Causes that Lead to Crime and Delinquency

a) Lack of parental support and guidance

Parental support and guidance to children is of utmost importance in the development of the child. A 'let-alone' policy in bringing up children usually deprives them of attachment and sensitivity to the opinion of others. It is often true that the lack of attachment to significant people in the juvenile life makes them feel free from moral restraints and lessens their resistance to delinquency. The home and family relationship are of significant importance to adolescents. The home exerts a strong influence on a child's personality and character development.

b) Failure in school and undesirable peer group influence

Majority of the young delinquents are premature school leavers who failed to complete their primary school education

or vocational training. Slow learners and pupils who have below average intelligence have difficulties in adopting and keeping pace with an academic type of education. As a result of frustration, some of them exhibit delinquent symptoms in class.

Having left school prematurely, these school dropouts encounter difficulties in finding a meaningful employment because of their age. Being idle most of the time, these youths often associate and identify themselves strongly with peer group in the neighbourhood, often the undesirable group of peers. Without constructive activities on meaningful utilization of leisure time, they find life meaningless and boring. Hence, they hang around in street corners or shopping centres and attempt to commit offences like shoplifting etc. These youths are very vulnerable to the exploitation of vicious adults.

c) Mass media

Mass media and other entertainment may contribute to delinquency by: i) glamouring crime; ii) portraying violence; iii) encouraging an escapist attitude to life; iv) encouraging the pursuit of immediate pleasure and extravagance; and v) confusing the ethical sense of youth by portraying the permissive way of life.

d) Financial and environmental factors

Delinquency is highly correlated with low income and other social problems. Financial stress and poverty may sometimes create social and individual situations for the degeneration to delinquency.

2. Provision of Services for Juvenile Delinquents

a) Refractory children and young persons

The usual complaints attending refractory cases are truancy, running away from home, telling lies, stealing, defiance of parental authority, bullying and undesirable behaviour and habits which if not checked could lead to criminal tendencies.

Refractory cases are as far as possible dealt with outside the ambit of the juvenile court, unless such persons show no improvement after a period under statutory measures within the community or within the approved homes.

Predelinquents who do not respond to non-statutory measures may be referred to the juvenile court. The juvenile court in this instance may order the child or young person to be sent to an approved home or be placed on probation for a period not exceeding 3 years.

Other government agencies which provide non-statutory supervising and specialized services for refractory children are the child psychiatric clinic of the Ministry of Health, the social work unit of the Ministry of Education. The Singapore Children Society, a voluntary organisation with offices founded in major housing estates also cater for such supervisory service.

b) Juvenile court

This court is exclusively meant for dealing with juvenile offenders under 16 years of age. The provision of this court aims at separate arrangement for trying and prescribing treatment most appropriate to an individual child favouring his reformation, well-being and ultimate rehabilitation in the society. The concept of treatment orientation for juveniles is further enhanced by the panel of advisers of the magistrate, juvenile court. They are to inform and advise the court in respect of any consideration affecting the treatment of any juvenile brought before it.

c) Non-institutional form of treatment

Probation is a constructive form of corrective treatment of selected offenders outside the institutional setting. The main objective of probation is to prevent crime, delinquency and drug-abuse through the rehabilitation of offenders. Probation officers help the probationer to reestablish himself in the community as a socially useful and law-abiding citizen. The juvenile court relies on the probation officer to furnish it with a probation report on the offender. The report provides factual and diagnostic information on the social

background of offenders to enable the court to determine appropriate action for the offenders. Statistics from the annual report for the last three years (1979-1981) indicated that in the treatment of juvenile offenders, probation as a form of non-institutional treatment was widely used by the juvenile court (50%). In 1981 419 pre-sentence reports were furnished to the juvenile court and the number of juveniles put on probation was 299.

d) Institutional form of treatment (approved schools)

The decision to commit a juvenile offender to an institution is taken with judicious care. The juvenile court is normally reluctant to remove an offender from his home environment. The court can order the offender to be sent to an approved school for a period of not less than three, and not more than five years. The objective of institutional rehabilitation is to provide the juvenile with the opportunity to enable healthy growth and normal development. The juvenile offender can be considered for release on parole by the parole board after he has stayed 12 months and has made sufficient progress in his training. Parole supervision attempts to combine supervision and treatment as a means of returning the offender to his family and community. During the period of parole, the parolee is under an obligation to comply with certain requirements imposed by the director of social welfare for securing his good conduct or preventing a repetition by him of the same offence or the commission of other offences. If he breaks the conditions of his parole, he may be recalled to the approved school to serve the unexpired portion of his original period of detention.

The overall situation was discussed in details by participants and it was agreed to the following recommendations to prevent the juvenile delinquency in Singapore.

i) Mass media such as TV, newspapers, etc. should play a more active role by educating the parents regarding their responsibilities towards their children.

ii) To train school teachers as counsellors in order to counsel pupils who possess personality and emotional problems.

iii) Special arrangements have to be made for slow-learners in the school and reduce the number of dropouts from schools.

Community-based Treatment for Juveniles in Sri Lanka

The second paper for the group workshop was presented by Mr. Tilakawardena from Sri Lanka.

In ancient times, punishment more or less involved the community. Before incarceration came into being, the form of punishment used, public humiliation, flogging in public, stoning, banishment, etc. are all forms of community punishments. As time went on, this led to the establishment of penal institutions. This was to instill fear into an offender, hoping it would prevent him from committing a crime again. By about the eighteenth century the concept of reformation came into being with ideas of treatment and rehabilitation, probation service was established in 1908. It started to function on 12 March 1945.

Probation is the first form of community-based treatment. It was recognized by the judiciary as an effective instrument of imaginative justice and useful method of treatment of offenders. It allowed the offenders to remain useful members of community avoiding the stigmatizing and frequently deleterious effects of imprisonment. The probation service in Sri Lanka also covered child care services. Before making a probation order, a court shall:

a) consider all such information relating to the character, antecedents, environmental and mental or physical condition of the offender as may at the instance of the court be furnished orally or in writing by a probation officer of the probation unit for the

judicial division in which the offence was committed and;

b) call for through such probation officer and consider a report from the commissioner as to the suitability of the case for supervision under probation.

The principle of consent is preserved for all persons who have attained the age of 14 years. Mr. Tilakawardena further stated that the conviction which precedes the making of a probation order is deemed not to be a conviction. Sri Lanka has enjoyed a comparatively high rate of probation success, *i.e.*, between 75 to 80 per cent in its nearly 40 years of existence, yet departmental statistics show that the number of those granted probation has declined since 1965. In 1981, there was only 985 granted probation as compared to 1,806 cases in 1965. The use of probation reveals a downward trend. Comparing the aforementioned statistics with the figures showing the number of persons committed to prisons, the average number of persons committed to prisons annually is ten times higher. Statistics also support the fact that admission to certified schools (juvenile training schools) in Sri Lanka is on the decline. The group felt that Sri Lanka's probation system should be fully utilized since it is cheaper than sending offenders to institutions and has a high success rate and other social advantages.

Next, Mr. Tilakawardena spoke about community service order (which is yet to be activated). The community service order could incorporate most of the prevailing correctional philosophies to wit punishment, treatment, atonement, social growth preparation and restitution. The offender pays back to the society in terms of time and labour, he is offered constructive activity, and he is encouraged to develop inmate talents. The offenders work in the community and the community is being asked to trust and help their own offenders rehabilitation.

Lastly, Mr. Tilakawardena mentioned services which are available to children:

(1) Children's homes

a) State receiving homes for children —Provide immediate and specialized attention to the severely neglected and abandoned children. After restoration to normal conditions these children are handed back to parents or guardians if they could be traced and if home conditions could be improved.

b) Non-governmental organization children's homes—Provide long-term care to children who are deprived of parental care and who thus fall into the categories of orphan, abandoned and deserted. These children receive formal education and care.

(2) Day care centres are designed to provide services for pre-school children of working parents. Children are provided a nutritious meal and also stimulated through creature activities designed to help their intellectual growth. Pre-schools and vocational training centres have been established to help the intellectual growth of the children and to provide training facilities to inmates who are not selected for higher education.

(3) Sponsorship programme —It was inauguarated in July 1980. This programme is designed to enable the diversion of institutionalized children and those seeking institutionalization to their own families or to the care of legally appointed guardians with and income support provided by benefactors in Sri Lanka and abroad. The intention is to provide the warmth of the family to children as against institutionalization.

(4) Child and family welfare centres— The intention is to bring under one roof all these services to benefit not only the children in the institutions but also their families and children and families living around such institutions.

Treatment of Stimulant Drug Offenders in Japan

Mr. Ito from Japan firstly showed the trend of stimulant drug offences during the last ten years. He explained that in

1972, newly received stimulant drug offenders by probation offices were only 240, but in 1981, the figure went up to 6,197 or 25.8 times larger than in 1972. The number of stimulant drug cases newly received by probation offices has been increasing year by year.

The trends of stimulant drug cases were classified as two periods.

1) The first stimulants period was from 1946 to 1956. Due to postwar turmoil of socio-economic chaos, stimulants abuse spread throughout the country. Although the Stimulant Drugs Control Law was enacted in 1951 to provide a basis for controlling stimulant drugs, unfortunately, stimulants' abuse did not cease and the number of offenders referred to public prosecutors' offices continued to increase. The Government then took the following comprehensive countermeasures.

i) Amend the law in three respects. a) expanded the scope of control to include handling of raw materials such as ephedrine; b) intensified punitive provisions; and c) established a new system of compulsory hospitalization for addicts.

ii) Carried out nationwide educational campaigns to eradicate stimulant drug abuse.

As a result, the number of offenders referred to public prosecutors' offices drastically decreased.

2) The second stimulants period was from 1970 onwards. Data collected proved that the problem is more serious and deep-rooted. A study conducted by the Research and Training Institute, Ministry of Justice, on recent stimulant drug cases, to look into the actual situation of the stimulant drug offences and the attributes of the offenders, had the following results:

a) On average, they were in their 20's and 30's.
b) Senior high school graduates, who are almost 90 percent Japanese youth, were less than 20 percent of the group.
c) About 50 percent, they had relationships with organised gangster groups (*bōryokudan*).
d) Regarding the first experience they used drugs, about 70 percent of them were given drugs without paying for them.
e) About 30 percent of male offenders said they could not stop drug abusing because they could not give up the comfortable feeling of using drugs.
f) To get big money to obtain drugs, more than one-third of them had been engaged in illegal trafficking in drugs, stealing money in their homes, or committed prostitution or other offences.
g) More than a half of them exerted baneful influences upon their families and not a few families were collapsed by divorce, etc.
h) The number of juveniles and housewives arrested for stimulant drug offences has also been increased.

Mr. Ito then mentioned regarding the treatment of stimulant drug offenders.

1) Prosecution and trial—The prosecution rate has increased year by year and reached 89.3 percent in 1981. These prosecution rates are very high compared with other offences. It shows that public prosecutors' office is paying more attention to stimulant drugs offenders. Regarding the rate of suspension of execution of sentence, the suspension rate has remained higher than 50 percent with some fluctuation and decreased to 51.1 percent in 1980.

2) Corrections—In order to prevent the repetition of stimulant drug control violations, correctional authorities have tried many kinds of treatment for these inmates in correctional institutions and a great deal of effort has gone into improvement and expansion of these projects. The various kinds of treatment were the effective use of audio-visual educational apparatus, lectures, group discussions, individual interview guidance etc. Since custody of offenders is in an institution, the group felt that very intensive educational measure has to be taken within the institution.

3) Probation and parole—Consideration has to be given to the drug abuser's in-

dividual personality, family background and the social condition. The persons placed under probationary supervision shall be guided and supervised by the following methods: a) to watch the behaviour of the person under probationary supervision by keeping proper contact with him; and b) to give the person under probationary supervision such instructions as are deemed necessary and pertinent to make him observe the conditions.

Rehabilitation aid is also available for these under probationary supervision such as: a) to help them obtain lodging accommodations; b) to give them vocational guidance and help obtain a job; c) to reform and adjust their environments; and etc.

The following schemes have been carried out to rehabilitate stimulant drug ex-offenders:

a) More intensive treatment by professional probation officers;
b) Close collaboration between professional probation officers and volunteer probation officers;
c) More emphasis on rehabilitation aids; and
d) Special attention to volunteer probation officers to improve their treatment techniques especially relating to stimulant drug ex-offenders. In addition, some probation officers have been trying groupwork method for treatment on them.

Mr. Peter Rogers's opinion was that it was easier for an addict to overcome his physical dependence on drugs but his psychological dependence on drugs was very unpredictable. An addict used to suffer from stress and anxiety. Counselling should be an important factor in rehabilitating drug-offenders. A counsellor must have the ability, the strength and the sincerity from his heart to build up good rapport with the addicts, gained his confident and finally assisted the addict to be free from drug-addiction.

Finally, Mr. Ito showed how probationers and parolees were evaluated at the final stage of supervision.

"Success"—includes not only those who warranted early discharge but also those who showed better adjustment to social life.

"Failure"—contains those offenders who revealed unsatisfactory adjustment as well as those recommitted to institution for technical violation or reconviction.

"Moderate"—is applied to probationers and parolees whose standard of behaviour is generally regarded as acceptable although it may fall short of the standard of behaviour of normal numbers of the community.

Success rates of stimulant drug ex-offenders are less than that of total number of offenders. The reasons may be the fact that stimulant drug offenders have more serious problems including unemployment, association with organized criminals, family conflict, etc.

Civilians' Involvement in Rehabilitation of Offenders and Delinquents

Mr. Konishi from Japan in his paper introduced two organizations, namely, Big Brothers and Sisters Association and Women's Association for Rehabilitation Aid.

1. Big Brothers and Sisters Association (BBS Association)

The Big Brothers and Sisters Movement was started in Kyoto, in February 1947. At that time, because of the confusion of the society, there was an increasing tendency of delinquency, thus, young people formed a group under the slogan "guidance for the young by the hands of the young." This movement spread rapidly into other prefectures and in 1950, it was named BBS movement. In 1952, the National Federation of Big Brothers and Sisters Associations was established.

Although it was started by students at the beginning, many young working people joined. Because of the nature of the work, the age ranges between 18 and 30 when applying for admission. The nature of their services of befriending with delinquents and predelinquents is divided

into person to person type activity and groupwork type activity. Cases were referred by various institutions such as probation office, family court, child guidance centre, police, school and other public agencies.

Mr. Konishi cited two case studies. From the case studies, he explained that it was fundamentally necessary to grasp the need of the offenders and the delinquents and to clear what kind of services can be offered.

He further explained that in case of a probationer matched to a BBS, there are three persons who deal with the probationer, *i.e.*, a professional probation officer, a volunteer probation officer and a BBS member. A professional probation officer and volunteer probation officer act as a supervising organ as well as a supporter for the probationer. The agency and BBS cooperate with each other in dealing with delinquents and misbehavioural children in different aspects.

2. Women's Association for Rehabilitation Aid (WARA)

WARA are autonomous organizations of voluntary women on a standpoint of mothers or housewives for crime prevention as well as welfare of offenders, delinquents and their families.

The antecedents of the WARA were born before the Second World War in Tokyo, Kyoto, Takamatsu and so on, but the association named WARA was constructed after the establishment of the present system of rehabilitation of offenders, and in 1964 the National Federation of WARA was finally organized.

Activities of WARA are as follows:

1) To convene conferences and discussion meetings in order to study crime situations and characteristics of offenders and to strengthen we-feeling of members.

2) To campaign and enlighten people about the problem of offenders (delinquents) and their rehabilitation.

3) To participate in crime prevention activities.

4) To cooperate with volunteer probation officers for rehabilitation of offenders, *e.g.*, to present offenders with gifts in celebration of successful termination of supervision.

5) To assist rehabilitation aid hostels (halfway houses) in providing financial and other support.

6) To assist Big Brothers and Sisters Association, *e.g.*, to support BBS financially.

7) To visit a correctional institution for encouraging inmates.

8) To participate in events of other offices concerned and organizations.

Members of the group commented on the concept of volunteer system in their individual countries. Through discussions, the group had a consensus that in order to improve criminal justice system there should be more frequent and close communication and liaison among all agencies of it. In addition, it was agreed that the general public have the potential to make an enormous contribution to the treatment of offenders. Not only by their direct help to offenders, but also by such activities as creating environments conducive to healthy development of human society. In this regard, it was also agreed that more efforts should be made to secure public involvement in the treatment of offenders.

Current Trends and Backgrounds of Juvenile Delinquency in Japan

Presenting a paper on the above subject, Mr. Sawai from Japan first pointed out that juvenile delinquency has been increasing notably in number in comparison with adult offence whose increase has not been so remarkable during the last ten years. The number of non-traffic juvenile delinquency in 1981 reached 252,808 and recorded the highest number after World War II.

Then, he mentioned some of the distinguished characters of the current trends of juvenile delinquency such as:

(1) Theft

Theft accounted for 78.1 percent of total juvenile delinquency in 1981. The most typical type of thefts was shop-

lifting, followed by thefts of motor bicycles and bicycles. "The White Paper on Crime" reported that quite a large number of juveniles who committed such thefts were rather motivated by pleasure seeking.

(2) Stimulant drug abusers and thinner sniffing

The number of stimulant drug cases was 2,575 in 1981. This number is still low in comparison with other delinquencies. Stimulant drug cases, however, has been certainly increasing among juveniles including girls during these several years.

(3) Violence (including injury)

a) School violence and domestic violence—Nowadays Japan has faced serious problems concerning the educational and family systems, which are naturally connected with other economic, social and ethical factors such as materialism, urbanization, egoism, etc. School violence and domestic violence as juvenile delinquencies are symbolic of these problems. School violence reached 2,085 in 1981. Domestic violence against parents has sometimes even resulted in serious homicides within juveniles' own families.

b) Violence caused by hot-rodders—Violence caused by members of hot-rodders groups is also one of the current characteristic problems. Members of hot-rodders groups usually act in group, lose easily their own national minds in group activities, and indulge in commission of various kinds of delinquencies which are not only violence against another hot-rodders group, but also violence against patrolcars, policestations and sometimes violence against ordinary people who are driving a car in a safe manner.

c) Specific type of violence—The specific type of violence is so-called "phantom offence" or *"Tōri-ma"* in Japanese. Juvenile offenders as well as adult offenders suddenly attack children, young ladies, girl students, etc. on a street, in a train or a subway and in other public places without any specific motives for attacking.

Mr. Sawai dealt at length on the backgrounds of juvenile delinquency.

1. Social backgrounds

(1) Materialism—Materialism has spread now all over Japan and has affected juveniles seriously. They are apt to think, look at and count everything in material value such as money or wealth, and are apt to loose Japanese traditional moralism.

(2) Urbanization—Urbanized city lives have naturally made families smaller in size, and have caused weakening of family function which used to foster, control and educate children under authority of parents and the relatives.

(3) Isolation—Concentration of population in big cities like Tokyo, Osaka, Nagoya, etc. has made people including juveniles isolated each other, and at the same time has made cooperation within a community broken completely. Isolation in urbanized city lives has made people irritating, anxious and sometimes desperate.

(4) Devastation of education—Since most of junior high schools have become a kind of preparatory schools for sending the students to senior high schools, teachers at these schools are obliged to spend most of their time only for giving students knowledge and skills which are necessary to pass entrance examinations. At this situation, it is too difficult for the teachers to maintain human relationship with each student. As a result, bad marked students fall easily in desparation.

(5) Uniformity—Isolation results in uniformity among juveniles, and this trend is strengthened by mass media including television, movies and so forth. Juveniles desire to belong to a group and to act with other members of the group, because they are afraid of being isolated. They often commit delinquencies in a collective manner.

2. Individual backgrounds

(1) Mental faculties—Many of those juveniles who have committed serious crimes such as murder, robbery, rape, arson, stimulant drug, etc., are of poor mental faculties.

(2) Lack of human relationship—Many juvenile delinquents are usually egoistic and individualistic. They do not know how

to maintain good human relationship with others and also do not understand victims' grieves and pains. Lack of good family discipline and lack of good human relationship at childhood may cause immaturity of a juvenile.

(3) Bad parents—Weakening of parental control and lowering of parental prestige contribute to current trends of juvenile delinquency.

(4) Lack of experience in childhood—Most of the problematic juveniles have become teenagers without experiencing meaningful and useful childhood. These juveniles are now trying to experience something which other normal juveniles have already experienced in their childhood.

The group totally agree with Mr. Sawai that when we face a juvenile delinquent, it is very difficult for us to find out the most suitable treatment measure for him in the light of his sound upbringing. We usually feel a gap existing between the ideal and the reality. It is important for us to understand the juvenile's own problems based upon human and friendly relationship, and therefore to talk with the juvenile with sincerity and compassion. Through this sincere effort we are able to find an appropriate treatment measure for his rehabilitation. We should always remember the importance of circumstance and environment of the juvenile as backgrounds of the juvenile's behaviour. Therefore, juvenile problem should be approached in a larger context of social development.

The Role of Psychologist in the Juvenile Classification Home

The role of psychologist in the juvenile classification home in Japan was given by Mr. Tada. The juvenile classification home is not an institution which gives juvenile delinquents active correctional education. The home is dealing with the classification of the juvenile delinquents before family court hearing.

The psychologists working in the correctional institution have the following roles:

1) A role as a clinical staff who has direct contact with inmates;
2) A role as a consultant of staff training and management of the institution, which aims at improving the treatment system; and
3) A role as an adviser of delinquency problems in the community

The family court refers delinquent juveniles aged 14-20 to the juvenile classification home to classify their personalities. Most part of psychologist's works is occupied with classification.

Classification is conducted to examine personality, past career, living environment and interrelationship of them through interview, investigation of life history, psychological tests, etc. The results of classification, together with those of medical examinations, behavioural observation and analysis of case history and life environment, are examined at the classification conference of the home, in which a recommendation for the disposition of the case to the family court is formulated. The results of classification, together with the recommendation regarding the treatment of the juvenile, are then reported to the family court.

The group members suggested that relationship between family courts and juvenile classification home should be good and that personnel of family court and juvenile classification home should hold general and case conference more often in order to solve any problems and to promote good understanding between them. Members of the group were of the opinion that other agencies of the juvenile justice system should coordinate their activities with the classification home for smooth functioning.

The juvenile classification home may render clinical services to any outside people and agents upon request. Psychological services provided to the other agencies and outside people include classification of juveniles under probation, re-classification of inmates in the juvenile training school, diagnosis and therapy for outpatients such as pre-delinquent juveniles, personality assessment of new

students in junior or senior high school and so on. The role of the juvenile classification home to cope with the problem of juvenile delinquency in the community is of great importance.

Conclusion

Through discussions, it was found that an integrated approach to the treatment of juvenile offenders through community-based corrections was needed. The members had a consensus that in order to improve criminal justice system there should be more frequent and close communication and liaison among all relevant agencies. In addition, it was unanimously agreed that the general public have the potential to make an enormous contribution to the treatment of juvenile offenders. In this regard, it was also agreed that more efforts should be made to secure public involvement in the treatment of juvenile offenders by convincing and refined publicity and public enlightenment on the urgency and necessity of such public participation.

WORKSHOP V: Juvenile Delinquency in General

Summary Report of the Rapporteur

Chairman: *Mr. Carl W. Jensen Pennington*
Rapporteur: *Mr. Tin Aung*
Advisors: *Mr. Hachitaro Ikeda*
Mr. Yasuo Hagiwara

Titles of the Papers Presented

1. Initial Causes of Juvenile Delinquency as Observed in Burma
   by Mr. Tin Aung (Burma)
2. The Crime Rate is Declining in China
   by Mrs. Wu Yan Shi (China)
3. Some Aspects of the Juvenile Offenders in Costa Rica
   by Mr. Carl W. Jensen Pennington (Costa Rica)
4. The Juvenile Gangsters in Japan
   by Miss Sachimi Annomae (Japan)
5. The Correction of Anti-Social and Asocial Behaviour through Study Guidance and Extra Curricular Activities in a Juvenile Reform Home
   by Mr. Masao Obata (Japan)
6. Training System for Correctional Personnel in the Institute
   by Mr. Susumu Yamashita (Japan)

Introduction

The group members were from different profession, namely, a law officer from Burma, a public prosecutor from Costa Rica, an officer-in-charge of International Affairs Department, from the Chinese Ministry of Justice, a senior psychologist from juvenile classification home from Japan, an instructor of National Child Education and Training Home from Japan and a professor at the Training Institute for Correctional Personnel in Japan.

Initial Causes of Juvenile Delinquency as Observed in Burma

The first paper was presented by Mr. Tin Aung from Burma on the initial causes of juvenile delinquency as observed in his country. In his paper, it was mentioned that two categories of juvenile offenders were observed—the first category was the "pre-delinquent," a delinquency prone youth, and the second category was the "full-fledged delinquent."

The general characteristics of the pre-delinquent juvenile noticed in some bigger provincial towns are idling around on street corners or in tea shops in groups of 4 or 5, "killing" time and neglecting studies. They are usually truant and also tend to be disorderly in their manner of dress and disobey their parents and teachers. They spend most of their time only with like-minded youth. They might go to cinemas or roam around town without any specific purpose except pleasure-seeking. If the opportunity presents itself, they might drink alcohol or even abuse narcotic drugs. Such an ill-disciplined mode of living gradually leads them astray, causing them to drop-out from school. They become underachievers of a young age. When they are confronted by the inevitable reality of a future without much hope and prospect, they oftentimes rebel against their parents and teachers by committing socially unacceptable acts. A majority of the pre-delinquent juveniles come from families which are considered decent and respectable in society.

The juveniles under the second category, *i.e.*, the full-fledged juvenile delinquents, usually come not only from socially priviledged families but also from middle class and poverty-stricken homes as well. Although they are initially normal youngsters, many factors such as

decreasing parental guidance and control, lack of moral education and discipline in schools, their immaturities, rising expectations of modern society, lack of employment opportunities and consequent frustration, exposure to conflicting concepts and values, desire for better material things, scholastic underachievement, etc., drive them to seek solace in alcohol and drugs. This kind of escapism eventually pushes them into the pit of fully-gown juvenile delinquency, finally landing on the bed of criminality. It is noted that for whatever reason, the act of running away from home is one of the initial steps towards juvenile delinquency.

Failure of Parental Responsibility

Parents, especially from the privileged strata of society, fail to provide their children with moral guidance in relation to norms of social obligations. As a result, the children gradually become refractory and spoiled, bending toward the direction of pre-delinquency. Working parents are found to be most deficient in giving guidance and supervision. They do not seem to consider it necessary or are just too tired after a hard day's work to spare a few moments with their children to find out what is going on in their lives.

Some parents are themselves in need of moral or psychological treatment and are in no position to look after the normal growth of their children. In some cases, parents are morally bankrupt and cannot act as role model for their children.

Mr. Tin Aung further noted that some parents were too possessive and were not prepared to accept the traditional neighbourly guidance and supervision extended by the elders of the community to their children.

Responsibility of Teachers

After parents, teachers are also partially responsible for the delinquency of their students. Nowadays some teachers are reluctant to enforce discipline impartially and to take necessary steps against defaulting students for fear that they might earn antagonism both from their students as well as from their indulging parents, especially if they belong to the upper strata of the society whence most of the juvenile delinquents come from.

Sometimes teachers tend to forget or overlook the fact that even delinquent students, although they might show resistance to teachers' guidance in the classroom due to their mischievous juvenile behaviour, are likely to listen to their teachers in private. Teachers should be quite tactful, understanding and tolerant in dealing with this sort of student, and be cognizant of juvenile psychology.

Mr. Tin Aung pointed out that here was the critical stage where teachers should play an important role by being a tolerant, understanding and sympathetic person whom students on the brink of delinquency can look up to for help. If the teacher is ignorant of the socio-economic, emotional and scholastic conditions influencing the psychology of his students at a particular crucial moment and if he is prone to overreact in the name of maintaining school discipline and reputation of the school, the poor child would have no one nor place to turn to for help.

Poverty and Economic Hardship

The theory that economic poverty is a major cause of juvenile delinquency seems incorrect in the light of observations in Burma. As is well known, Burma is still an economically developing country where the social structure is not very complex and the attitude towards society is not as sophisticated and materialistic as in the highly industrialized and greatly urbanized societies. An atmosphere of traditional community mindedness and neighbourly concern for the well-being of members of the community still prevails.

The degree of seriousness and prevalence of juvenile delinquency problem in Burma is comparatively lower than in more economically developed countries. However, the juvenile delinquency problem does exist in Burma. It is observed that majority of juvenile delinquents generally

come from families which are not considered poverty-stricken. Furthermore, it is noted that youngsters of poor parentage are more prone to be stable and act maturely. Perhaps because of the force of the disadvantaged circumstances they find themselves in, they have learned the lessons and realities of life early and experienced struggles from closer quarters than those children who are economically better-off and so-called "westernized."

Hence it is not unconditionally acceptable that the root of juvenile delinquency lies primarily on the grounds of economic poverty alone.

The Crime Rate is Declining in China

Mrs. Wu from China outlined some of the reasons for the decline of the crime rate in China, as follows:

1. The Development of Social Construction to Create Favourable Conditions for Stability

Thanks to the state policy of opening more channels to employment, the formerly acute problem of youth unemployment has been alleviated. Another factor is the upgrading of school education all over China on subjects such as political ideals, moral integrity and resisting corrupt influences from abroad. Last year the number of criminal convictions among students fell 26.6 percent, compared with 1981. One major reason for the wholesome social order is the government's stress on socialist ethics over the past two years.

2. The Emphasis on Education among Youths who Committed Minor Offences

The public security bureaus are well aware that young offenders make up a large portion of those convicted of crimes. The authorities feel that bad habits of these youths are not deeprooted and that it is easier for them to be rehabilitated that it is for habitual criminals. Therefore many resources are going into the education of young offenders.

3. Establishment of the System for Public Security

Following the nationwide implementation of the production responsibility system, a similar responsibility system was established for public security. Under this system, the maintenance of security in the factories, mines, enterprises, rural communes and production brigades is closely tied to the workers' and farmers' political dignity and economic benefits.

4. Self-governance and Self-education at the Grass Roots

In many areas urban and rural residents have worked out local rules which encourage community members to be law-abiding. Simultaneously, people are called upon to fight against criminal activities. The mass media have repeatedly cited heroes and heroines who have helped to put criminals behind bars.

5. Improvements in Efficiency of the Public Security Agencies through Professional and Technical Training for Security Personnel

In 1982, 75 percent of the cases were solved, a 4.4 percent increase over 1981. Among serious crimes, the percentage was 89.3 percent. This has resulted in the disintegration of criminals. In 1982, about 6,200 criminals in 18 big cities handed themselves over to the public security agencies.

Some Aspects of the Juvenile Offenders in Costa Rica

Mr. Jensen Pennington from Costa Rica expressed his views regarding some characteristics of juvenile offenders in Costa Rica. He stated that in order to determine the factors that contribute to the development of juvenile delinquency, technical studies and statistics are required. Although it is very difficult to identify all the factors with the information obtained from the juvenile court of San Jose, it may be possible to mention some of them.

1. Level of Education

The predominant level of schooling in Costa Rica is rather low, *i.e.*, out of the population over 15 years of age (1,047,202), 245,345 completed elementary school, 47,522 completed high school and 26,051 completed college. However, 605,716 (435,239 in elementary school, 139,625 in high school and 26,051 in college) left their respective schools with an incomplete education and 122,678 received no formal education.

Additional data provided by the juvenile court reveals that approximately 50 percent of juveniles before the court, and their parents, have not completed elementary school. Therefore, lack of education is one of the main causes of juvenile delinquency. This can be deduced from the fact that insufficient education is an obstacle for the satisfaction of personal and financial necessities and will create feelings of frustration, leaving crime as the only way to satisfy these necessities.

2. Child Labour

To work during childhood deprives the child of necessary conditions for suitable parental guidance, formal education, recreational activities and so forth.

3. Unemployment

Unemployment has a direct effect on the general situation of the family, and consequently on the juvenile's development since the level of family income determines the fulfillment of prime necessities for each of its members.

The income of the family is of great importance in terms of a contributory factor to delinquency, since statistics indicate that the majority of the juvenile taken to juvenile court come from low-income families. This is the reason why we find a large percentage of crimes are against property. For example, of the cases brought before the juvenile court in 1979, 59.62 percent were against property. This percentage was 63.22 in 1980 and 66.39 in 1981.

4. Most Relevant Problems for Juvenile in Costa Rica

In the last few years the number of juveniles taken to the juvenile court in San Jose has been relatively steady. For example, in 1970, 1980 and 1981, there were 1,002, 1,020 and 997 cases respectively. The number of recidivists in each of these years was also steady, *i.e.*, 197 cases in 1979, 215 cases in 1980 and 209 cases in 1981. These numbers may reveal that correctional institutions as a readaptation measure for juveniles do not solve the problem. This situation is also clear in the excessive number of escapers from the Juvenile Orientation Center where we found that 1,394 were escapers for the years of 1976 and 1977 among a total of 1,946 departures.

Another relevant factor in this field is age. The majority of delinquents are between 11 and 16 years of age, demonstrating a certain relation between age and the tendency to transgress. And the older they become the higher they are in the number of delinquents.

The wide range of circumstances surrounding the juvenile makes it extremely difficult to pinpoint the precise factors contributing to his behaviour. A child might live in an unsafe atmosphere such as with a social group inclined to perform illegal acts, or in a low-income family that cannot satisfy necessities. Psycological factors also contribute to delinquency in many cases.

Costa Rica, through its public agencies, tries to solve problems such as housing and nutrition, aggression and child abandonment. If we call these measures preventive measures, they must be carried out with sufficient financing and coordinated programmes among the related agencies.

The Juvenile Gangsters in Japan

Miss Annomae, a senior psychologist from Japan, presented a report on the involvement of juvenile delinquents in organized crime syndicates. She described the present condition of the Japanese underground syndicates and the char-

acteristics of the juvenile members of those syndicates, mainly by referring to the White Paper on Crime and mentioning the findings of conventional criminal studies.

1. Present Condition of the Japanese Underground Syndicate

According to the White Paper on Crime in 1982, the total number of underground organizations was 2,452 in 1981 and the total number of gangsters in these organizations was 103,263. The syndicate's money is mainly derived from illegal activities related to stimulant drugs, gambling, prostitution, bucket-shop operation, etc.

In 1981, a total of 32,844 gangsters were arrested for non-traffic offences. These gangsters accounted for 7.9 percent of the whole. The most popular crime was injury, followed by gambling, blackmail, violence, etc. In addition, gangsters accounted for 13.9 percent of all the violators of special laws, except for the Road Traffic Law. The most common crime committed by gangsters was found to be violation of the Stimulant Drug Control Law. Thus, it can be said that the particular types of crimes committed by those who belong to underground syndicates directly reflect the current nature of those syndicates themselves.

2. Characteristics of Juvenile Gangsters

The characteristics of the Japanese juvenile gangsters and the process of gaining membership in an underground organization are as follows;

a) Family background—Their family background is characterized by a high percentage of "broken" or "insufficient" families, a low standard of living, and an indifferent attitude of parents toward child-raising. Thus, many of them share unhappy, socially disadvantaged family backgrounds.

b) Educational and occupational background—Generally speaking, they tend to lack the ability to adjust themselves to school life and employment.

c) Records of delinquency—Most of them committed an offensive act and were taken into custody. In addition, many of them were involved in delinquent organizations.

d) Process for membership—Many of them went through one of the following types of process for becoming a gangster: 1) joining a syndicate directly by influence of a member of becoming a member on his own accord; 2) joining a syndicate because he had a good time with a gangster; and 3) joining a syndicate after being taken care of financially by a member.

It is understood that they are generally pleasure-oriented and dependent upon others for their ways of life.

e) Purposes of entry and life as a gangster—Concerning motives, "the longing for surface good looks of gangsterism" was the most popular answer. This was followed by "realization of a life full of pleasure," "elimination of a sense of alienation," etc. Concerning the life after joining a syndicate, the majority of them were content with their lives as gangsters, as their original goals were fulfilled. The majority of them did not declare themselves to have any intention of leaving this underground existence.

Japanese underground syndicates maintain their existence by recruiting new members. For these syndicates, juvenile delinquents are an ideal source of recruits. It is necessary to effectively prevent juveniles from joining these syndicates.

The Correction of Anti-Social and Asocial Behaviour through Study Guidance and Extracurricular Activities in Juvenile Reform Homes

Mr. Obata of Japan, an instructor from a National Child Education and Training Home, stated his opinion that study guidance and extracurricular activities play important roles in the mental and physical development of anti-social and asocial juveniles. In the process of their total growth and development, participation in such group activities gives them an oppor-

tunity to build up new human relations with other juveniles as well as instructors and to autonomously or heteronomously rehabilitate themselves.

Since the study guidance starts at a level which the juveniles can comprehend, they desire to continue studying. Therefore, their attitude toward obtaining knowledge can be developed and their thinking power will be strengthened, which lead to the establishment of a basis for making value judgements.

In club activities, the juveniles will be influenced by the instructor and the well-disciplined group of juveniles, and some changes in their mind and behaviour will take place.

The Training for Correctional Personnel in the Institute

According to Mr. Yamashita, Professor of the Training Institute for Correctional Personnel, Japan, correctional administration in Japan has been evaluated highly regarding its good management and contributions to effective resocialization of offenders. As the precondition of effective correctional treatment, discipline in correctional institutions is maintained in spite of the increase in inmates' population, especially of gangster group members and stimulant drug abusers. On the other hand, since inmates have the right to make a petition to the Minister of Justice whenever they are dissatisfied with given treatment, and also may take legal actions to court or other authorities outside, complaints of inmates are appropriately attended to. Statistics and examples suggest the calm and safe surroundings of Japanese prisons.

This situation is due to the efforts of each corrections officer. Various kinds of treatments carried out in institutions are managed on the basis of human interaction and mutual confidence between personnel and inmates. Therefore, not only the recruitment of able personnel through competition at the national level but also their training is considered very important in Japanese correctional services.

For the purpose of training of the personnel at the national level, the Training Institute for Correctional Personnel was founded in Tokyo, over 90 years ago. The institute now has eight branches, and a variety of courses designed for various types and levels of personnel are conducted by a well-trained teaching staff. Those courses are designed to promote the efficiency of personnel by teaching them academic knowledge and practical skills required for the performance of their duties and by cultivating character through moral and physical training.

SECTION 4: REPORT OF THE COURSE

The Quest for a Better System and Administration of Juvenile Justice

Summary Report of the Rapporteur

Session 1: Investigation and Prosecution of Juvenile Delinquency

Chairman: *Mr. U Kyaw Myint*
Rapporteur: *Miss Perlita J. Tria Tirona*
Advisor: *Mr. Shu Sugita*

Introduction

In the investigation and prosecution of juvenile delinquents, the paramount interest of the youth shall always be considered to assure his well being, treatment and rehabilitation. To this end, the investigation shall be geared towards the treatment of the youth as a human being in need of aid, encouragement and guidance rather than one destined for condemnation and punishment.

The prosecutory process, on the other hand, shall be characterized by speedy, fair and compassionate administration of justice wherein modified rules of procedure would govern to achieve an informal and a less adversary atmosphere.

In the light of this over-all policy, and pursuant to the resolution adopted at the 6th United Nations Congress on the Prevention of Crimes and the Treatment of Offenders asking the Committee on Crime Prevention and Control to develop standard minimum rules for the administration of juvenile justice which could serve as a model for member states, the 58th International Training Course on Juvenile Justice Administration held at UNAFEI from 18 May to 11 July 1981 adopted a Proposed Guidelines for the Formulation of the Standard Minimum Rules for Juvenile Justice Administration which among other things includes Guidelines on Investigation and Prosecution of Juvenile Delinquency, the main topic of this first session.

The topic of this session was divided into three main topics namely: Principles of Investigation, Principles of Disposition and Professionalization of Law Enforcement Officers.

The topic on Principles of Investigation was further divided into three sub-topics as follows: (a) minimum use of arrest and pre-trial detention; (b) right to counsel and participation of guardians or parents in the proceedings; and (c) confidentiality of investigation.

Principles of Investigation

a. Minimum Use of Arrest and Pre-trial Detention

There exists a general view that during investigation of the juvenile, confinement and detention should be avoided unless considered necessary in his or in the public interest, and that institutional confinement should be resorted to only to the extent justifiable.

The participant from Pakistan observed that the word "arrest" should not be used as far as juveniles are concerned and that taking into custody would be a better term. Whenever possible, unless otherwise ordered by the court, after the juvenile is taken into custody, he should be released to the custody of his parents and should not be allowed to be detained with the police unless the offence committed is serious.

He suggested that the juvenile should be allowed bail as a matter of right regard-

less of the seriousness of the offence committed by him; that he should be informed of the nature of the charges against him and that he should be assisted by counsel or advocate. And, in no case should his fingerprints and photographs be taken during the process of investigation.

One of the participants from Burma suggested that the seriousness of the offence committed by the minor should be classified and that a line should be drawn between delinquency and crime. The participant from Pakistan, however, stated that can be left to the individual state or country since the seriousness of the offence will vary from country to country.

As to the matter of the contact between the police and the juvenile offenders, the participant from Fiji was of the view that the first contact between the police and the juvenile offender creates such an impact on the mind of the offender and could immediately result to harm to said offender. He further stated that harm can be avoided only through the use of community policing. The police or arresting officer should use their discretion in deciding whether or not to arrest the juvenile offender, depending on the gravity of the offence committed. In petty offences, harm on the offender could be avoided or reduced by community policing, by merely giving caution to the child and/or by directly bringing reconciliation between the child and the offended party.

On the other hand, one of the participants from Sri Lanka was of the view that if the juvenile offender has committed a criminal act, he has to be taken into custody. In his view, it should be managed in such a way as to do the least harm possible rather than to avoid harm.

Further on the arrest of juvenile offenders, the Pakistani participant was of the view that the right of arrest should be taken away from the police, and the police should be directed to complete the investigation and that after investigation, the proceedings should be referred to the court for decision on whether there is sufficient evidence available with the police to summon the juvenile in court. In this manner there will be no need to arrest the juvenile offender or to take him into custody.

The participant from Malaysia, however, stated that the right to arrest should not be taken away from the police. But the police should use its wise discretion before arresting a juvenile offender. This was concurred in by the participant from the Philippines who stated that there are instances when arrest (or taking into custody) must be made as when the juvenile offender is caught in *flagranti delicto*.

The participant from India stated that there is no question that the child should be given a different treatment from adults and others. Whenever delinquency occurs, the necessary evil of coming into contact with the police will surely arise and it cannot be avoided. The police have their duties to perform. But the police should play their role in such a way as to cause the least harm, or that the harm to the juvenile is to be minimized absolutely.

Thus, on this point of minimum use of arrest and pre-trial detention, it was the consensus that arrest or taking into custody of a juvenile offender must be employed or resorted to only if there is no other way and that if it can be avoided, it must be avoided.

b. Right to Counsel and the Participation of Parents and Guardians in the Proceedings

As to the matter of right to counsel and the participation of parents and guardians in the proceedings, it was the view of the participants that the juvenile offender should be granted the right to have a counsel at all stages of the investigation and prosecution, and to have his parents or guardian present in the proceedings.

c. Confidentiality of Investigation

On the confidentiality of the investigation of juvenile offenders, the participant

from Costa Rica was of the view that records of the juvenile offender must be kept by the juvenile court in charge of the case, and that the police should not keep any record whatsoever affecting the juvenile offender. The participant, from Pakistan on the other hand, stated that the records of the juvenile court should be kept separate from the records of criminal cases of adults in general; and that there should be a special provision prohibiting the inspection of such records by persons other than the child's parents or the duly authorized representative of the child, except upon written order of the court.

The foregoing view was shared by the participant from India who added that records which may be maintained by the police or the judicial authorities should not in any case be divulged to any authority who may later on employ the juvenile offender, and that his records as a juvenile offender should not be taken against him.

The participant from Fiji stated that when the juvenile offender has reached the age of majority, all records pertaining to his juvenile delinquency either with the police or with the social agencies should be destroyed and should not be used against him.

A participant from Japan, however, differed from the opinion of the participant from Fiji and said that the records of the juvenile offender should not be destroyed upon reaching the age of majority because if he commits the same offence after reaching adulthood or the age of majority, his previous record as a juvenile could be used as reference in the determination of the appropriate treatment of such adult. An adult with a previous record as a juvenile offender should be treated differently from an adult offender who never had any previous record as a juvenile.

On this point, the participant from Peru stated that in her country, they do not have police or judicial records affecting juveniles because in her country, minors do not have any criminal responsibility and that if they commit any anti-social conduct, they only have the records of rehabilitation treatment if the minor was referred to the rehabilitation or observation center. Moreover, the Minors Code of Peru (Codigo de Menores) prohibits the keeping of records affecting the anti-social conduct of the minor.

A faculty member of UNAFEI likewise stated that in Japan, records of juvenile offenders are also kept confidential but at the same time said records can be referred to for the purpose of determining the appropriate disposition to be given to the offender. Thus, the criminal court may request for the records of the juvenile offender from the family court and it is up to the family court judge to determine whether or not said records may be given to the criminal court. Basically, the records affecting the juvenile offender kept by the family court of Japan are privileged or confidential.

Principles of Disposition

As a policy, a juvenile offender should be given maximum security for rehabilitation, and should be kept out of the criminal justice system. Regarding the matter of maximum use of diversions, the participant from India stated that there is a service aspect related to the police function. Taking this into account, it is essential that the police at their own level should be able to dispose of as many juveniles as may be defined in the law of a particular state depending upon the situation. He further stated that the police should not take everything to the court. As far as possible, the formal dealing of the juvenile by the court should be avoided. While the police in many countries may not have the legal power to divert the case of the juvenile, he suggests that the police should be given this power legally with certain safeguards in the interest of the child, society and the judicial system.

The participant from Pakistan, on the other hand, believes that the police and the prosecution should not be given discretion in diverting the case due to the fact that most of the countries of the region are still developing, and the police and the

prosecution do not enjoy the confidence of the people. He believes that the disposition should remain with the court for the time being.

The participant from Fiji cited the figures relating to diversion by the police in his own country. He stated that the number of offenders who re-offended after being cautioned was less than the number of offenders who re-offended after being prosecuted even though the number of those who were cautioned was more than the number of offenders who were prosecuted. He believes that the juvenile offenders who can be diverted from the criminal justice system at an early stage are less likely to re-offend than those who become involved in judicial proceedings. He further stated that in Fiji diversion is introduced at the investigation stage by giving the police discretion not to bring the juvenile offender to court either by administration of no further action or caution. Wide discretion is also given to the prosecution authority since they may refuse prosecution of a case or even withdraw a case that has been filed by the police in court. He believes, however, that the use of caution should be sanctioned by legislation and attention should be given to achieving greater consistency in cautioning practice. Secondly, that there should be an instant cautioning system or scheme. All first-term minor offenders under 17 years of age who admit guilt should be cautioned; and thirdly, that the formal caution should not be administered when there is insufficient evidence for the prosecution.

The participant from India expressed the view that there are problems faced by many countries, for example, the piling up of cases in the judiciary resulting in delay in the administration of justice. Hence, it is better to resort to practical step to dispose of cases.

The participant from Indonesia stated that in her country prior to 1961, the public prosecutor had the discretionary power to withdraw criminal cases. However now, under the present law the Attorney General is the only official empowered to dismiss criminal cases. Any public prosecutor who wants to dismiss a criminal case which he deems will harm the public or the government interest has to request the consent of the Attorney General. The Attorney General, in exercising this exclusive discretionary power, usually consults the Minister of Justice or the Minister of Defence.

The participant from Malaysia believes that diversion should be exercised at the level of police and/or the prosecution. A participant from Burma, in expressing his support for this proposed guideline on diversion, also stated that the police and the prosecutor should be invested with more discretion in handling juvenile cases.

According to the participant from Nepal, they have a law which provides that prosecution is to be conducted by the police and the public prosecutor, and the police do not enjoy the confidence of the people. He feels therefore that the power of diversion should be given to the prosecutors only, for they are part of the judiciary.

The participant from India contended that the authority finally responsible for launching the prosecution, whether it is the police or the prosecutors, should be able to make a decision whether or not to prosecute a case or whether or not the juvenile is to be dealt with at their own level.

Professionalization of Law Enforcement Officials

Law enforcement agencies play an equally important role in the administration of juvenile justice. Police service today extends beyond routine investigation and disposition of complaints. It also has as one of its objectives, the welfare of the individual, and of society. To better accomplish these objectives, professionalization of the law enforcement agencies is an imperative.

In this regard, the participant from India stated that it is very essential that a training course be offered to equip

the police professionally. In his country, India, there are training programs/courses with subjects dealing with human behaviour and police attitude, and on problems relating to youth. These courses are designed for the police in all levels. Juvenile division units have been established in all metropolitan area and big cities as early as the sixties. However, it has not been extended to the rural areas. He believes that these juvenile units should also be established in rural areas.

The participant from Malaysia stated that the establishment of juvenile units within existing police departments would depend on funding, especially in developing countries, and on the priorities of each country.

In Japan, according to a Japanese participant, there is a specialized staff dealing with juvenile cases in each police station.

Dr. Ted Palmer, Visiting Expert from the U.S.A., also expressed the view that the fact that the police will one way or the other be interacting with far more youth than any other agency, the training and professionalization of the police agencies should receive the highest priority that funding can allow.

Session 2: Adjudication of Juvenile Delinquency

Chairman: *Mr. Minoru Okamura*
Rapporteur: *Mr. Ranjit Bandara Ranaraja*
Advisor: *Mr. Hidetsugu Kato*

Introduction

Most countries in Asia and the Pacific have experienced a rapid increase in their juvenile population and an even faster rate of growth in juvenile crime over the last decade. As a result, a review of the existing juvenile justice systems has become opportune, not only to identify and eliminate the obstacles preventing its smooth functioning but also to seek improvements within the system through the sharing of experiences. With this object in view thirty participants from eighteen countries of Asia and the Pacific and other regions held five general discussion sessions on different aspects of juvenile justice administration. The main theme of discussion at the second session was the adjudication of juvenile delinquency, which was considered under three items; (1) the juvenile court, (2) principles of hearing procedure, and (3) principles of disposition.

The Proposed Guidelines for the Formulation of the Standard Minimum Rules for Juvenile Justice Administration prepared by UNAFEI on the basis of the report of the study group at the 58th International Training Course and the report on the Standard Minimum Rules for the Administration of Juvenile Justice and the Handling of Juvenile Offenders prepared by Dr. Horst Schüler-Springorum, Professor of Criminal Law and Criminology, Munich University, provided the framework for the discussions.

The items for discussion were introduced by the chairman who stressed the fact that although different countries have adopted different systems of juvenile justice administration, they, with a few exceptions, had experienced an increase in the incidence of juvenile delinquency. It was the function of society to ensure the healthy upbringing of juveniles. But on occasions on which this goal has not been achieved it was necessary to bring the juvenile before courts of law. During the adjudication stage it was the primary duty of court to maintain a balance between the interests of the juvenile on the one hand and the interests of the society on the other, firstly by not subordinating the fundamental rights of the juvenile in the process of treatment and rehabilitation and secondly, by protecting society from the persistent offender.

Juvenile Court

The need to deal with juveniles outside the traditional criminal justice system was

then discussed. The mental and physical immaturity of juveniles and logically, the fact that the same degree of responsibility for a criminal act could not be attributed to a juvenile was recognized. "Immaturity" by definition left room for future reformation and rehabilitation, both of which to be successful had to be individualized. Such a task would be best left to a system of justice different from that employed to deal with adults.

The point was also made that besides the traumatic experience of appearing in an adult court, contamination with adult offenders could cause irreparable harm to a juvenile. It was recognized that the basic philosophy of juvenile justice was the need to deal with juveniles kindly, with compassion, together with a measure of firmness. Hence the desirability of having a separate system of juvenile justice was accepted without objection.

Attention was focussed on the question whether administrative boards or tribunals with adequate procedural safeguards to ensure a fair trial and due process would be more suitable than juvenile courts to deal with juveniles either in conflict with the law or in need of care and protection. In view of reports that children's hearings before panel representatives of the local community in Scotland and central board for social welfare services in Sweden had come in for adverse comment, views were expressed that it would not be opportune to take any steps in that direction. However, the advantage of such boards or tribunals in providing more expeditious solutions to juvenile problems avoiding the delay experienced in the judicial decision making process was noted.

The view was also expressed that "status" offenders had no place in juvenile courts as they had committed no criminal offence, such persons could legitimately be "treated" by administrative boards, and have the further advantage of not categorizing them with juveniles who had broken the law. Whilst it was conceded that such an arrangement had its own merits, it was argued that where the order of an administrative body had the effect of curtailing the liberty of the juvenile, safeguards had to be provided to the juvenile to have recourse to a judicial body.

Other participants were of the opinion that, since juvenile courts were established to "protect" all categories of juveniles, no other administrative board or tribunal should be permitted to usurp the powers of a juvenile court. In support of their argument it was pointed out that the protection of the constitutional and legal rights of juveniles and an impartial investigation could be ensured only by a judicial body. The juvenile court was the organ most suitable to impose sanctions on those who break the law and caution those who are prone to commit acts harmful to society.

Though no final conclusion was reached on the desirability of setting up administrative boards or tribunals to deal with juveniles, it was apparent from the discussions that most participants preferred the juvenile courts to handle juveniles in conflict with the law.

It was observed that whilst most countries represented have already established juvenile or family courts with special jurisdiction to deal with the young, a few had not. Some countries had established special juvenile courts in certain towns or areas only and given ordinary criminal courts jurisdiction of juvenile courts to try juveniles concurrently. The reasons for this arrangement were two-fold. Firstly the lack of resources and secondly the absence of an adequate work load. Where this procedure had been adopted secrecy and informality which are hallmarks of juvenile justice have been preserved. In this context one participant expressed the view that it was unfair to expect judges of ordinary criminal courts to switch roles from a stern magistrate to a benevolent juvenile magistrate. It was pointed out that the experience of countries which have adopted the system of granting concurrent jurisdiction of juvenile judges to judges of ordinary criminal courts has shown the system works reasonably well, though it may not be the ideal system.

Since the function of the juvenile justice system is the prevention and treatment of

juvenile delinquency, attention was focussed on the different categories of juveniles over whom court should have jurisdiction. Each country has its own definition of delinquents, pre-delinquents and neglected or abused children.

It was disclosed that the most commonly accepted definition of a "delinquent juvenile" was a juvenile who has committed a criminal offence or transgressed the law, which act if committed by an adult would draw legal sanctions. Difficulty was encountered where such acts were committed by children who had not reached the age of discernment. Some countries have employed the term "law breaking" or "law violating" children to describe them.

The term "pre-delinquency" was not as easily defined since it covers a wide spectrum of deviant behaviour which makes the juvenile prone to commit crimes or violate the law in the light of his character and surrounding circumstances. A few countries have defined the term "pre-delinquent" to include behaviour such as persistent disobedience to the reasonable dictates of their parents, running away from home without good cause, associating with criminals or other immoral persons or frequenting immoral places or showing a disposition to engage in morally harmful behaviour like repeated use of alchohol, drugs and stimulants.

It was observed that in some countries "neglected juveniles" included those who are "mistreated," "abused" or "destitute." This category of juveniles was sometimes described as "children in need of care and protection." One country has defined a "neglected child" to mean a child begging or found without having any home or settled place of abode or any ostensible means of subsistence or is found destitute or has parents or guardians who are unable to exercise or does not exercise proper care and control over the child. Another country has defined a "mistreated or abused child" as one against whom a criminal offence has been committed by his or her parent, guardian or custodian. It was noted however that when considering these definitions the line separating each category tends to get blurred.

The need to recognize the different needs of each category of juveniles and the manner in which participant countries were dealing with them came under discussion. From a comparative study of the procedure followed by different countries it became evident that no uniform practice was being followed. In certain countries pre-delinquents and neglected children were grouped together with delinquent juveniles and dealt with by juvenile courts. In others pre-delinquents and children in need of care and protection were dealt with by welfare boards or similar bodies set up by departments dealing with social welfare. In certain countries there was no category of neglected children recognized by law. In a few countries pre-delinquents under a certain age came within the jurisdiction of family courts only when they were referred to them by non-judicial authorities. The discussions brought into focus the wide gulf that has to be bridged if a uniform set of rules for juvenile justice administration is to be adopted. However, a majority of participants showed no disapproval of the suggestion that delinquent juveniles be dealt with by juvenile courts and neglected children be dealt with outside the juvenile justice system. The manner of dealing with pre-delinquents remained a vexed question.

Since most criminals commence their careers as juvenile delinquents, the efforts at protecting and rehabilitating potential criminals, it was noted, depends to a great extent on the quality of the personnel. In view of this, it was considered relevant to discuss the criteria for appointment of those responsible for working the juvenile justice system.

A comparative study of the functioning of courts in different countries in the region revealed that some countries had a single judge learned in the law presiding over juvenile courts whilst the practice in other countries was to give the presiding judge the assistance of two or in one case three laymen. In some countries it was a condition that one of the assistant judges

be a laywoman. However, one common fact that emerged was that the professional judge had to be learned in the law especially of procedure and evidence and be sympathetic towards the needs and problems of children. Where layjudges assisted the professional judge, it was a requirement that they should have experience in bringing up children and welfare work whilst being of good social standing. In one state the panel of layjudges comprised of qualified psychologists, doctors and sociologists.

It was noted that the reasons for the insistence of such qualifications are manifold. In the case of a professional judge, it was considered that he should be well-versed in the law of procedure and evidence to ensure a juvenile is afforded a fair trial adhereing strictly to the rules of procedure. Although some participants expressed the view that a judge should also have an adequate knowledge of behavioural sciences, a note of caution was sounded that too much theoretical knowledge may create a danger of a judge applying such theories to situations which are wholly unsuited. It was observed that a judge who exercises wide discretion in making orders in respect of the liberty of juveniles was less likely to abuse this power if he had a proper training and experience. There were no dissenting views expressed to the principle that proper training and experience of judges was a *sine qua non* to the proper administration of juvenile justice.

Inclusion of juvenile justice in the curriculum of law schools, academic studies, mandatory specialized training on a continuing basis were suggested as means of achieving the objective of improving the quality of judges.

There was no disapproval of the principle that there should be no discrimination between sexes in the appointment of juvenile judges.

For the proper treatment of a juvenile a correct diagnosis of his individual character was considered essential. The success or failure of rehabilitation, it was noted, depends to a great extent on individualized treatment of the juvenile and the dedication and the quality of the support staff working in the juvenile court.

Besides the administrative staff, it was suggested, a juvenile court should have the services of probation and parole officers, social workers psychologists, psychiatrists, doctors and nurses. Whilst some participants expressed the view that it would be preferable to have such officers attached to juvenile courts where possible, others suggested that it would suffice if their services alone were available on request. It was also stressed that the latter course would encourage a certain degree of objectivity and independence on the part of these experts. However, some other participants felt that if the officers are attached to the court co-ordination of their functions would be facilitated.

As in the case of judges the proper training of these officers was considered to be of great importance. Training in the working of the juvenile justice system and delinquency prevention was considered essential.

One participant stressed the need for cooperation between judges and support staff as the welfare of the child was the paramount consideration.

Principles of Hearing Procedure

It was noted that in contrast to the hearings in adult criminal courts proceedings in juvenile courts should be informal. An awe-inspiring atmosphere should be avoided. The court room should have a friendly appearance, yet in no way lose its dignity. Surroundings should be such, that the judge will not for a moment forget that the person before him is a juvenile and not a criminal. In turn the juvenile should be free of tension and be able to gain confidence to express himself freely. The view was expressed that the court should be very simply furnished with the judge sitting at the same level as the juvenile and as close to him to enable easy conversation.

It was observed that hearings should be in camera with only the interested parties, parents or guardians, lawyers, witnesses, members of the court staff and profes-

sional workers present, in order to make the appearance in court as least traumatic as possible to the juvenile. Excluding the public, it was pointed out, will have the further advantage of avoiding the stigmatization of the juvenile. If the press is to be admitted, it was suggested, news items which tend to identify the juvenile should be prohibited.

It had been suggested that the fact finding and dispositional hearings be separated and the juvenile judge be given the discretion to allow the public and the press to be present at the fact-finding stage only on the basis that justice must not only be done but also seen to be done. It had also been suggested that open hearings would act as a check on the arbitrary use of power by certain juvenile judges and court officers. However, several participants disapproved of such an innovation.

During the course of the discussions it was suggested the juvenile should be given the right to waive the privilege of a closed trial if he so wishes. One participant expressing his view on the matter observed that this would negate the basic philosophy of the juvenile justice system. It was pointed out that in the United States of America, where the tendency of juvenile courts at present is to extend the legal and constitutional rights of juveniles, such a move was being considered by some states. The arguments for and against, it was noted, have to be considered in the context of the minority adult population deciding what is good for the majority juvenile population. This in turn no doubt, will raise further questions on constitutional rights. No conclusion was reached on this interesting aspect of the rights of a juvenile.

It was observed that juvenile courts maintain legal records containing the charges, evidence, findings, dispositions and social records relating to juveniles brought before them. To avoid identifying a juvenile as a criminal, secrecy and confidentiality of the records must be ensured. Except the juvenile concerned, his parents and attorneys, public prosecutors, probation officers and other professionals whose assistance is sought by court, no other person should be allowed access to them. It was observed if such records are needed for research purposes, precautions should be taken to prevent the identification of the juvenile in any findings. The view was also expressed that every country should take necessary steps to destroy records concerning juvenile offenders after rehabilitation is achieved or on the juvenile reaching the age of adulthood. The purpose of this action, it was explained, was to change the status of the juvenile from one with a court record to one with no contact with the juvenile system, thereby affording the juvenile equal opportunity in adult life. No participant voiced any objection to the principle of secrecy in juvenile proceedings.

It was noted that in the United States of America where juvenile courts are said to have had their origin, these courts were considered until 1967 to be civil in nature on the assumption that rehabilitation rather than punishment was their goal. Hence constitutional rights available to an accused in a criminal court were denied to juveniles in trouble with the law. Since the decision in the *Gault* case due process rights have been extended to most aspects of juvenile court proceedings on the basis that they are criminal in nature, without disputing the protection and rehabilitation philosophy underlying the juvenile justice system. Some of the main rights available to the juvenile, it was noted, are the right to counsel, right to be properly notified of the charges against him, the right to confront and cross-examine witnesses, the privilege against self-incrimination, the right to an impartial trial, the right to have the charges against him proved beyond reasonable doubt, right to the last word in the hearing, right to a copy of the proceedings and the right to appeal.

The right to counsel was discussed at length. A suggestion that the presence of parents or guardians at the hearings could obviate the need for counsel was disputed. It was pointed out that the parents and guardians themselves may be as inarticulate and as ignorant as the juveniles of the intricate rules of procedure and evidence,

hence in no position to be a substitute for counsel learned in the law. The need for counsel to safeguard the interests of the juvenile was specially stressed. Some participants observed that the state had a duty to provide legal representation to juveniles at its expense. Though this suggestion was accepted in principle, a few participants observed the priorities of their governments did not permit such a course in view of financial constraints.

At the end of the discussion on constitutional and legal rights of the juvenile there were no suggestions for limiting any of the rights enumerated earlier.

It was observed that the principle of "justice delayed is justice denied" is applicable with greater force to juvenile court proceedings. The time span between the commission of the offence and the final disposition should be as short as possible if the juvenile is to relate one to the other. Hence it has been suggested that except in the event of a juvenile denying the commission of a delinquent act or a final disposition having the effect of institutionalization of a juvenile the right of appeal should be restricted. Though the legality of such a measure could be questioned, no conclusion was reached on this matter.

The attention was then focussed on the persons who should be entitled to assist the judge at the hearing. As the house had already dealt with the auxiliary staff, the role of the prosecutor was taken up for consideration. As a criminal trial in most countries is considered to be one between the state and an individual, the notion of a judge acting as the prosecutor, it was noted, does not appear to be logical. A "fair trial" by definition is fair to two sides. A judge, whilst being entrusted to preserve the interest of the state, cannot be called upon to act in the best interests of the child. Hence the best course of action to be taken to ensure a fair trial would be to permit a public prosecutor to appear on behalf of the state at least during the fact-finding stage. It was however noted that the prosecuting officer in turn must not forget the fact that unlike in adult criminal courts, the basic philosophy of a juvenile court is the protection of the child. The presence of a prosecuting officer in a juvenile court will in no way prejudice a juvenile so long as he himself is represented by counsel. The discussion of this subject ended without any conclusion being reached.

Principles of Disposition

Although the juvenile justice system's basic philosophy lays stress on treatment and rehabilitation, it was observed that it is unrealistic to imagine that courts do not at the same time punish the offender for his deviant behaviour. The offender at least does not believe his behaviour was due to any sickness needing treatment, but that court is seeking to condemn his actions by imposing certain corrective measures on him, be it by way of non-institutional treatment or institutional treatment. However, the treatment itself depends to a great extent on the information available to a judge at the time of making the disposition.

It was revealed that in many countries in the region the most important source of information available to a judge is the social report filed by the probation officer following investigation and evaluation of the juvenile. Typically it contained a personal history of the delinquent from his birth to the date of commission of the offence, which would help court to understand the juvenile in order to make an appropriate disposition. Information regarding the age, identity, details of the offence in aggravation or mitigation, any prior record of adjudicated delinquency and disposal thereof are also of importance to the judge. Besides social reports, results of psychological and intelligence testing, psychiatric reports are also useful. It was noted however that all information supplied should be objectively presented without betraying any emotion or prejudice.

It was questioned whether in practice probation reports could really be impartial if the officers who submit them wish the juveniles to be admitted to institutions

because such facilities are available irrespective of whether it is the best form of treatment suited to the juvenile in question. In reply it was pointed out that probation officers usually take up to one month to make scrupulous investigations and prepare the reports. Once the reports are presented to court the judge and defence counsel had every right to question the makers of such reports, it was only after they were satisfied with the accurancy of the facts contained therein that dispositions were made on the basis of such reports. It was stressed that probation officers had little chance of influencing courts to make orders which were not in the best interests of the juveniles.

At the end of the discussion of the subject the majority of the participants indicated no objection to copies of social reports being made available to defence counsel, and to the makers of the reports being subject to cross-examination on the contents where the need arose.

The discussions disclosed that most of the countries of the region have all or some of the following forms of disposition; warning, care, guidance and supervision orders, community orders, restitution and victim compensation orders, fines, treatment orders, group counselling, determinate and indeterminate imprisonment, corporal punishment and capital punishment, besides other dispositions. Several participants expressed the view that corporal punishment and capital punishment should not be inflicted on juveniles. It was suggested that where such forms of punishment were available steps should be taken to remove them from the statute books. The view was also expressed that imprisonment with forced labour was not a suitable form of punishment for juveniles.

Considering the variety of options open to juvenile judges, it was his duty to keep in mind the need to protect and rehabilitate the juvenile when making a disposition. It was suggested that the disposition should always fit the offence and not be excessive or repressive. On humane as well as economic grounds it was considered preferable to avoid institutionalization in favour of community-based treatment such as probation. It was stressed that incarceration involves not only a loss of liberty but also separation from a familiar social environment which is bound to have grave psychological consequences. The view was expressed that institutionalization should be used as a "last resort" disposition in the cases of those guilty of grave crimes against society or persistent offenders only. There were no views opposing the principles set out, at the end of the discussion.

The final item discussed was the right of juvenile courts or competent authorities to review or modify their earlier orders. This matter came up for discussion as a corollary to a recommendation that placement in institutions for an indeterminate period should be avoided. However, this rule, it was noted, could apply to all types of dispositions which limit the liberty of a juvenile for a given period. The principle behind the suggestion that courts or any competent authority should be given the right to review or modify their earlier orders was that, if a juvenile offender who has been ordered to undergo a determinate period of institutionalization or treatment showed signs of rehabilitation, he, his parents or guardians, authorities of the institution or welfare authority could move for its termination before the expiry of the full period specified in the order, and the court or the competent authority should be in a position to review or modify it. It was assumed that the possibility of obtaining an earlier termination would induce the juvenile to respond to treatment favourably and thereby feel "free" as early as possible.

There were two dissenting views expressed. Firstly that a judge should not fix a determinate period in a final disposition as there was no guarantee that a juvenile offender would be rehabilitated within a given time. Hence it was suggested that court should be at liberty to order treatment for an indeterminate period. Secondly the view was expressed that a juvenile court or any competent authority should not be given the right to vary or modify its own orders as there would be no finality

to the disposition. It was suggested a modification or revision could be sought through an appellate body. It was noted that both these suggestions will cast an unnecessary burden on the juveniles and should be subjected to further consideration.

Conclusion

Closing the sessions the chairperson stressed the desirability of evolving a set of basic principles for the administration of juvenile justice to ensure the healthy growth of juveniles into responsible citizens. It was observed the discussions had contributed greatly to the better understanding of the varied systems of juvenile prevailing in the different countries of the region.

Session 3: Institutional Treatment of Juvenile Delinquents

Chairman: *Mr. Akira Nakata*
Rapporteur: *Mr. Nasrullah Khan Chattha*
Advisor: *Mr. Hachitaro Ikeda*

Introduction

As the chairman stated, most of the juvenile delinquents are themselves victims of intemperate parents and intolerant community. Therefore the need is that instead of treating them as criminals, they should be treated like patients. The training institutions are designed for long-term care, *i.e.*, the period for which the children remain in these institutions is not measured in days or weeks, but in months and years. Normally the delinquents are not committed to these institutions, unless and until, the court is of the opinion that by reasons of the criminal habits, tendencies or association with persons of bad character, it is expedient that he/she should be subjected to detention in the institution for such term and under such instructions and discipline as appears more conducive to the reformation of the delinquent. In addition to maintaining custody of the delinquents, and thus segregating them from the community, the institutions have the full-time care of the delinquents, and must provide them housing, food, education, recreation, medical care and religious training. It is also the objective of the institutions to try to change the delinquents' attitudes and habits, so that when they leave the institutions, they will not get into further trouble with police and courts and at best will have better balanced personalities and constructive attitude.

Classification

After defining the objectives of institutional treatment, the participants expressed their views about classification. One of the participants from Japan stated that in Japan the juvenile classification home is charged with the duty of conducting the classification. He further stated that for this purpose the classification home can detain the juveniles for a period not exceedings four weeks. During this period the behaviour of the delinquent is observed in various settings and classification is carried out using scientific methods of medicine, psychiatry, psychology, sociology and pedagogy. Interview and analysis of care history are also among the methods being used for the classification. The results of classification together with those of medical examinations, behavioural observation and analysis of personal history and life environment are considered at the classification conference of the home, in which a recommendation for the disposition of the case by the family court is formulated. The data gathered and assessed by the juvenile classification home are not only helpful to the family court but also to the juvenile training school in case the juvenile is committed to a training school. The results of the investigation and directions concerning his treatment are filed in the juvenile records, which is sent to the juvenile training school

together with other documents concerned. He laid further stress on the point that the delinquent should be given individual treatment, after defining his problems and he should be kept under constant observation. He was of the opinion that classification should be such which may go a long way in the rehabilitation of the juvenile delinquent.

The participants from the Republic of Korea, Malaysia, Nepal and Singapore showed their agreement with the above view. The participant from India expressed that as the needs of the delinquent remain changing, there should be regular counselling keeping in view the different nature of the case. Another Japanese participant stated that as there is close cooperation between the juvenile classification homes and the institutions, the delinquents are being looked after properly in each and every respect. The participant from the Philippines also stressed the need of counselling and guidance.

Education and Training

After this the participants went on to the second item of discussion, *i.e.*, education and its various forms. A participant from Burma suggested that the delinquents who had no chance of completing the education should be provided facilities for the completion of basic studies. He also stressed the importance of vocational training, and suggested that it should be given to the juvenile keeping in view his aptitude and family background, so that he faces no difficulty in settling or adjusting after he is released from the institute. The participant from the Republic of Korea insisted that those delinquents who have not been able to complete their compulsory education should be made to complete it. After that if they want to continue their studies, they should be encouraged for it with all possible assistance and temptations of all sorts. The participant from India stated that education should be given the highest priority, as the lack of education results in lack of employment, economic poverty, mental poverty and juvenile delinquency. He was of the opinion that the delinquents should be provided vocational training which is of great import for his rehabilitation. A participant from Japan stated that quite a good number of delinquents have good I.Q. (Intelligence Quotient), therefore they should be encouraged to complete their higher school education.

As regards vocational training, the participant from India stated that in India there is a system of imparting education in the institution and for this purpose the schools have been attached to the institutions for the grant of certificate, and vocational training is also being given. The participant from the Phillippines stated that in her country the inmates of the institutions are being trained in various handicrafts. One of the Japanese participants was of the view that the vocational training should be up-to-date and should fulfill the needs of the delinquents. He explained that the training schools should have some specific vocational training that is oriented toward the time of release. For boys such things as wood working, machine shop, shoe repairing, paintings, printing, auto mechanics and electrical work can be given keeping in view the individual aptitude and family background. The objective should be not to turn out skilled craftsmen, but to give some orientation of an occupation. If they are successful in the course and wants to obtain a certificate/license for practice, they should be obliged readily without any indication on the license as to where the training was received. The participant from Singapore explained that in her country the private companies are encouraged to give training to the delinquents according to their needs and once the delinquents are released from the institution they are provided job by that very company. Another participant stated that the qualification obtained by delinquents should be acknowledged and all in concerned departments should coordinate their efforts in encouraging them.

Recreational Activities

The participant from Fiji, at this point, laid stress on the importance of exercises, sports and games. He stated that the need of all children for recreation is generally recognized. Therefore community centres, schools and public recreation departments have accepted the responsibility of providing space, equipment and leadership. He was further of the opinion that recreation may be used as a means of personality development and character training. He stated that in Fiji the contests are held between the inmates of various institutions, which is quite good for the juveniles. A Japanese participant asserted that sports and recreational activities play an important role in the character building of the delinquents. They learn to abide by the rules. The juveniles get a sense of achievement and this is the proper and healthy way of spending the spare time. The participant from India explained that in his country physical instructors have been employed in all the institutions, and the delinquents take part in all the state level and country level without any discrimination of any sort.

Accommodations

Concerning the topic of accommodations, a participant from Japan stated that in case of Japan adequate accommodation is being provided keeping in view different life styles. Previously no beds were being provided to the inmates, but as the trend is changing, certain institutions have started providing the beds to the inmates. The participant from Costa Rica suggested that pregnancy should also be taken care of, and all possible facilities should also be provided in delinquent cases. A participant from Japan suggested that the institutions should be made comfortable, but they should be escape proof. Mr. Peter Rogers, visiting researcher, was of the opinion that in institutions the high walls are not essential, and instead the staff should remain more vigilant. He was of the view that the institution should give a homely appearance. A participant from Burma was of the opinion that the delinquents should not be treated as angles, but they should be made to repent for their misdeeds. Mr. Rogers again suggested that the penologist approach is receiving little attention as it is not serving the purpose of rehabilitation. A Japanese participant taking part in the discussion suggested that it is quite difficult to draw a line between the necessary facilities and the dangers of escape. Therefore he was of the opinion that the architectural design of various types of institutions should lay emphasis on attractiveness and comfort of the building and provisions for a normal round of activities. At the same time, as the building is intended for custody and hense should be escape proof. This makes it possible for staff and juveniles to concentrate on program activities without any anxiety.

The Deputy Director of UNAFEI, referring to the United Nations Standard Minimum Rules for the Treatment of Prisoners which have provisions regarding single rooms at night or dormitories, explained that the draft of the S.M.R. was completed before World War II, therefore it gives the impression that it mostly reflects the condition and facilities for northern part of the world, and it may not be fully applicable/practicable for rest of the world having hot climate. The participant from India, expressing his agreement with the views of the Deputy Director, stated that providing single room accommodation is neither good in hot countries, nor feasible economically. He further suggested that certain juveniles are not in a position to sleep alone in a room at night. Therefore no uniform rule can be made applicable, and only highly uncontrollable or unruly juveniles should be made to sleep alone. The juveniles should not be suspected all the times and they must be trusted, so that they may also react accordingly. He cited the example of open prisons which are working quite normally in India. He was of the opinion that as the basic idea is the rehabilitation of the juveniles and they are

to return to the society, they should be allowed to live in groups under strict vigilence.

Food, Clothes, etc.

A participant from Japan was of the opinion that the inmates are the core of the next generation, and if they become physically handicapped it will be a great loss to the nation. Therefore the inmates must be provided with all the basic facilities properly and according to standard. Sufficient calories of food should be provided to the inmates. The participant from Indonesia stated that in her country food is provided on the medical prescription of the doctor, and inmates are allowed to wear their own clothes outside the institution. A participant from Burma was of the view that the food be having complete nutritional values, and uniform be avoided as far as possible as it gives the idea of regimentation and stigma.

A participant from Japan stated that in Japan the inmates while going out wear the school uniform like other students and therefore it is not possible to differentiate between them, and while inside the institution, they put on the clothes which are suited to the occasion, *e.g.*, in workshop he will wear the dress designed for that specific purpose and while playing sports shall wear the sports dress. The participant from Costa Rica suggested that it will be proper if the inmate is allowed to use his own dress inside the institution. The participant from Singapore explained that in her country the inmates use different uniforms inside the institution from that for going out.

The participants agreed that all the inmates should be given medical checkup at the time of admission and discharge and at regular internals, and it should be the responsibility of the institution that the inmates are having good health.

Conclusion

The problem of institutional treatment of juvenile delinquents is one of the most debated points in the history of criminology, but no final decision has been reached as yet. However, one should see the reasons for the existence of different types of disposition. In general, young children, first offenders and minor offenders are likely to be placed on probation. The juvenile with a stable family or accompanied by interested and stable guardian, willing to help him, may be granted probation. But the recidivists who have perhaps failed to amend their conduct under previous probation, the serious offenders and relatively old juveniles are more likely to be committed to a training school. The juvenile from a broken home and perhaps completely disintegrated home is often sent to a training school, especially if no one comes forward to give him care. The institutions are in fact meant for these types of delinquent. Supposing if there had not been such types of institutions, then these unfortunate juveniles must have been sent to the prisons. Therefore these institutions should be strengthened further for the welfare of the delinquents, but there is a hard fact that the placement of juveniles in these institutions should always be a matter of last resort. The judge must search all the corners before ordering the placement of the juveniles in the institutions. Therefore the judge must keep in view the point that the mildly delinquent juveniles might become more delinquent from association with more thoroughly delinquent juveniles in the institution. He may come to think of himself as a delinquent and carry this attitude back to his home, school and community, when he is released. Because of these hazards the juvenile court judge should avoid the use of institution as far as possible, keeping in view the welfare and future development of the juvenile and the safety of the community.

Session 4: Non-Institutional Treatment of Juvenile Delinquents

Chairman: *Mr. Mohan Lall Kalia*
Rapporteur: *Mr. Hewaussaramba Tilakawardena*
Advisor: *Mr. Yoshio Noda*

Introduction

Various forms of non-institutional, community-based treatment methods for juvenile offenders undoubtedly justify the approach for diversion devices against the custodial methods of treatment in the juvenile justice system. Paying much importance and due attention to these forms of treatment methods for juveniles rest not only on the economical aspect of it but also on the worth and dignity of human beings. Since the individual cannot be considered as an isolated entity but must be considered in relation to his environment, the treatment of juvenile delinquents with the community involvement through reformative and supportive methods achieves for reaching benifits to the individual, his family and community in terms of developmental context.

Since non-custodial methods of treatment in dealing with juvenile offenders have demonstrated to be an effective device in rehabilitation of selected juvenile delinquents, this diversion from institutionalization could be considered as one of the most hopeful and economical measures of rehabilitation and reintergration of juvenile delinquents into their community. It is in this context that the need arose to discuss, share experiences, reexamine and also to formulate a better approach to solve the problem of juvenile delinquency through the juvenile justice system.

Various Forms of Non-Institutional and Community-Based Treatment of Juvenile Delinquents

Significance and merits of community-based treatments that could be practiced for the treatment and rehabilitation of juvenile delinquents saving the juveniles from stigmatization and frequent deleterious effects of institutionalization were broadly emphasized. It was revealed that using of such programs for selected juvenile delinquents is a device for rehabilitation within the family and community achieving manifold social advantages. Considered along with the high success rate of these programs and prevention of recidivism and above all its humanitarian approach, it was highlighted that community-based treatment measures could be considered as desirable modes of judicial as well as non-judicial disposition.

It was also revealed at the discussion that probation is widely practiced in most of the participating countries as a method of community-based treatment.

1. Probation

In the probation system the juvenile delinquent is released into the community subject to conditions imposed by the court in accordance with laws. The offender is subject to active supervision by a professional social worker and what he does in social work terminology is "planned change." The probation officer or the professional social worker as an agent of change sets in motion a process of regeneration of a delinquent in his planned change effort. He combines his creativity, spontaneous feelings, individuality, concern and love for the individual, his family and community with a body of knowledge about human behaviour and social environment. An imaginative formulation is worked out with each juvenile delinquent treating him as an individual distinct and unique among all other individuals based on a psychosocial assessment and the treatment is designed to fit the juvenile within the limits of a social work function. The juvenile is helped to solve his problems by mobilizing the resources in the community and capacities in the individual. The level of functioning is constantly revived in order to achieve progress.

However, the community-based treatment process in probation provides ex-

tended judicial control in most of the participating countries. This could be considered as a significant characteristic in probation treatment for juvenile delinquents. Unlike in a situation where the offender is sent to an institution, the authority to set, modify these conditions or the authority to modify the duration of the order are all vested in the judiciary. The structure, therefore, provides an opportunity for the judiciary for continued involvement in the successful rehabilitation of juvenile delinquents in most of the participating countries.

It was revealed that imposition of conditions in probation varies from country to country. However, primary aim of imposing probation conditions is to effect guidance and control of his behaviour to achieve progress. There exist certain similarities in the conditions of probation in all the countries with regard to some basic requirements such as:

a) Mandatory reporting to the probation officer;
b) Good behaviour or conduct as a law-abiding individual;
c) Appearance in court or probation office whenever required; etc.

While some countries impose general or mandatory conditions only, others impose both general and special conditions or discretionary conditions.

Special conditions of probation take the form of stipulating a particular place of residence, prescribing the pursuance of a vocational training or study, etc. The authority to impose special conditions vested with the court in some countries. In Japan the Director of the Probation Office is empowered to set these conditions for juvenile probationers.

The violation of conditions sometimes stemmed from lack of knowledge on the part of the probationer regarding the contents of conditions imposed on him. Therefore, the participants stressed that it should be the duty of the probation officer to furnish each probationer with a careful explanation of the conditions. It was also noted that the conditions should be realistic and enforceable so that the probationer could practically observe them, and, in addition, that the conditions should not include requirements which inflicted unnecessary restriction on the personal freedom and legitimate activities of the probationer.

Discharge from probation ordinarily occurs at the end of the probation period if there has been no violation of the conditions. However, in most of the participating countries, the period of probation may be terminated earlier by the court on the application and recommendation by the probation officer in accordance with the progress of the probationer.

In Japan the Director of the Probation Office has authority to decide an early discharge of probation supervision of juvenile probationers. In cases where early discharge appears premature, the Director of the Probation Office could grant conditional suspension of supervision.

In Singapore, an automatic review of the progress of every case granted probation is done by the Juvenile Case Committee if a probationer has at least completed six months of his period of probation.

In Sri Lanka for early termination of the period, the probationer is required to complete one half of his stipulated period of probation, while in most of the countries early discharge from probation at any stage is possible depending on the progress achieved by the probationer.

For all countries, a serious breach of conditions in the probation order or commission of a new offence will result in revocation of probation. The probation officer is required to make the most difficult judgement regarding an application to the court for the revocation of probation. Before submitting the application for revocation, it was stressed, the probation officer should consider whether the revocation would serve the best interest not only of the probationer but also of the community.

In order to make probation treatment an effective method of rehabilitation for juvenile delinquents, assigning a reasonable number of cases to a probation officer has to be carefully determined. However,

this concept is applicable to those countries where the probation officer's supervision of juvenile offenders take the direct form. The variation in the number of cases become necessary according to seriousness of the cases, geographical conditions and use of voluntary probation officers. In Japan probation officers render their services to a large number of probationers through the mobilization of voluntary probation officers. The probation officer in Japan carries a case load of about 150 cases as against a case load of about 40 in number which could be supervised by a probation officer who deals directly with his cases.

With regard to qualifications and skills of probation officers, the house unanimously agreed to the proposed guidelines of UNAFEI that the probation officer should possess the requisite aptitude, adequate knowledge and such skills or behavioural sciences that contribute to the understanding of the phenomenon of delinquency and should be properly trained in the methods and techniques of correctional work. The house also agreed that the other qualifications and requirements may be imposed in accordance with the educational systems and expectations of respective countries.

It was also discussed that for successful rehabilitation of juvenile delinquents as far as possible revocation should be avoided and that it could be achieved by the mobilization of community resources to suit the needs of the juvenile while enabling him to gain acceptance in his family and community and thereby solving his problems through the help and guidance of the probation officer.

It was revealed that probation as a typical form of community-based treatment method is practiced in varying degree in participating countries except Nepal, China, and the Republic of Korea.

However, there are a number of obstacles which make it difficult to introduce or expand probation services in many participating countries. One of them is strong public feeling in favour of custodial treatment of offenders, considering probation to be too lenient. Another is the shortage of necessary funds and professional personnel in the probation service. In some countries, a small number of probation officers have to provide supervision and guidance to a large number of probationers. In order to cope with these problems as well as to improve probation services, the participants unanimously agreed that in keeping with the Proposed Guidelines for the Formulation of the Standard Minimum Rules for Juvenile Justice Administration prepared by UNAFEI, worthwhile steps to improve the quality of services could be emancipated in the near future. Dr. Günther Kaiser, visiting expert who participated in the discussion, observed that community-based treatment for juvenile offenders could be arranged in a wide range with the availability of sufficient staff.

2. Various Types of Diversion Programmes

The diversion of juvenile delinquents to other programmes in accordance with their needs focussed the attention of participants.

Foster care could be implemented as a diversion programme for those juveniles who are in need of such placement. However, in their interest placement should be made in the most appropriate situation available. It involves pre-admission, placement and post-care. Pre-admission involves the assessment of the juvenile's problems and needs and preparing him for admission. Placement relates to the period during which the juvenile is actually in care. Therefore residential care programme is necessary to suit the needs of the juvenile. Post-care includes the development of a supportive follow-up programme.

The participants agreed to the views expressed by the participant from Pakistan that comprehensive investigation should be carried out by a professional social worker or probation officer before arriving at the decision to entrust the custody of a juvenile to the care of foster parents.

The community service order could be considered as another form of community-based treatment for juvenile of-

fenders. It could incorporate most of the prevailing correctional philosophies to rest punishment, treatment, atonement, social growth preparation and restitution. The offender pays back to the society in terms of time and labour, he is offered constructive activity. he is encouraged to develop inmate talents. The offender who works in the community and the latter is expected to trust and help its own offender's rehabilitation. However, a community service order should have a possibility of guidance and help of a friendly counseller who would work out for the offender's re-intergration to the community. The participants unanimously agreed to the proposed guidelines in this respect and held the view that this could be considered as a useful alternative device to institutionalization.

The participants also discussed whether restitution and victim compensation could be used as a diversion against institutionalization and other community-based treatment method in the interest of the juvenile delinquent depending on the nature of the act committed, circumstances and also the capacity of the offender or his parent or guardian to compensate the victim. It was viewed that depending on the merits of the case referral for specific welfare programme diversion would seem appropriate.

Utilization of Volunteers, Voluntary Organizations or Other Community Resources

The dire necessity for the mobilization of resources available in the community to suit the needs of the juveniles on treatment programmes were discussed.

It was revealed voluntary organizations in the field of social work in most of the participating countries play a significant role. The services rendered by voluntary organizations in the community are of vital importance for the success of community-based correctional programmes in the prevention and treatment of juvenile delinquency. Hence, active participation and the involvement of members of the voluntary organizations should be obtained by authorities in the implementation of such programme in the community for its success. All the participants agreed that utilization of volunteers and mobilization of community resources are very essential in the treatment and rehabilitation of juvenile delinquents in an uncontrolled environment like community.

The utilization of voluntary probation officers, who are selected from the community to serve in their own locality, is one progressive factor of great importance in the field of community-based treatment.

In Japan these voluntary probation officers are selected from among citizens who are respected in the local community and who have sufficient enthusiasm for helping offenders, those who are in need. They also should be people of financial stability with good character who are in good physical and mental health. They do not receive any remuneration for their services but they achieve sense of gratification for their humanitarian deed in helping those who are in need. They are also given due recognition for their dedication to social work. There are 47,000 voluntary probation officers throughout Japan.

In Singapore too, utilization of voluntary probation officer's services for effective implementation of community-based treatment programmes for juvenile delinquents achieves commendable progress. The volunteers undergo a period of intensive training to perform their work as professional social workers. The voluntary workers do not receive any material benefit but they are usually awarded with certificates of commendation by the government in recognition of their services.

The voluntary probation officer, as a member of the community, prosesses profound knowledge and experience about local life and hence, with the guidance of professional probation officer he could make the correct and suitable approach in solving the problems of his probationers under supervision in the locality with the mobilization of community resources. One could envisage that human behaviour is

such, the offender gains acceptance and create confidence in the voluntary probation officer in this helping process which motivates him to turn over a new leaf.

In Japan the role of 800 professional probation officers with 90,000 probationers and parolees under their supervision demonstrates an example to other nations. The active supervision done by voluntary probation officers under the general guidance and advice of professional probation officers is playing a very important part for the success in this endeavour. In this context mobilization of volunteers for the success of a state organized community-based treatment programme designed to a large number of offenders could be considered as a structural modification in probation in the approach to rehabilitate offenders in their community.

Since in the utilization of volunteers for community-based treatment projects need a certain amount of skills in the relevant field, the participants agreed that definite guidelines, regulations governing qualifications, recruitments and training, areas of role performance should be properly demarcated in the event of obtaining the direct services of volunteers for systematic training programmes for juvenile delinquents.

Parole and Aftercare Services

Parole (conditional release), and aftercare services are community-based treatment methods used for the primary purpose of providing the continuing help necessary for re-adjustment of the juvenile to normal life in the community. Thus the community involvement becomes an essential part of the rehabilitation of juvenile delinquents.

Parole or conditional release are normally granted on the basis of offender's prior history, his readiness for release and the need for his re-intergration to the community under guidance and supervision before the expiration of his sentence. Aftercare is a form of assistance to those conditionally released on parole or licence and also to those who have completed their statutory period of institutionalization.

1. Parole

A parole system would include selected offenders who are subjected to premature release on condition that they agree to accept supervision by a probation/parole officer with the understanding that he is still under sentence and is liable to recall in the event of violation of conditions. This is a previlege granted to the offender in his own interest and that of the interest of society in general. On the other hand, parole is not normally granted if it is felt that the offender would become a threat to his community. However, it should be best understood that he has to go back to his community on the expiration of the term. In the rehabilitation process releasing the juvenile offender on parole or licence appropriate guidance, support and supervision of probation/parole officer and volunteers will reinforce the rehabilitation in the offender's community.

In the course of discussion it was generally agreed that parole or releasing on licence could be used as an effective and meaningful community-based correctional method. It was revealed that some of the participating countries still did not adopt the parole system while some countries have considerably developed it to help their offenders. It was also revealed that the type of the parole-granting agency varies from country to country, *i.e.*, the Minister of Justice, a special panel, an independent parole board, etc.

In Japan the regional parole board has power to grant parole to juvenile inmates of juvenile training schools.

The requirements regarding the juvenile training school inmates are: a) the juvenile should attain the highest grade of the progressive stages in the institution; and b) rehabilitation can be expected by and large through supervision after release on parole.

On receipt of an application for parole, a parole investigation officer visits the institution and makes interviews and inquiries and submits his report to the parole

board. Findings of the investigation are further clarified by one of the board members of the parole board by visiting the institution. Thereafter three members of the parole board examine the case on the panel and make decision whether parole could be granted or not.

In Pakistan juvenile inmates in training schools are released on parole after examining the progress and suitability for release by a panel consisting of the District Magistrate, Magistrate and the Director of the institution. The suitable cases for release are recommended to the panel by the superintendent of the juvenile training institution.

In Singapore, on an application made by the head of the Approved School, Welfare Services, on the recommendation of the assessment and review committee, the parole board advises the Director of Social Welfare regarding the suitability of a juvenile offender for release on parole. The Director of Social Welfare upon receiving such recommendation releases the inmate subject to conditions stipulated by him. After release volunteers are deployed to assist the welfare officer to carry out the supervision of juvenile offenders.

From the foregoing it would be seen that there are different approaches to the application of parole, criteria of selection and decision-making process in different countries.

In Sri Lanka, inmates of Certified/Approved Schools are released on licence. An inmate can be recommended for release on licence, when he has completed his compulsory stay of one year and has achieved a considerable progress. The case committee of the institution after assessment and reviewing the progress of the case may recommend an inmate for release on licence to the Licence Committee. The Licence Committee, after careful observations of the recommendation as well as the report of the aftercare agent/probation officer if satisfied with the inmates progress, his home condition and further training or employment opportunities, may recommend to the Commissioner of Probation and Child Care Services to release the inmate on licence. The Commissioner, if he is satisfied that the inmate has made satisfactory progress, grant the release of the inmate on licence.

2. Aftercare Services

In addition to or in place of the parole system, there are many types of aftercare services for discharged offenders such as supervision and guidance on a voluntary basis, aid in money or in materials, provision of temporary residence, job placement, and reference to pertinent agencies for other assistances. In some countries, there exist halfway houses and aftercare centres, such as discharged prisoners aid societies, rehabilitation aid hostels and etc. It was reported that most of these facilities are operated on a voluntary basis and voluntary organizations are playing significant roles in the reintegration of offenders to the society.

In Japan voluntary organizations maintain such residential facilities with the guidance and aid of probation service. At present there are 102 halfway houses throughout Japan, which are authorized by the Ministry of Justice. Probationers and parolees whose home environments are not conducive to their rehabilitation or who do not have a place to live can temporarily find lodging accommodation in these hostels.

In Singapore there are probation hostels established under the Probation of Offenders Act. The conditions of residence in these hostels are made by the court for offenders whose home environments are unhealthy for rehabilitation and the character and other factors do not require institutionalization.

The participants viewed, since halfway houses or hostels provide living accommodation for juvenile delinquents who are in need of stable living atmosphere, that it is very essential to set up such facilities with the help of voluntary organizations in the best interest of the rehabilitation of juvenile delinquents.

PART II

Documents Produced during the International Meeting of Experts on the Development of the United Nations Draft Standard Minimum Rules for the Administration of Juvenile Justice 14 – 19 November 1983 UNAFEI

Report of the International Meeting of Experts on the Development of the United Nations Draft Standard Minimum Rules for the Administration of Juvenile Justice Held at UNAFEI, Fuchu, Tokyo, 14-19 November, 1983

I. Background to the Meeting

1. Sequel to the consideration of Agenda item 4 of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Caracas, Venezuela, from 25 August to 5 September, 1980, under the title "Juvenile Justice: Before and After the Onset of Delinquency," the Congress adopted Resolution 4 titled "Development of Minimum Standards of Juvenile Justice." This resolution in its operative paragraph (a) recommends that the "Committee on Crime Prevention and Control should be requested to develop standard minimum rules for the administration of juvenile justice and the care of juveniles which can serve as a model for Member States."

2. The Committee on Crime Prevention and Control at its seventh session held in Vienna, Austria, in March 1982, approved the Secretariat's efforts in initiating the necessary machinery for the development of these rules. It noted the 1981 United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) draft of the proposed minimum rules, which was the first attempt to respond to Resolution 4, and decided that the Secretariat should continue in its efforts to further elaborate upon the rules.

3. The secretariat commissioned a consultant, Professor Horst Schüler-Springorum to produce a draft of these rules, as well as a treatise on the subject-matter of the rules, with the aid of the UNAFEI guidelines. Also, Instituto Latino-americano de Naciones Unidas para la Prevención del Delito y Tratamiento del Delincuente (The United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders) (ILANUD) prepared a set of draft rules on the same subject-matter for consideration at such meetings as this. In addition, Rutgers University's School of Criminal Justice and the National College of Juvenile and Family Court Judges, in co-operation with the United Nations Crime Prevention and Criminal Justice Branch, hosted an *Ad Hoc* Meeting of Experts from 2 to 8 November 1983 on the Seventh Congress' Topic IV, namely, "Youth, Crime and Justice." This meeting also proposed some draft rules on the subject-matter.

4. It is against this background that the UNAFEI convened this International Meeting of Experts, at the request of the United Nations Crime Prevention and Criminal Justice Branch, for the purpose of further elaborating the Standard Minimum Rules for administration of juvenile justice and the handling of juvenile offenders, with a view to presenting its product to the Committee on Crime Prevention and Control at its Eighth Meeting holding in Vienna, Austria, in March, 1984, for its consideration and onward transmission to the Interregional Preparatory Meeting on Topic 4 in China in May, 1984.

II. Attendance and Organization of Work

A. Date and Venue of the Meeting

5. The Meeting was held at the UNAFEI premises in Fuchu, Tokyo, Japan, from 14 November to 19 November, 1983.

B. Pre-Meeting Consultations

6. A meeting of the Experts specifically invited for this Meeting was called on Sunday, 13 November, 1983 to consider organizational matters and procedure. The group, which was subsequently enlarged, comprised the Experts listed below, and was immediately turned into the Steering Committee for the Meeting:

Members of the Steering Committee

(1) Chief Adedokun A. Adeyemi—Nigeria, and member of UNCCPC
(2) Mr. Wu Han—China, and member of UNCCPC
(3) Mr. Horst Schüler-Springorum—Federal Republic of Germany, and UN Consultant for the project
(4) Mr. Minoru Shikita—United Nations, Executive Secretary, 7th UN Congress
(5) Mrs. Amelia D. Felizmena—Philippines
(6) Mr. Peter Rogers—Malaysia, UN Visiting Research Fellow, UNAFEI
(7) Miss Perlita J. Tria Tirona—Philippines
(8) Mr. Atsushi Nagashima—Japan
(9) Mr. Hiroshi Ishikawa—Director, UNFEI
(10) Mr. Masaharu Hino—Deputy Director, UNAFEI
(11) Mr. Hidetsugu Kato—Chief, Training Division, UNAFEI

7. The Steering Committee decided upon issues relating to the agenda items, the time schedule, time allotment to the respective agenda items, and the procedure for the conduct of the Meeting.

C. Attendance

8. The meeting was attended by four categories of experts, namely, those experts who were invited to UNAFEI specifically to attend this meeting, the participants at the 64th International Training Course, the theme of which was "The Quest for a Better System and Administration of Juvenile Justice," high-ranking Japanese officials involved in the administration of juvenile justice, and the teaching staff of UNAFEI. The full list of participants at the meeting was as follows:

List of Participants

Mr. Adedokun A. Adeyemi (Nigeria), Mr. Wu Han (China), Mr. Yoshio Suzuki (Japan), Mr. Horst Schüler-Springorum (Federal Republic of Germany), Mr. Minoru Shikita (United Nations), Mrs. Amelia D. Felizmena (Philippines), Mr. Christopher Theodore Jansz (Sri Lanka), Mr. Peter Rogers (Malaysia), Mr. U Kyaw Myint (Burma), Mr. U Tin Aung (Burma), Mrs. Wu Yan Shi (China), Mr. Carl W. Jensen Pennington (Costa Rica), Mr. Etuate V. Tavai (Fiji), Miss Wong Kwai-lan, Verena (Hong Kong), Mr. Mohan Lall Kalia (India), Miss Andi Djawiah Amiruddin SH. (Indonesia), Mr. Kim, Jin Gwan (Korea), Mr. Yahaya Isa (Malaysia), Mr. Seddiki Ahmed (Morocco), Mr. Ramji Prasad Tripathi (Nepal), Mr. Nasrullah Khan Chattha (Pakistan), Mrs. Elena Esther Salguero Fernandez (Peru), Miss Perlita J. Tria Tirona (Philippines), Miss Ng Bie Hah (Singapore), Mr. Ranjit Bandara Ranaraja (Sri Lanka), Mr. Hewaussaramba Tilakawardena (Sri Lanka), Mr. Pongsakon Chantarasapt (Thailand), Mr. Atsushi Nagashima (Japan), Mr. Koichi Miyazawa (Japan), Mr. Atsushi Yamaguchi (Japan), Mr. Norio Sakka (Japan), Mr. Keiji Yonezawa (Japan), Mr. Shoichi Kobayashi (Japan), Mr. Kazunori Kikuchi (Japan), Mr. Kazuo Sato (Japan), Mr. Kazuhisa Suzuki (Japan), Mr. Hiroshi Ishikawa (Japan), Mr. Masaharu Hino (Japan), Mr. Hidetsugu Kato (Japan), Mr. Hachitaro Ikeda (Japan), Mr. Masakane Suzuki (Japan), Mr. Toshihiko Tanaka (Japan), Mr. Shu Sugita (Japan), Mr. Yasuo Hagiwara (Japan), Mr. Yoshio Noda (Japan). (Observers): Mr. Graham W. Smith (United Kingdom), Mr. Taro Ogawa (Japan), Miss Sachimi Annomae (Japan), Mr. Toshihisa Asao (Japan), Mr. Shiro Hirohata (Japan), Mr. Hiroyuki Ito (Japan), Mr. Naoya Konishi (Japan), Mr. Akira Nakata (Japan), Mr. Masao Obata (Japan), Mr. Minoru Okamura (Japan), Mr. Toshio Omata (Japan), Mr. Toshiho Sawai (Japan), Mr. Hajime Tada (Japan), Mr. Susumu Yamashita (Japan).

D. Opening of the Meeting and Election of Officers

9. The Meeting was opened by the Director of UNAFEI, Mr. Ishikawa, who formally welcomed the participants to the Meeting. He informed the participants about the contribution of UNAFEI to the development and improvement of man-

power in the field of criminal justice administration in Asia and the Far East through its past 63 training courses, and the 64th course being the on-going one. He expressed his appreciation to the United Nations for recognizing UNAFEI's earlier efforts in the development of the pertinent Standard Minimum Rules and requesting it to organize the present meeting.

10. Chief Adeyemi, a Member and Representative of the United Nations Committee on Crime Prevention and Control, addressed the Meeting next. He gave a brief background history to the holding of the Meeting in Japan and expressed sincere appreciation, on behalf of the Committee (including his two other colleagues on it who were present, Mr. Suzuki of Japan and Professor Wu Han of China) to UNAFEI, and the Government and people of Japan for hosting the Conference.

11. The Executive Secretary to the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and the Chief of the United Nations Crime Prevention and Criminal Justice Branch, Mr. Shikita also addressed the Meeting. He traced the developments, within the United Nations framework, of efforts to develop rules, norms and guidelines for the protection of human rights, in general, and of the rights of specific categories of people, including youths. He called attention to the various existing instruments and indicated the need for the current exercise, which had arisen in consequence of Resolution 4 of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. He further related the current efforts to other completed and continuing parallel efforts meant to safeguard the welfare and proper development and integration of the youth into the society, in order to maximize and, even, realize his or her contribution potential within the society. He explained the status of the Standard Minimum Rules on the bases that whilst they should be applicable in countries and regions of most different backgrounds to be "standard," they should also contain and thus disseminate world-wide certain qualities of life, including guarantees, that are commonly reflected in the human rights ideals to be "minimum." He explained that flexibility and realistic approach were nonetheless required in the phraseology of the rules in as much as the ultimate aim was to secure a global consensus for them at the Seventh Congress. He further indicated what other meetings would still have to consider the document produced at the Meeting, including those of the Non-Governmental Organizations, that of the Committee on Crime Prevention and Control itself, at its eighth session, the Interregional Preparatory Meeting on Topic IV in China, as well as the meeting holding in Bagdhad, etc. He, therefore, enjoined participants to view the efforts at the Meeting as part of the continuous global efforts to develop and elaborate upon these rules, before their eventual submission to the Seventh Congress for its deliberation and approval. He welcomed the participants on behalf of the Secretary-General of the United Nations and conveyed to them his wishes for a successful deliberation.

12. Thereafter, the Meeting elected the following officers:

Chairman	:	Professor Nagashima (Japan)
Vice-Chairmen:		Professor Wu Han (China)
		Miss Tria Tirona (Philippines)
Rapporteur	:	Chief Adeyemi (Nigeria).

E. Adoption of the Agenda

13. The Chairman formally presented the Agenda to the Meeting. It contained the following: 1. Opening of the Meeting, 2. Election of Officers, 3. Adoption of the Agenda, 4. General Principles, 5. Investigation and Prosecution, 6. Adjudication, 7. Non-Institutional Treatment, 8. Institutional Treatment, 9. Research, Planning and Policy Formulation, 10. Adoption of the Report, 11. Closure of the Meeting.

The Meeting adopted the Agenda un-

animously.

F. Organization of Work

14. The Meeting decided to work in plenary throughout, and approved the following time schedule for its work:

a. first and second sessions
: Agenda item 4;
b. third session
: Agenda item 5;
c. fourth session
: Agenda item 6;
d. fifth session
: Agenda items 7 and 8;
e. sixth session
: Agenda items 9 and 4.
f. seventh session
: Adoption of the Report and Closure of the Meeting.

15. The Meeting had before it five different drafts of the Standard Minimum Rules namely, the UNAFEI draft, the ILANUD draft, Professor Schüler-Springorum's draft, the Rutgers draft, and the United Nations Secretariat's draft. The Meeting decided to use the Secretariat's draft, which was developed out the first three drafts, as its working paper.

16. Also papers, which UNAFEI had earlier commissioned certain experts to write, were distributed to the participants at the Meeting. These were the papers of (a) Professor Schüler-Springorum; (b) Professor Wu Han; (c) Chief Adeyemi; and (d) Mrs. Felizmena.

III. Deliberations on the United Nations Draft Standard Minimum Rules for the Administration of Juvenile Justice

Agenda Item 4
General Principles

a) Introduction

17. The Meeting considered agenda item 4 at its 1st, 2nd and 6th Sessions. On the Chairman's invitation, the Executive Secretary to the Seventh Congress introduced the topic. He explained that the rules were not necessarily meant to be mere reflections of existing laws in the various countries. Such an approach would not make for improvement in the situation. Neither should they aim at too lofty ideals, otherwise they would not find the consensus of the world community. Rather they should be broadly sensitive to the scope of the various local, national and regional differences existing in the respective juvenile justice practices in the world today; whilst at the same time they should incorporate such set of guarantees in the juvenile justice system as would accord with those generally acceptable to the international community. He explained further that the main thrust of the rules aimed at juveniles who have offended against the law, that is, those at the intervention stage. This, of course, was not to deny the importance of pre-intervention preventive principles and measures. These have been and are still being dealt with in other international instruments. Consequently, except for a few rules on fundamental perspectives, which acknowledge the interrelationship between prevention and control, the draft rules specifically aimed at the respective processes arising from legal intervention in cases of juveniles who offended against the law. Further, the draft rules were designed for practical application, therefore, whilst not ignoring the knowledge acquired from theory, it sought to avoid theoretical and philosophical controversies.

18. In inviting the participants to begin discussion of the rules, the Chairman requested that Part I, on the General Principles, should be viewed in the context of its envisaging the basic philosophy that should underlie such Standard Minimum Rules. He exhorted participants to ponder upon the rules carefully and, thereafter, express their views on them freely and frankly, in order to enable the Meeting succeed in producing a worthwhile draft which would be presented to the other subsequent meetings, with the eventual product being ultimately presented to the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

b) Fundamental Perspectives

19. In relation to draft rule 1 on "fundamental perspectives", which was considered at the 6th session, some participants were of the view that the formulation did not go far enough to focus on the real issue which the rules were aimed at, namely, the "avoidance of harm to the juvenile". Others, however, felt that the suggested additional phrase was not only capable of opening the door to the need to introduce many more clarifying rules on juvenile welfare in general (which are quite outside the ambit of these rules), but it could also have a negative impact on the outlook of those officials and authorities dealing with juvenile offenders. Rather than engendering positive acts of assistance, socialization and resettlement in the officials, the suggested amendment might give the wrong impression that all that the officials needed to do was merely to avoid harm to the child. Some participants further felt that the same idea was already conveyed in the rule, in specific positive manner. After considerable amount of debate, however, most participants agreed that it would not be advisable to introduce the suggested phrase.

20. In respect of draft rule 1.3, it was feared by some participants that the last conjuctive phrase might result in a punitive approach to the handling of juveniles in conflict with the law. However, the fear was allayed when it was pointed out that the phrase complained about also related, just in the same way as the preceeding ones did, to the principle requiring the payment of attention to such positive measures as might involve the full mobilization of resources like the family, schools, etc. in the handling of juveniles who offended against the law.

c) Scope of the Rules

21. As originally framed, many participants found some difficulties with the phraseology of draft rule 2.1 (originally 1.1), particularly in two respects: firstly the definition of a juvenile offender with reference to the attainment of the age of criminal responsibility. After considerable amount of debate, particularly as to the need or otherwise of having an age or age-shades of criminal responsibility, it was eventually agreed that the phrase, "has reached the age of criminal responsibility", was better deleted. It was agreed that this did not detract, in any way, from the importance of the existence of age(s) of criminal responsibility, which was already provided for in the immediately following draft rule. The second difficulty in relation to this rule was the attempt to introduce a synonymous usage for both "delinquency" and "criminality" in the definition of "offence". Some participants pointed out that such synonymous usage might cause misunderstanding of the actual meaning intended, particularly when the differences of connotation in the various language are borne in mind. Examples of such vagaries were indicated in relation to what connotations the words would have in relation to each other if they were considered in Chinese, French or Spanish, as compared to their connotation in English. Some other participants felt that there was a need to distinguish not only between juvenile misbehaviour and juvenile delinquency (used in the sense of a juvenile crime), but also among the different types of delinquency for purposes of determining suitable approaches of intervention. After considering all the various views expressed, it was agreed that it was best to delete from the draft rule the words "criminal and delinquent behaviour; criminality and delinquency are used as synonyms". It was felt that such deletion would make the definition less ambiguous and more acceptable to virtually all legal systems.

22. Draft rule 2.2 (originally 1.2) was basically acceptable to the participants, after its wordings were re-arranged to avoid the notion that the laws applicable to juveniles were meant to provide for the special needs of institutions just as they were required to cater for the special needs of juvenile offenders. The re-arrangement made it clear that both the laws and the institutions were to be made to cater for the special needs of juvenile offenders.

23. There was general agreement that draft rule 1.3 was not only attempting an un-

enforceable rule, but also that it seemed to contradict the spirit of the various resolutions of the United Nations requiring Member States to implement the principles contained in those resolutions in accordance with social, cultural and political circumstances of each country, such as is contained in the operative paragraph 8 of General Assembly Resolution 35/171. However, some other participants expressed the view that the rule should be retained since it was already existing in the Standard Minimum Rules for Treatment of Prisoners. But the mojority view was eventually accepted, and the draft rule was deleted.

d) Age of Criminal Responsibility

24. Most participants found the original formation of this draft rule difficult to accept. Some felt it was practically meaningless, whilst some others felt that it was ambiguous. Many participants felt that it was an erroneous attempt to lay down a uniform rule concerning the age of criminal responsibility bearing in mind the varying and diverse, cultural, social, legal, economic, geographical and legal factors determining the respective choices of the respective ages of criminal responsibility in different countries. Some participants revealed that the concept of the age of criminal responsibility was not applicable to juveniles in their countries, *e.g.*, Peru—only those who had attained majority (and are, therefore, considered as adults) could be criminally responsible. Some participants suggested a total deletion of the draft rule. After much debate, it was agreed that the draft rule should be retained in a modified form which will not assume the applicability of the concept to juveniles in all systems. Hence, the present formulation was found to be more satisfactory.

25. Draft rule 3.2 (originally 2.2) was seen as unnecessary in view of the fact that the situation was adequately covered by the better formulated draft rule 7.2 (originally 6.2). Accordingly, draft rule 3.2 was deleted.

e) Aims of Juvenile Justice

26. Most participants felt that draft rule 4.1 (originally 3.1) conveyed the wrong impression that fair and equal treatment should be applied at the stage of assistance and rehabilitation of the juvenile. It was felt that such a notion would amount to a negation of the concept of individualization of treatment. It was unanimously agreed that the wording should be altered in order to convey the correct approach that juvenile justice should aim at assistance and rehabilitation of the juvenile rather than applying merely punitive sanctions against him or her.

f) Scope of Discretion

27. Draft rule 5.1 (originally 4.1) generated a lot of discussions. Certain participants felt that its scope was unacceptably wide, as it purported to grant discretion to agencies, like the police, who had no discretion in juvenile cases, but were under a duty to take the offending juvenile before a family court for the disposition of the case. Particular mention was made of the Japanese and Costa Rican positions in this regard. Others, however, felt that the draft rule contained general provision, which was meant to make the discretion available to such officials as would have powers to exercise it within the respective legal system. It was eventually accepted that draft rule 5.1 could not be applied the same way as draft rule 10 would be applied. In the circumstances the rule was retained, except for the change of the phrase "ample scope" to "appropriate scope".

28. Draft rule 5.2 (originally 4.2) did not generate much discussion except for the proposal to change the last word "professions" to "competence", since the rule aimed at enhancement of skills.

g) Protection of Privacy

29. The draft rule 6.2 (originally 5.1) did not generate much debate beyond the suggestion that the phrase "proved guilty" should be substituted with the phrase "the offence is proved to have been committed."

h) Extension of the Rules

30. The draft rule 7.1 (originally 6.1) generated a lot of discussion, and was regarded as very significant in view of its seeking to extend, in its sub-rule (1), those provisions touching on the guarantees and protection of human rights to juveniles who are proceeded against for behaviour not punishable in adults. The significance of this was that it would aim at ensuring the observance of such guarantees and protection to even cases not involving the invocation of the criminal process, thereby ensuring that the juvenile's rights are not trampled upon under the guise of welfare proceedings. Some participants observed that this rule essentially pointed towards care and protection cases, and that such should, therefore, be specifically spelt out for purposes of clarity. Some other members felt that the draft sub-rule could equally contemplate cases of juveniles who are beyond parental control. After further examination of the issue, it was agreed that it would be better to leave the provision flexible in order not to get involved in the problem of having to spell out the various worldwide categories. And in response to a suggestion that the phrase "proceeded against" be changed to "dealt with", it was agreed that such an approach might be utilized to achieve the idea of differentiating the situations. But it was felt that it was better done by breaking the two sentences into two separate paragraphs: The first sentence, as amended, should become paragraph (a), and retain the phrase "who may be proceeded against", whilst the second sentence should become paragraph (b), and the phrase "who are proceeded against under the law" be changed to the phrase "who are dealt with under the law". It was felt that this formulation and presentation would indicate the differentiation, whilst it would still enable the avoidance of getting involved in numerous problematic worldwide categorizations. It was felt that the present formulation would make for greater clarity, whilst at the same time retaining flexibility. And with the substitution of the phrase "who may be proceeded against for any specific behaviour which will not be punishable if committed by an adult" for the initial one of "who are alleged to have committed specific juvenile offences which cannot be committed by an adult", it was felt that the draft sub-rule would become less objectionable.

31. The principles embodied in draft sub-rule (2) were felt to be acceptable, after it became clear that they were intended to mitigate the circumstances of youths who would otherwise have been subjected to adult treatment in some legal systems, whilst their contemporaries were treated as juveniles in some other legal systems. They would consequently mitigate the problems which might be caused by draft rule 3 on the age of criminal responsibility, sub-rule (2) of which was earlier deleted in view of the existence of this draft sub-rule.

32. Draft rule 8 (originally 7) was adopted without debate.

Agenda Item 5
Investigation and Prosecution

33. This agenda item was considered at the 3rd session of the Meeting. The item was introduced by the Executive Secretary to the Seventh Congress, as the representative of the Secretariat.

a) Initial Contact

34. Draft rule 9 (originally 8) contained only two sub-rules. Some participants took objection to the original title which was "Needs to Minimize Adverse Effects", on the basis that it gave the impression that the investigation and prosecution stages of juvenile justice were harmful *per se* to juveniles. Such a pre-supposition was not justifiable. After some debate, the present title to the draft rule was adopted.

35. In relation to original draft sub-rule (1) (now sub-rule (3)), some participants objected to the phraseology on the basis that it gave the impression that the police contact with juvenils were normally harmful to the juveniles. This was felt to be unfair and unjustifiable. It was suggested that the initial phraseology ignored the fact that police response to a juvenile at the initial contact-stage would very much be

dictated by the circumstances of the contact. Thus, the response to a juvenile who stole an orange would be quite different to that of a juvenile who was stabbing another person viciously. In the first situation, the police might justifiably be requested not to do him any harm. In the second situation, however, police intervention had to be prompt, decisive and effective, even if it would mean doing harm to the juvenile. It was stated that the police have regulations governing their conduct in the performance of their functions. It was also pointed out that harm could be done to the juvenile at all stages of juvenile justice and that the impression, therefore, be not given that only the police were capable of harming the child, or that they were always harsh or brutal to juveniles. It was consequently suggested that specific reference to the police should be deleted and be replaced by the phrase "law enforcement agencies". The meeting adopted this suggestion. Some participants also suggested that the phrase "to avoid harm to the juvenile" be replaced by a positive formulation like "to promote the welfare of the juvenile" or "to handle juvenile with adequate understanding of his or her needs". Some other participants felt that the phrase "to avoid harm to the juvenile" should be retained. It was stressed that the impression felt by the law enforcement agency having first contact with the juvenile was very important in that it could well determine the juvenile's impression and understanding of societal intervention in his case. This, in turn, would condition his own reaction to the intervention. It was pointed out that the phrase was not intended to imply leniency on the part of the law enforcement agency, but rather to convey the authority of the State in such a manner that will not produce harm to the juvenile or engender in the juvenile hatred for and hostility to him or her. Consequently, the issue was not one of leniency, but one of kindness in order to avoid harm. After a considerable amount of debate, it was felt that it was better to retain the phrase "to avoid harm to the juvenile", but that a further phrase "having due regard to the circumstances of the case" should be added in order to avoid the possible impression that harm must be avoided to the juvenile at all costs and in every situation. The Meeting adopted this last proposal. It was further felt that in order to avoid the impression that the rule was designed to point accusing fingers at some law enforcement agencies, this sub-rule should be transferred to the last paragraph, thereby becoming sub-rule (3).

36. In respect of original sub-rule (2) (now sub-rule (1)), the Secretariat proposed the present formulation to replace the original first sentence, on the basis that mere speedy notification was not enough, but that immediate or, even simultaneous notification was the msot desirable thing and where that was not possible, then notification must be done within the shortest possible time. This new formulation was adopted after some debate, with the addition of the word "thereafter" to the phrase "shortest possible time", as otherwise "immediately" and "shortest possible time" might be regarded as synonymous.

37. It was felt that the second sentence in the original sub-rule (2) dealt with a completely different subject matter, namely, "release", and should, therefore, be considered as a separate sub-rule on its own. This proposal was adopted and the sentence became sub-rule (2) to this draft rule.

b) Diversion

38. Some participants felt that the original title of draft rule 10 (originally rule 9), "Diversion by the Police" was not acceptable, because there are some legal systems which do not allow the police any discretion to deal with juvenile cases without reference to the appropriate tribunal. The example of Japan was cited, where the police were obliged to take all juvenile offenders to the public prosecutor or before the Family Court. And, on the same basis, a title like "Discretion by the Police" was regarded as even more objectionable. Consequently, it was agreed to adopt the word "Diversion", without specifying the agency diverting, in that such an approach would avoid any suggestion that a police-

man, in Japan for example, should divert a juvenile case without taking before the Family Court.

39. Some participants, in the light of the objection raised above against the title, based, for example, on the Japanese experience, felt that rule 10.1 should be rephrased with a view to avoiding an unequivocal grant of discretion to the police to dispose of cases without bringing them before the appropriate authority solely empowered to dispose of the cases. Some other participants pointed out, on the other hand, that the Japanese experience was not universal, neither was it peculiar to Japan. After prolonged debate, it was agreed that the word "court" on the first line should be replaced by the words "competent authority". This would accommodate both the Japanese as well as the other situations. Then, the responsibility for the exercise of discretion would rest only with the authority empowered to do so under the law of the particular country. The next sentence was also framed to make the respective agencies like the police, the prosecution, or other agencies constituting the competent authority (as defined in draft rule 13.1) merely alternatives. This device was felt to be the best way of not specifying the agency to be empowered to exercise the diversionary discretion, leaving each legal system free to decide the particular agency which would be empowered to exercise the discretion, "without recourse to formal hearings", and "in accordance with the criteria laid down for the purpose", under each legal system. The formulation was adopted after the incorporation of all these amendments.

40. Draft sub-rule (2) was adopted after necessary modifications. In particular, it was felt that the consent of parents and guardians should also be accepted to be deserving of recognition, with the proviso that a right of appeal to a competent authority should also be preserved, but leaving whichever of the parties who wished to exercise such right to do so at his own option. However, it was felt that the rights of consent, and also of appeal, here should be limited to only those cases involving referral to appropriate community or other services.

41. In view of the flexibility and coverage of draft rule 10.1, it was felt that original rule 12.1 had become redundant and should be deleted. This proposal was adopted, with little debate.

42. It was felt that original rule 12.2 was placed under a wrong heading, which was itself relevant only to its sub-rule 1, now deleted. In view of its more general nature, it was felt to be more relevant to draft rule 10, dealing with diversion, since it would then provide the necessary machinery for encouraging and facilitating diversionary disposition of cases, having regard to its provision of such community programmes as temporary supervision and guidance, restitution and victim compensation. The proposal to transfer old rule 12.2 to become new rule 10.3 was, therefore, unanimously adopted.

c) Specialization within the Police

43. Draft rule 11 (originally rule 10) dealing with this subject matter was unanimously adopted without debate.

d) Detention Awaiting Trial

44. Draft rule 12.1 (originally 11.1) under this topic was adopted without debate. Its sub-rule (2) was adopted after the addition of the phrase "or in a separate part of an institution also holding adults" to follow the phrase "juveniles. . . shall, in principle, be detained in separate institutions." The amendment was proposed in recognition of the fact that, in some countries, juveniles are held in the same institution as adults. Therefore, it was advisable to spell out the principle of segregation of juveniles from adults also in such situations. The sub-rule, together with the amendment, was adopted without debate.

Agenda Item 6
Adjudication

45. The Meeting considered this agenda item at its 4th session. The Executive Secretary presented this part of the draft

rules for discussion.

a) Competent Authority to Adjudicate

46. Draft rule 13.1 dealing with the topic was adopted without much debate, as most participants found it self-explanatory in view of the fact that considerable amount of references had already been made to it during the consideration of rule 10.1.

b) Confidentiality

47. In considering draft rule 14, it was felt that the former draft rule 13.2 had no relationship to the topic of competence to adjudicate. It was, therefore, felt that it should be made a separate rule by itself, and that it should be expanded to cover the need for confidentiality in relation to proceedings in juvenile cases. Former draft rule 13.2 was, therefore, transferred under the present heading, in an expanded form designed to avoid publicity of juvenile cases and stigmatization of juveniles, as draft rule 14.1. Having adopted this proposal, the Meeting also adopted another proposal to introduce a new draft rule 14.2, designed to protect the juvenile from harmful publicity. In order to take cognizance of the constitutional provisions on the freedom of the press in certain countries, it was felt that some room for flexibility and discretion should be allowed. This was sought to be met by prefixing the phrase "As a rule," to each of the two sub-rules of draft rule 14. Participants felt that this would satisfy respect for the rights and needs of the child, without disregarding the constitutional provisions on freedom of the press in many countries. It was felt that the present formulation had the advantage of having the principle established first, and then providing the avenue for recognizing any exception which might be compatible with the laws of Member States, as well as the needs of the juvenile, as defined under those laws.

c) Legal Counsel, Parents and Guardians

48. Draft rule 15 was adopted, with only stylistic modification involving the replacement, in its sub-rule (1) of the last phrase, "where such aid is available", with "where there is provision for such aid in the country". All participants agreed that a child should be entitled to legal representation, or to representation by and assistance of his parents or guardians, who must also be entitled to be in court with him and participate in the proceedings. Discretion was, however, still left to the competent authority to deny parental right to participate where such participation will not be in the interest of the child. Examples of juveniles who might resent their parents' or guardian's presence at proceedings because of previous ill-treatment at the hands of such parents, and generating hostility between them, was given. It was agreed that the interests of the juvenile, not those of the parents, should be paramount here. Also it was felt that legal aid should be granted to a juvenile if such a scheme is in operation in his country, and his circumstances fall within those entitled to it (last part of sub-rule (1)).

d) Social Enquiry Reports

49. Participants felt that the original title "Investigation of Circumstances" should be changed to the present one, which was felt to be more in consonance with usage. With that amendment to the title, rule 16 was adopted without further debate.

e) Guiding Principles in Adjudication

50. Paragraphs (a), (b) and (c) of draft rule 17.1 relating to this topic were adopted, without debate, by the Meeting. However, in deference to the viewpoints of some participants that the interest of the state was paramount over and above any other interests, it was felt that the original formulation of paragraph (d), namely, that the "best interest of the juvenile shall always be prior to the interest of the protecting society" would not be acceptable enough to attract worldwide consensus. It was, therefore, changed to the following formulation: "The welfare of the juvenile shall be paramount in the consideration of his or her case." Participants felt that this formulation, whilst emphasizing the welfare of the juvenile, did not necessarily detract from the significance and promi-

nence of the interest of the society. The participants adopted the last formulation.

51. Participants also felt that the imperial and inflexible formulation of paragraphs (e) and (f), namely, "(e) There shall be no corporal punishment"; and "(f) There shall be no capital punishment", would militate against their being adopted by consensus, if the experience of the Sixth Congress was anything to go by. It was explained that only a more flexible formulation, which would emphasize the rule, but leave room for exceptions as might be dictated by the economic, social, cultural and political circumstances of each country, would be appropriate. The formulation should, however, enjoin Member States to keep the possibility of eventual adoption of such a rule in view. It was for these reasons that the Meeting adopted the following formulations:

"(d) Where capital punishment is applied against juveniles, efforts shall be made to reduce the application of this sanction, with the aim of eventually abolishing it for juveniles";

"(f) Juveniles under certain specific ages shall not be subject to corporal punishment or imprisonment."

Some participants felt that there would be difficulty in applying rule 17.1 (e) if an age limitation was not set. 18 years was suggested. In supporting the choice of this age limit, some participants felt that there should be no difficulty in its being acceptable because of the existence of a similar demarcation of 18 years in the International Covenant on Civil and Political Rights. Other participants felt, however, that the need for such a demarcation in these rules seemed to have been removed by the provisions of draft rule 7.2. Further, it was pointed out that comparison of the draft here with the provision in the International Covenant on Civil and Political Rights could not be valid. By nature and mandate,. the Standard Minimum Rules would not constitute a treaty, with all the legal implications of justifiability and enforcement, whereas the Covenant referred to was a treaty, properly so called. Secondly, the nature of coming into existence of the Covenant was, as stated in its Article 49, by the deposit of instruments of accession by only 35 States. The Standard Minimum Rules would require global consensus for its acceptance. Consequently, whilst such definitive age demarcation could be made in the Covenant, such an approach was not advisable in a set of rules requiring the consensus of the world community. It was best, therefore, to retain the flexibility of phrascology in paragraph (e). The last suggestion was agreed to by the participants, and sub-rule 17.1 was adopted in its new formulation.

52. Participants adopted draft rule 17.2, however, without any debate.

f) Various Disposition Measures

53. Draft rule 18 (originally 19) was adopted, without debate, with the Secretariat's amendment which added "other relevant orders" as the last measure.

g) Least Possible Use of Institutionalization

54. Draft rule 19 (originally rule 20) was adopted, without any debate.

h) Avoidance of Unnecessary Delay

55. Draft rule 20 (originally rule 21) was adopted, without debate, after the mere stylistic editorial amendment by the Secretariat.

i) Rights of Juveniles

56. Draft rule 21 (originally rule 22) was adopted, after a minor amendment, by the addition of the words "right to parental or guardian's presence" after "right to counsel".

j) Records

57. In considering draft rule 22 (originally rule 23), the addition of the phrase "or other authorized persons" was proposed on the ground that employers, researchers and administrators requiring the information for genuine and legitimate reasons should not be denied access to such records on an absolute basis. Some participants pointed out that the phrase "other authorized persons" was not explicit

enough, and that it might open the door to unrestricted access to records of juveniles. Other participants appreciated the danger of unrestricted access to records of juveniles but felt that absolute prohibition was not desirable. It was suggested that qualified prohibition was to be preferred. It was pointed out that the qualification and safeguards against unrestricted access were to be found in the word "authorized" in the rule, and also in rule 14.2 on confidentiality. it was felt that these two safeguards were sufficient to protect the juvenile from unrestricted access to this records.

58. The Meeting agreed to the deletion of original rule 23.2 which read: "All records may be destroyed after a certain period of time or after the offender has reached a certain age." Some participants felt that this was necessary in order to enable the juvenile to avoid future stigmatization. Some other participants pointed out that the rule was dangerous because it would preclude the possibility of having a complete career record of an adult criminal whose criminal career had started during juvenile period. On that note, it was felt that it contradicted sub-rule 1 (now rule 22.1). Some other participants felt, in addition, that its existence would negate the possibility of necessary research as a basis for effective planning and policy formulation. Further, the danger of its retention for developing countries might encourage the present practices of unwittingly destroying data. What is needed is something to encourage such countries to embark upon data salvation. After much debate, it was agreed to delete the rule. It was pointed out that the juvenile enjoyed enough guarantees under draft rules 6.1, 14 and 22.

k) Need for Professionalization and Training

59. Some participants noted the absence of a rule for adjudicators comparable to draft rule 11 on specialization and training for the police. Provision for a comparable rule was suggested for members of the "competent authority", as defined in draft rule 13.1. The suggestion was generally welcomed, and resulted in the adoption of rule 23 relating to the present topic.

Agenda Item 7
Non-Institutional Treatment

60. The Meeting considered this agenda item at its 5th session.

a) Effective Implementation of Disposition

61. In considering draft rule 24 (originally rule 25), participants suggested that the word "another" on the third line be changed to "some other" in order to make it sound right in view of the fact that the rule contemplated some other authority (undefined). Also, some other participants felt that the last word "dictate" was too strong; and it was agreed to change it to "require". A minor editorial change, substituting "from" for "for", was made in the second line of sub-rule (2). The Meeting then adopted rule 24 in its entirety after these minor changes.

b) Provision of Assistance

62. The Meeting adopted draft rule 25, relating to this topic, without debate after a minor editorial amendment involving the insertion of the words "assistance as" before the word "lodging".

c) Mobilization of Volunteers and other Community Services

63. The Meeting adopted after rule 26 without any debate.

Agenda Item 8
Institutional Treatment

64. The Meeting considered this agenda item also at its 5th session. The Executive Secretary of the Seventh Congress presented it for discussion, on behalf of the Secretariat.

a) Objectives of Institutional Treatment

65. Rule 27.1 (originally rule 26) relating to this topic was agreed after minor editorial changes. Rule 27.2 was a new rule introduced by the Secretariat. It was

adopted, after an amendment, to make it positive in its orientation.

b) Application of United Nations Standard Minimum Rules for the Treatment of Prisoners

66. In the discussion of this topic, it was suggested that there was a need to add the phrase "and to avoid harm to them, as well as to promote their welfare", in order to stress the need for avoidance of harm. After some debate it was agreed that the addition was not necessary in this rule because the concept of welfare and avoidance of harm had been adequately provided for in the rules as a whole, and that the purport of this rule was simply to provide additional protection and guarantees for the juvenile by means of incorporative reference to the rules forming the subject matter of this topic. The Meeting then adopted draft rule 28 (originally rule 27), without any amendment.

c) Frequent and Early Recourse to Conditional Release

67. Draft rule 29 (original rule 28), relating to this topic, was adopted by the Meeting without any debate, after an amendment, involving the change of the word "competent" to "appropriate".

d) Semi-Institutional Arrangements

68. In considering draft rule 30 (originally rule 29), it was felt that better phraseology was required so as to better adapt it to more universal applicability and acceptability. This led to the addition of "day-time training centres" to the category of the semi-institutional arrangements. And for greater flexibility, the phrase "other appropriate semi-institutional arrangements" was altered to read "other appropriate arrangements" in order to give the transitional stage of a wider coverage than it would otherwise have had. Finally, the phrase "so as to facilitate the early and smooth (re-) socialization of juveniles" was considered inappropriate as the word "(re-) socialization" might raise many problems. Consequently, the phrase was substituted with another one reading "that may assist juveniles in their proper re-integration into the society". With these amendments, the Meeting adopted the rule.

Agenda Item 9
Research, Planning and Policy Formulation

69. The Meeting considered this agenda item at its 6th session. The Executive Secretary for the Seventh Congress presented it to the Meeting for discussion.

a) Research

70. In discussing rule 31 (originally rule 30), the Meeting adopted rule 31.1, without any debate or amendment. Editorial amendments were made to the third line of draft rule 31.2, involving the change of the phrase "of collecting and analyzing" to read "to collect and analyze" in order to correct the language. Draft rule 31.2 was adopted by the Meeting, with the amendment stated above.

b) Participation in National Development

71. The Secretariat proposed that in view of the introduction and adoption of rules 1.3 and 1.4 earlier during that same session, the first sentence of draft rule 32.1 was no longer necessary; and it was accordingly deleted. Also, the opening phrase of the second sentence: "In this respect," was also deleted. This left only the remaining sentence reading "There shall be provisions for youth to participate meaningfully in the planning and development of the nation". After listening to the Secretariat's explanation that it was in compliance with the mandate from the Sixth Congress, the Meeting adopted the rule, as amended, without debate.

72. The Meeting ended its deliberations on the draft rules with the adoption of draft rule 32.1, as amended, and with that adoption, it ended its 6th session.

Agenda Item 10
Adoption of the Report

73. The Report of the Meeting was considered for adoption at the seventh session

of the Meeting. The Report was introduced by the Rapporteur, on the invitation of the Acting Chairman, Miss Perlita J. Tria Tirona, who acted in the absence of Professor Atsushi Nagashima, who was unavoidably absent.

74. The Report, as is customary, was considered paragraph by paragraph. The Meeting corrected certain typographical errors. During the consideration of the Report, a participant observed in respect of paragraph 59 dealing with the reportedly adopted draft rule 23.1 that a modification of the formulation of the rule was necessary in order to avoid giving the impression that social workers and probation officers were not trained in the basic knowledge of social sciences, contrary to the true position. After some discussion, the Meeting agreed that the participant and the Secretariat should agreed on an acceptable reformulation of the rule, even though the rule, having been already adopted, could no longer be altered at that point. The Rapporteur was authorized to record the fact duly in the Report and to ensure the reproduction of the agreed text for the record to enable its future consideration by subsequent meetings. The Meeting further invited the participants who might have further suggestions to make on the Commentaries to let the Secretariat have their comments through UNAFEI. The participants, in turn, requested for copies of the final documents to be made available to them, as well. The Meeting, after duly authorizing the Rapporteur to make all the necessary editorial amendments, adopted the Report, as already corrected.

Agenda Item 11
Closure of the Meeting

75. After the adoption of the Report, statements were made by the Director of UNAFEI and the Deputy-Director of UNAFEI, the Executive Secretary to the Seventh Congress and the Rapporteur, in his capacity as the representative of the United Nations Committee on Crime Prevention and Control. The statements respectively thanked the participants, UNAFEI authorities and personnel and the Government and people of Japan for the success of the Meeting. The Acting Chairman of the Meeting made a statement, and declared the Meeting closed.

Draft Standard Minimum Rules for the Administration of Juvenile Justice

Introduction

1. Any United Nations standard minimum rules generally have a double characteristic: By being "standard" rules, they should be applicable in countries and regions of most different backgrounds, and by being "minimum" rules they should contain and thus disseminate worldwide certain qualities of life that are commonly reflected in the human rights ideals.

2. The elaboration of standard minimum rules for the administration of juvenile justice will have to be considered in the above perspectives. In order to become "standard" rules, they will have to be very sensitive to the broad scope of national and regional differences marking the respective experiences and practices in juvenile justice in the world of today. And in order to become "minimum" rules, they nonetheless will have to incorporate an unequivocal set of guarantees, with reference to the administration of justice and in accordance with the recommendations of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. Flexibility in the interest of wide applicability on the one side and firmness in some basic issues in the interest of fundamental rights on the other seem particularly hard to reconcile, in this context. Still they should be the ultimate criterion for the success of the elaboration of such standard minimum rules.

3. Accordingly, in the elaboration of the rules, emphasis will be given to the administration of juvenile justice in the handling of juvenile offenders, with a view to submitting eventually to the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders a set of standard minimum rules for the administration of justice concerning juvenile offenders.

4. Furthermore, a number of considerations should be taken into account, namely:

a) *The extent of juvenile crime and delinquency, its multifaceted forms and the factors related to it:* The youth crime situation manifests itself in various forms, which are affected by the most heterogeneous factors, i.e., delinquency in poor countries versus delinquency in rich countries, in urban versus in rural areas, violent crime and gangsterism versus petty delinquency and minor offences, etc. Drugs and alcoholism, unemployment and migration, wars and violence add to the picture. For any given society, even the simple fact of its age composition may make an important difference: Where the majority of the population is of a rather young age, issues of societal self-defence against juvenile crime may mingle with more understanding, than where the very old judge over the very young.

b) *The dark figure:* Criminological findings underline the relevance of the dark figure for youth crime and juvenile delinquency. Although this is generalization that needs further analysis, the very existence of a substantial number of unreported instances of juvenile crime and delinquency raises the fundamental issue of equality, when standard minimum rules are being drafted only for those who are caught. Obviously, such rules should not claim to do justice to all juveniles in general, but should guarantee certain standards of justice to those offenders who come into its reach.

c) *The effects of handling juvenile offenders:* Since birth cohort studies in particular have thrown doubt on the idea that differences in the handling of juvenile cases reflect corresponding differences in terms of "success" (recidivism or otherwise), too much cannot be claimed for juvenile justice procedures. Standard minimum rules become important

then to avoid unnecessary harm caused by procedures and sanctions and to ensure a minimum of respect for the juvenile offender's personality.

5. From these preconditions, some more general statements follow which may be considered the "philosophy" of the proposed standard minimum rules:

First, the issue of criminalization or decriminalization is not touched by the rules. This is not to underestimate its importance, but general rules need to be restricted to punishable behaviour as this is defined by each respective legal system.

Second, prevention in the sense of (not treating delinquents, but of) preventing pre-delinquency and pre-criminality is not the main thrust of the rules. This is not to underestimate its value or importance, but such prevention may either be provided by care measures in the pre-delinquency field, or may find its correlates in a criminal policy stressing deterrence and incapacitation. Also, these have been or are being handled in other pertinent instruments within the framework of the United Nations. It is for these reasons that the proposed rules have not emphasized prevention, but rather have focussed on the juvenile offenders who are already in conflict with the law.

Third, no position is taken on the "welfare" versus the "justice" approaches to the question of treating juvenile offenders. In practice, however, the difference between the two is not necessarily the difference in kind but just that in degree, and it will be seen that the rules do specify assistance and rehabilitation and require fair and just treatment. These are rules for practice more than theory, and therefore do not seek to resolve an ongoing philosophical debate.

6. In the proposals which follow, an attempt has been made to integrate this philosophy into a coherent and consistent set of rules, allowing for their further improvement and development, on the occasions of subsequent international meetings of experts.

Draft Rules

Part I: General Principles

1. Fundamental Perspectives

1.1 Society shall seek, in conformity with its general interests, to further the best interests of the juvenile and his or her family.

1.2 Society shall endeavour to develop conditions that will ensure for the juvenile a meaningful life in the community which, during his or her period in life most susceptible to deviant behaviour, will foster a process of maturation which is as free from crime as possible.

1.3 Sufficient attention shall be given to positive measures which involve the full mobilization of all possible resources, including the family, volunteers and other community groups, as well as schools and other community institutions, for the purposes of promoting the welfare of the juvenile with a view to reducing the need for intervention under the law, and of effectively dealing with him or her when in conflict with the law.

1.4 Juvenile justice must be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice to all juveniles.

1.5 Juvenile justice services shall continuously be systematically and progressively developed and co-ordinated with a view to improving and sustaining the competence of personnel engaged in the services, and their methods, approaches and attitudes.

2. Scope of Rules

2.1 The following Standard Minimum Rules shall apply to juvenile offenders, it being understood that (a) juvenile is a child or young person who, under the respective legal system, is not yet criminally responsible as an adult; (b) that an offence is any behaviour (act or omission) that is punishable by law under the respective legal system; and (c) that a juvenile offender is a juvenile who has committed an offence.

2.2 Efforts shall be made to establish in

each national jurisdiction a set of laws, rules and provisions specifically applicable to juvenile offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice, and designed (a) to meet the special needs of such offenders in accordance with their ages; and (b) to implement the following Rules effectively.

3. Age of Criminal Responsibility

3.1 In those legal systems recognizing the concept of the age of criminal responsibility, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.

4. Aims of Juvenile Justice

4.1 The juvenile justice system shall emphasize, as its aim, the provision of assistance and rehabilitation to juveniles rather than applying merely punitive sanctions to them.

4.2 Since the range of measures available to application to juvenile delinquency and youth crime is much broader than those usually available for application to adult criminality, it shall always be a requirement that reactions to juvenile offenders are not out of proportion to the circumstances of the offender and the offence.

5. Scope of Discretion

5.1 In view of the special needs of juveniles, as well as the variety of measures available for application, it shall be required that appropriate scope for discretion shall be allowed at the different levels of juvenile justice administration including investigation, prosecution, adjudication and the follow-up of disposals.

5.2 Efforts shall be made, however, to ensure sufficient accountability at all levels in the exercise of any such discretion. Moreover, those who exercise discretion shall be especially qualified or trained to exercise it judiciously and in accordance with their respective functions. Therefore, professional teaching, in-service training and other appropriate means shall be utilized to maintain the necessary professional competence.

6. Protection of Privacy

6.1 To avoid unintentional harm being caused to juveniles by unnecessary publicity or by the process of labelling, consideration shall always be given to the juvenile's right to privacy and to being treated as innocent until the offence is proved to have been committed.

7. Extension of the Rules

7.1 (a) In addition to the protection afforded by these Rules to juveniles committing offences that adults can commit, the relevant provisions of the present Rules touching on the guarantee and protection of human rights shall be applied as well to any juveniles who may be proceeded against any specific behaviour which will not be punishable if committed by an adult.

(b) In addition, the protection shall be extended to all juveniles who are dealt with under relating laws.

7.2 Efforts shall also be made to extend the principles embodied in the Rules to young adult offenders.

8. Saving Clause

8.1 Nothing in these Rules shall be interpreted as precluding juveniles from the application of the United Nations Standard Minimum Rules for the Treatment of Prisoners and other human rights instruments and norms recognized by the international community.

Part II: Investigation and Prosecution

9. Initial Contact

9.1 Upon the arrest of a juvenile, his or her parents or guardian shall be immediately notified of his or her arrest, and where such immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter.

9.2 A judge or other competent official shall, without delay, consider the question of release.

9.3 Any contacts between the law enforce-

ment agencies and a juvenile offender shall be managed in such a way as to promote the welfare of the juvenile and avoid harm to him or her, having due regard to the circumstances of the case.

10. Diversion

10.1 Juveniles shall only be tried formally by the competent authority referred to in Rule 13.1 below if they cannot be dealt with otherwise. The police, the prosecution, or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for the purpose.

10.2 Any diversion involving referral to appropriate community or other services shall require the consent of the juvenile, or his or her parents or guardian, provided that such decision to refer a case shall be subject to review by a competent authority, upon application.

10.3 In order to facilitate the discretionary disposition of cases, efforts shall be made to provide for such community programmes as temporary supervision and guidance, restitution and victim compensation.

11. Specialization within the Police

11.1 In order to best fulfill their functions, police officers who frequently or exclusively deal with juveniles shall be especially instructed and trained.

11.2 In large cities specially trained police units shall be provided to deal with the prevention and investigation of juvenile offences.

12. Detention Awaiting Trial

12.1 Detention awaiting trial shall be used only as a measure of last resort and for the shortest possible period of time. Wherever possible, it shall be replaced by alternative measures such as close supervision, protective care, placement with a family or in an educational setting or home.

12.2 Juveniles under detention awaiting trial are entitled to all rights and guarantees of the United Nations Standard Minimum Rules for the Treatment of Prisoners. In particular, they shall be kept separate from adults and shall, in principle, be detained in separate institutions, or in a separate part of an institution also holding adults. While in custody, they shall receive all necessary individual assistance, social, psychological and physical, that they may be required in view of their age and personality.

Part III: Adjudication

13. Competent Authority to Adjudicate

13.1 Where the case of a juvenile offender has not been diverted of under Rule 10 above, he or she shall be dealt with by the competent authority (court, tribunal, board, council, etc.) according to the principles of fair and just trial.

14. Confidentiality

14.1 As a rule, proceedings in juvenile cases shall not be open to the public and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to express himself or herself freely, with a view to encouraging his or her cooperation.

14.2 As a rule, no information that may lead to the identification of a juvenile offender shall be published.

15. Legal Counsel, Parents and Guardians

15.1 Throughout the procedure the juvenile offender shall have the right to be represented by his or her legal adviser or to apply for free legal aid where there is provision for such aid in the country.

15.2 The parents or the guardian shall be entitled to participate in the proceedings in the interest of the juvenile. They may, however, be denied participation by the competent authority if there are reasons to assume that such exclusion is necessary to protect the welfare of the juvenile.

16. Social Enquiry Reports

16.1 In all cases except for minor offences, before the competent authority makes final disposition, the backgrounds and circumstances in which the juvenile is living or the offence has been committed shall be properly investigated so as to

facilitate judicious adjudication of the case by the competent authority.

17. Guiding Principles in Adjudication

17.1 The disposition of the competent authority shall be guided by the following principles:

a) The reaction to the offence shall not be out of proportion to the circumstances of the offences and the offenders;
b) The proportionality as referred to in a) above shall be the proportionality to the needs of the juvenile and not merely to the gravity of the offences;
c) Restrictions on the personal liberty of the juvenile shall be carefully considered and limited to the minimum extent required;
d) The welfare of the juvenile shall be paramount in the consideration of his or her case;
e) Where capital punishment is applied against juveniles, efforts shall be undertaken to reduce the application of this sanction, with the aim of eventually abolishing it for juveniles;
f) Juveniles under certain specific ages shall not be subject to corporal punishment or imprisonment.

17.2 The competent authority shall have the power to discontinue the proceeding at any time.

18. Various Disposition Measures

18.1 A large variety of dispositions shall be made available to the competent authority to provide a greater flexibility and to avoid institutionalization as much as possible. Examples of such measures, some of which may be combined, are as follows:

- Care, guidance and supervision orders;
- Probation;
- Community service orders;
- Intermediate treatment and other treatment orders;
- Orders to participate in group counseling and similar activities;
- Orders concerning foster care, living and housing communities or other educational settings;
- Other relevant orders.

19. Least Possible Use of Institutionalization

19.1 The placement of a juvenile in an institution shall always be a disposition of last resort and for the least period necessary.

20. Avoidance of Unnecessary Delay

20.1 Each case of a juvenile offender shall from the outset be handled expeditiously, without any avoidable delay.

21. Rights of Juveniles

21.1 Basic procedural safeguards such as the right to counsel, right to parental or guardian's presence, right to be notified of the charges against him or her, the right to confront and cross-examine witnesses, the right to remain silent, and the right to appeal to a higher authority shall be guaranteed.

22. Records

22.1 Records of juvenile offenders must be kept strictly confidential and unavailable to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the case at hand or of future cases concerning the same offender, or other duly authorized persons.

23. Need for Professionalization and Training*

23.1 Efforts shall be made to secure that members of the competent authority shall have a basic knowledge of the social sciences relating to juveniles. These sciences shall also be part of the professional training of social workers and probation officers involved; social workers and pro-

* Rapporteur's Note: See the last page of this Report for a new draft rule 23.A which is a new formulation made necessary by an observation made by a participant during the consideration of the Report, but after the adoption of the rules had already been completed and closed. The new formulation is to be preferred, although it could not be technically substituted.

bation officers dealing with juvenile offenders shall receive periodical instruction on the theoretical and empirical state of their profession.

Part IV: Non-Institutional Treatment

24. Effective Implementation of Disposition

24.1 Appropriate provisions shall be made for the implementation of orders of the competent authority, as referred to in Rule 13.1 above, by that authority itself or by some other authority as circumstances may require.

24.2 Such provisions shall include the power to modify the orders as the authority deems necessary from time to time, provided that such supervision or modification shall be determined in accordance with the best interest of the juvenile.

25. Provision of Needed Assistance

25.1 Efforts shall be made to provide to juveniles at all stages of procedure such assistance as lodging, education or vocational training, employment or any other assistance as may be deemed necessary in order to facilitate the rehabilitative process.

26. Mobilization of Volunteers and Other Community Services

26.1 Volunteers, voluntary organizations and other community services shall be mobilized wherever and in such manner as they can effectively contribute to the rehabilitation of the juvenile.

Part V: Institutional Treatment

27. Objectives of Institutional Treatment

27.1 The objective of training and treatment of juveniles who have been placed in an institution is to provide care, protection, education and vocational skill in the interest of his or her wholesome growth, with a view to facilitating and ensuring his or her reintegration into the community and to enable him or her to assume a socially constructive and productive role in the society.

27.2 Inter-ministerial and inter-departmental co-operation shall be fostered for purpose of providing adequate academic or vocational training to the institutionalized juvenile with a view to ensuring that the juveniles do not come out educationally disadvantaged.

28. Application of United Nations Standard Minimum Rules for the Treatment of Prisoners

28.1 The United Nations Standard Minimum Rules for the Treatment of Prisoners and Related Recommendations shall be fully applicable in principle to the treatment of juvenile offenders in institutions.

28.2 Efforts shall be made to implement the relevant principles laid down in the aforementioned Standard Minimum Rules to a maximum possible extent so as to meet the needs of juveniles specific to their age.

29. Frequent and Early Recourse to Conditional Release

29.1 Conditional release from an institution shall be used by the appropriate authority to the greatest possible extent and shall be granted at the earliest possible time.

29.2 Juveniles released conditionally from an institution shall be assisted and supervised by an appropriate officer.

30. Semi-Institutional Arrangements

30.1 Efforts shall be made to provide semi-institutional arrangements, such as half-way houses, educational homes, day-time training centres, and other such appropriate arrangements that may assist juveniles in their proper re-integration into the society.

Part VI: Research, Planning and Policy Formulation

31. Research

31.1 Efforts shall be made to organize and promote necessary research as a basis for effective planning and policy formulation.

31.2 Efforts shall be made to establish a regular evaluative research mechanism built into the system of juvenile justice ad-

ministration and to collect and analyze relevant data and information for appropriate assessment and future improvement of the administration.

32. Participation in National Development

32.1 There shall be provisions for youth to participate meaningfully in the planning and development of the nation.

Proposed Rule 23.1 in Substitution for the Formulation at Para. 23, ante

23.A Need for Professionalization and Training

23.1A Efforts shall be made to ensure that all members of the competent authority, without exception, shall have a basic knowledge of the social sciences relating to juveniles. These sciences shall also be part of the professional training of social workers and probation officers, wherever this is not yet the case: provided that all such officers dealing with juvenile offenders shall receive periodical instructions on the theoretical and empirical state of their profession on a continual basis.

Draft Commentaries to the Standard Minimum Rules for the Administration of Juvenile Justice

To No.1

Some broad "fundamental perspectives" are giving the necessary reference to social policy in general. Such policy will have to promote juvenile welfare to the greatest possible extent in order to minimize the number of those cases where "juvenile justice" has to be resorted to (and thereby to minimize the inevitable amount of harm being done by each intervention following juvenile crime).

Juvenile welfare measures aiming at crime prevention before the onset of delinquency are marking, as it were, the last step before the main realm of application of these Standard Minimum Rules is entered into (see also Rule No. 7).

Nos. 1.1 to 1.3 of the Fundamental Perspectives point to the important role which a constructive social policy for juveniles will play, *inter alia,* for the prevention of crime and delinquency. Rule No. 1.4 correspondingly defines juvenile justice in the sense of these Standard Minimum Rules (see Rules No. 2 and the following ones) as an integral part of social justice for juveniles, while Rule No. 1.5 refers to men and means for juvenile justice as an instrument that must not fall back behind the development of social policy for juveniles in general.

To No.2

No. 2.1 defines the "juvenile" and the "offence" as the components of the notion of "juvenile offender" as being the main subject of these Standard Minimum Rules (see, however, also Rule No. 7). It is to be noted that the respective age limits will depend on—and are explicitly made dependent on—each respective legal system. This makes for a wide variety of ages coming under the notion of "juvenile", ranging from 7 years or below to 20 years or above. Such variety seems as inevitable in view of the variety of national legal systems, as it does not diminish the impact of these Standard Minimum Rules. For their contents are deliberately formulated in such way as to be applicable within different legal systems and by the same time to set some minimum standards for the handling of juvenile offenders under whichever definition of a "juvenile".

As to Rule No. 2.2, it addresses itself to national legislations with a view to an optional implementation of these Standard Minimum Rules both legally and practically. (The forthcoming International Youth Year may additionally contribute to further such development.)

To No. 3

In international perspective, the (lower) age of criminal responsibility differs widely, mainly for reasons of history and culture. A more modern approach would ask if a child can live up to the moral and psychological components of criminal responsibility which nowadays constitute the social function of the term, meaning to be held responsible for an essentially *anti-social* behaviour (*cf.* Draft Declaration on the Rights *and Responsibilities* of Youth, 1982). It is because of this social function that the legal consequences of criminal and delinquent behaviour are so grave: in particular for adults, but also (depending on the respective legal system) for juveniles. For these reasons, if the age of criminal responsibility is fixed too low (or if there is no lower age limit at all), the notion becomes meaningless. For there exists a close relationship between the notion of responsibility for delinquent or criminal behaviour and other social rights and responsibilities (such as marital status, civil majority, etc.). Efforts should therefore be undertaken to internationally agree on a reasonable lowest age limit.

To No. 4

Assistance and rehabilitation to form the ultimate purpose of juvenile justice administration is presented as a principle that all nations ought to be able to agree upon, in particular, since Rule No. 4.1 counterweight this very purpose by also referring to the possibility (and practice) of applying punitive sanctions. It is to be noted, however, that the rule clearly expresses some doubts against "*merely*" punitive sanctions and "*rather*" prefers assistance and rehabilitation.

On the other hand, the very breadth of this principle implies, as has been observed in many juvenile justice systems, the risk of reacting beyond cause and necessity and therefore of violating (other) fundamental rights of the individual. This risk can be counteracted by strictly adhering to the principle of proportionality.

In essence, Rule No. 4 calls for (no less and nor more than) an "adequate" reaction in any given case of juvenile delinquency. The two issues combined in the rule may help to further future development in both regards: New and innovative forms of reaction are as desirable as precautions are necessary against any undue widening of (the net of) social control.

To No. 5

Rule No. 5 is combining two closely related issues: The discretionary power of those who have to arrive at decisions within the administration of juvenile justice (No. 5.1), and the instrument that seems best apt to curb broad discretion, namely professionalization (No. 5.2).

All discretionary power runs the danger of being misused. There are, of course, other means to meet this danger, such as specified guidelines on how to exert discretion, or a system of review, appeals, or the like. But all these do not lend themselves to easily enter into international Standard Minimum Rules because such rules cannot possibly cover the legal, social and cultural differences implied therein. It is for this reason that professional qualification is offered as an instrument to check and balance discretion in matters of juvenile offenders.

To No. 6

The presumption of innocence is already embedded in the Universal Declaration of Human Rights of 1948 (Art. 11.1). It is repeated here only as a reminder. In practice, juvenile offenders rarely deny having committed the offence, so that the presumption of innocence will play its role mainly in the relatively rare cases of severe crimes.

But very important it seems to stress the juvenile's right to privacy. All what has become known by criminological research about the processes of labelling is pointing to the detrimental effects of spreading the rumor of prosecution and disposal among the community and the peers of the juvenile. Juveniles being particularly susceptible to such stigmatization, Rule No. 6 endeavours to contribute to the necessary awareness of these harmful risks (see also Rule No. 14).

To No. 7

This rule endeavours to make the Standard Minimum Rules for the Administration of Juvenile Justice become the nucleus of corresponding developments in three directions:

- in the direction of the so-called status offences foreseen in those national legal systems where a different (usually a wider) range of behaviour of juveniles is considered an offence than the criminal behaviour of adults (*e.g.* truancy, school disobedience, etc.; Rule No. 7.1.a);
- in the direction of juvenile welfare and care proceedings (Rule No. 7.1.b);
- in the direction of dealing with young adult offenders, depending of course on each given age limit (Rule No. 7.2).

All three extensions seem to be justified: Those intended by No. 7.1 as a provision of minimum guarantees in these fields, and those intended by No. 7.2 as a desirable step of further development in the direc-

tion of a humane criminal justice for all.

To No. 8

(open)

To No. 9

Rule No. 9.1 is in principle already contained in Rule No. 9.2 of the Standard Minimum Rules for the Treatment of Prisoners (1957/1977) and in Art. 9 of the Universal Declaration of Human Rights (1948).

The question of release shall be considered without delay by a judge "or other competent official": This latter notion is applied to any person or institution in the broadest sense of the term, including community boards or even police authorities having power to release the arrested person (see also International Covenant on Civil and Political Rights, 1966, Art. 9).

Rule No. 9.3 deals with some fundamental aspects of police and other law enforcement agents' behaviour in cases of juvenile delinquency. To "avoid harm" admittedly is a quite flexible wording, covering many features of possible interaction (harsh language, physical violence, exposure to environment, etc.). "Avoid harm" should be read therefore as doing the least harm possible. The importance of this lies in the fact that the experience of the initial contact with the juvenile might lastingly shape his or her attitude towards state and society. Kindness, firmness and compassion may be important means to the end of "promoting welfare" in these situations.

To No. 10.

Diversion is a rather common practice in some legal systems and is broadly discussed or even recommended in others. The advantage of diversion is mainly seen in that it may avoid negative effects of the further procedure that would otherwise have to take place (*e.g.* stigma by conviction and sentence). Diversion without referral ("to nothing") in particular may make use of a situation where the family, the school or others exerting "informal social control" have already reacted in an appropriate manner directed against repeating the offence.

Diversion is apparently practicable not only under legal systems following the principle of opportunity. This makes diversion by the prosecutor an instrument as important as is diversion on the police level. Moreover, the discretionary power of the prosecutor should not be limited to petty cases. The rule prudently suggests, however, that diversion is practicable by either the police, the prosecution or other agencies, thereby meaning that it may be exercised alternatively by either one, some, or all of them, according to the judicial system prevailing in each country. Where the police and the prosecution are not exercising such practice, the competent authority referred to in Rule 13.1 below will also be empowered, as diversion, to dispose of cases brought before it without recourse to formal hearings (see Rule 17.2).

The rule mentions the possibility of a general referral to youth welfare authorities and gives some examples of specific programmes that would make diversion seem appropriate even where an offence of not only petty character has been committed, depending on the merits of the individual case (*e.g.* first offence, the act having been committed under group pressure, etc.). Here the offender's (or the parents' or guardian's) consent with the diversionary measure are important restrictions (community service without such consent would contradict the Abolition of Forced Labour Convention, 1957).

To No. 11

In rule No. 11, the need for special qualifications has been set out generally; it applies to all police officials taking part in the administration of juvenile justice. Such specialization being rather far from reality in many countries, the rule might

still not be too utopian; instead, it might direct and promote developments deemed necessary on the national scale.

To a considerable extent the increase of juvenile delinquency goes along with the growth of large cities, regardless of region or culture. Here special (specialized) police units seem indispensable not only in the interest of the principles laid down in the previous rules, but more generally as an instrument for the effective prevention and control of the phenomenon. Such units of course cannot cope with the most important factors contributing to juvenile delinquency in the process of urbanization (shortage of housing, occupation, etc.). The more it is desirable to create police forces with a special knowledge of and understanding for the juvenile delinquency as one side of a much more general problem.

To No. 12

This rule may be readily agreed upon. The more urgent is its actual implementation. All over the world authorities are resorting to locking up children and juveniles far too easily. Once they are behind bars they are likely to be forgotten: At least in terms of unmet needs emanating from their individual situation; consequently, suicide rates are appallingly high.

It goes without saying that juveniles under detention awaiting trial must be entitled to all rights and guarantees of the UN Standard Minimum Rules for the Treatment of Prisoners (see also the International Covenant on Civil and Political Rights, 1966, Art. 9).

Even so, the danger of criminal contamination must not be underestimated. It therefore seems important to stress the need for alternative measures. By doing so, the rule should instigate phantasy and inventiveness in the interest of avoiding detention awaiting trial.

To No. 13

The main difficulty is to find a definition of the competent body (or person) that would be universally acceptable. The term "competent authority" is meant to cover the prevailing use of courts/tribunals (composed of a single judge or of several members; see also Rule No. 23) as well as administrative boards (*e.g.* the Scottish and Scandinavian system).

Its procedure shall in any case follow the minimum standards that have been developed rather universally for any criminal procedure, widely known as "due process of law". "Fair and just trial" accordingly would cover such things as the presentation and examination of witnesses, the common legal defences, the right to refuse answer or the right to have the last word in the hearing. All these going more or less without saying (and juveniles are mostly admitting the offence), it seems not necessary to enumerate them here, thus providing for some flexibility in its application (see also the following rules, in particular, Rule No. 21).

To No. 14

This Rule reflects two main requirements relating to procedures against juvenile offenders, both aiming at "confidentiality" as an interest that in these cases ought to prevail over the interest in the participation of the public, be it in the hearing or by press, mass media, and other means of publication by mass communication.

Both paragraphs explicitly state the rule to be considered "as a rule." This is meant to give room for exceptions under exceptional circumstances, legal or practical.

To No. 15

The first phrase uses terminology parallel to No. 93 of the Standard Minimum Rules for the Treatment of Prisoners (1957/1977). Whereas legal counsel and free legal aid are relevant mostly for the fact-finding part of the procedure, the right of parents and guardian as stated in the second phrase has to be seen as a general psychological and emotional assist-

ance to the juvenile—a function extending throughout the procedure. The competent authority's search for an adequate disposition of the case may in particular profit from the cooperation of the legal representatives of the juvenile. These very concerns can be thwarted if the latter play a negative role; hence their possible exclusion must be provided for.

To No. 16

Social inquiry reports ("social reports," "pre-sentence reports") are indispensable in most cases of legal proceedings against juvenile offenders. The competent authority has to be informed about the juvenile's social and family background, school career, educational experiences, etc. Some legal systems use special social services attached to the court or board for this purpose. Other social services (including the probation service) can however serve the same purpose—if only they exist. The rule therefore implies that adequate social services should be provided for to deliver social inquiry reports of a qualified nature.

To No. 17

The main difficulty of the text lies in the endeavour to combine certain centrifugal maxims that each have their own history and tradition:

- the idea of just desert vs. the idea of rehabilitation;
- the idea of help and assistance vs. the idea of repression and punishment, *both* as means to educational ends;
- the idea of reacting according to the offender's guilt and other singular merits of the case vs. the idea of protecting society against dangerous offenders;
- the idea of general deterrence vs. the idea of individual prevention.

All these are conflicting in cases of juvenile delinquency much stronger than in adult criminal law, for quite obvious reasons: The large variety of causes and reactions characterizing the criminology and adjudication of juvenile delinquency makes all those issues appear to be intricately interwoven (e.g. "help" *by* seizing important aspects of the juvenile's life). It cannot possibly be the function of Standard Minimum Rules for the Administration of Juvenile Justice to solve any of these squarings of the circle, last not least, because they reflect the history and tradition of only a *part* of the legal systems addressed by the rules. Therefore the essentials laid down in the rule (in particular under 1.a,b and d) are mainly to be understood as practical guidelines that should ensure a fairly common starting point; if so heeded by the authorities, they could considerably contribute to the fundamental rights' position of juvenile offenders.

Rule No. 17.d is dealing with the interest in minimizing the deprivation of liberty. *One* means to this end is probation which should be made use of to the greatest possible extent. It may be granted via suspended sentences, conditional sentences, board orders, and other dispositions which all have in common that they give the offender the chance of avoiding institutionalization.

In juvenile delinquency cases the term "probation" near to "naturally" implies that the offender is assisted to and supervised by a probation officer. The rule does not however explicitly say so, in order to allow for ways to avoid institutionalization also where a probation service has not (yet) been established or is not (yet) sufficiently staffed. Conditional release from institutions later will always be joined with the activity of a probation officer (Rule No. 29).

The competent authority should also be entitled to terminate probation earlier than foreseen if it appears that the juvenile has well enough adjusted to society—a perspective that might positively influence his behaviour by an encouragement to feel "free" as soon as possible.

The provision against capital punishment, flexibly worded as it is, is just another effort on the path to generally abolish this sanction (which for juveniles

ought to have better chances than for adults so far).

"Corporal punishment" (which in some cultures is felt to be an equivalent to imprisonment) is understood to also cover mutilating sanctions.

The power to discontinue the proceedings at any time (No. 17.2) is an inherent characteristic of handling juvenile offenders, as opposed to adults. At any time circumstances may become known to the competent authority making a complete stop to the intervention appear to be the best disposition of the case. Whereas in adult cases (and possibly also in cases of severe offences by juveniles), the idea of just desert and of retributive sanctions might still have some merit of its own, in juvenile cases this idea should always be outweighed by the interest in the *future* of the young offenders.

To No. 18

This is an attempt to enumerate some important reactions and sanctions that so far have been "invented" under different legal systems. Their terminology should therefore not be tested against the background of any single one of them. But on the whole they represent a set of promising options that deserve imitation and further development. Because of the shortage of adequate staffing to be foreseen in different regions, the enumeration abstains from explicitly pointing out staffing requirements; in these regions orders implying less manpower may be tried or developed anew.

The examples given have in common, above all, that they largely rely upon and appeal to the *communities* for their effective implementation ("community-based corrections" being a sort of already near to historical initiative that now has created numerous facets). In order to make all these effective, communities should be encouraged to offer corresponding community-based services.

To No. 19

If there is any trend unquestioned in modern criminology, it is the scepticism against institutional treatment. Little or no difference has been found in terms of success of institutionalization as compared with non-institutionalization. This may well be due to the many negative influences which seem unavoidable within any institution (total or less total) and which evidently cannot really be outbalanced by treatment efforts. In juvenile institutions, moreover, the negative effects not only of loss of liberty but also of separation from the former social environment are felt most acutely.

Besides this basic controversy, the rule nevertheless does not express itself on some important questions of detail: Does it apply to *closed* institutions only? Are the institutions envisaged more of a prison type or more of a correctional or educational home type? Which kind of offenders ought to go there for just what sort of offences? These (and other) questions are left unanswered deliberately; for the situation, legal and practical, differs widely in this regard from country to country and from region to region. It therefore seems more important to rouse consensus on the principle of least possible use of *any* institutionalization (even within a not strictly closed setting of not "total" character, cf. Annex to Standard Minimum Rules for the Treatment of Prisoners, 1957/1977), than to rouse dispute over the details just mentioned.

To No. 20

Speedy completion of the whole formal procedure in juvenile delinquency cases is a paramount concern because otherwise, whatever may be done good by procedure and disposition, is at stake again: The juvenile will find it more and more difficult if not impossible to (intellectually and psychologically) relate procedure and disposition to the earlier offence. This is easily demonstrated if one realizes how

much time all too often has elapsed between the day (or time) of the offence and the day of disposition or time of the latter's execution.

To No. 21

The rule states some important aspects of a "fair and just trial" as guaranteed in Rule No. 13.

These aspects in a way represent today's state of ideas about what would be the minimum components of a proceeding which deserves to be called "fair and just." Evidently, they will have to be supported by that atmosphere of understanding and concern that should characterize all proceedings in juvenile matters.

To No. 22

The rule attempts to compromise conflicting interests connected with records (or files): Interests of police, prosecution and other authorities to improve control vs. interests of the offender to be spared labeling and re-labeling.

On the whole, the attitude of the rule is more against than for record-keeping (otherwise there would be no need for it). The reason for this is not only the principle expressed in rules Nos. 6, 14, 17.d. Additional arguments against record-keeping may be derived from an ever more perfect technique of data-collecting and data-storing. In the long run, it therefore may be seriously envisaged to even destroy these records after a certain period of time or after the offender has reached a certain age.

To No. 23

The authorities competent for disposition may be composed of people with very different backgrounds (magistrates in England and in regions influenced by the English system; legally trained judges in Roman countries and in regions influenced by them; elsewhere elected or appointed laymen or jurists, members of community-based boards, etc.). For all these, a minimum knowledge of sociology, psychology, criminology and behavioural sciences concerning juveniles is asked for, this being considered more important than the question of an organizational specialization or independence of the competent authority as such.

Social workers and probation officers on the other hand (probation officers mostly being social workers anyway) would feel more or less alike and equal all over the world, due to the relative newness of their profession. As to these, it would mean to ask too much if a professional specialization were demanded as a prerequisite for taking over any function with juvenile offenders. Instead (and in addition to what is contained in Rule No. 5), professional instruction *accompanying* their work would seem to be the "optimum maximum" of their minimum qualification.

To No. 24

Disposition in juvenile cases more than in other cases tends to influence the offender's life in manifold regards and over weeks, months or even years—and duly so. The more it seems important to have an independent body with a qualification equal to the competent authority which originally disposed of the case watch over the implementation of the disposition: Be it that authority itself, be it a probation board, a youth welfare institution or others. In some countries the "juge d'exécution des peines" has been installed for this purpose, and it can even be said that the very idea of the "juge d'exécution des peines" originated from the interest in the offender's rehabilitation (in contrast to the interest in seeing him or her punished).

The composition, powers and functions of this authority must be flexible and are described in a way as cautious and as abstract as to make it widely acceptable (No. 24.2).

To No. 25

The impact of this rule lies not in the

enumeration of some important factors for rehabilitation that will hardly be questioned as such. It much rather lies in pointing to their importance *at all stages of procedure.*

If taken seriously, this will imply not only all necessary regard to those factors by the authority competent to dispose of the case. It will result even more in a considerable engagement of all sorts of persons and institutions concerned with juvenile welfare, ranging from neighbourhood initiatives over community agencies to national programmes. (See also Rule No. 26.)

To No. 26

The rule needs not much commentary; it follows from the very rehabilitative orientation of all work with juvenile offenders. Cooperation with the community—difficult as it often may be—seems indispensable if the directives of the competent authority shall be effectuated.

Volunteers and voluntary services in particular may very well prove to be a source of valuable activities largely unused so far. In some instances, the cooperation of ex-offenders (including ex-addicts) can help a lot. In sum, Rule No. 26 emanates from the very principles laid down in Rule No. 1.

To No. 27

The overall orientation of juvenile justice laid down in the previous rules needs to be detailed in the case of institutionalization. If not, there would be too much danger that nothing happens of the sort except confinement, discipline and boring labour.

The objectives and means contained in the rule may sound trite and trivial, having been worded over and over again. But by sounding so they indicate how far they are from realization. Actually they represent an ambitious programme which indeed should be postulated time and again, so as to cause at least *some* progress in the matter (beyond the interest of minimizing harm by the effects of institutionalization).

Vocational training presupposes that there would be a chance of making use of it after release. Although this might be so in the majority of (UN) countries, in the majority of industrialized societies the most realistic expectation is unemployment: a phenomenon which is going to expand steadily in the foreseeable future. In these regions "vocational training" is a historically backward method; "behavioural training" in preparation of a future marked by unemployment may rather be called for, as a proper preparation for life after release.

To No. 28

The Standard Minimum Rules for the Treatment of Prisoners and Related Recommendations were among the first to be promulgated by the United Nations. It is generally agreed upon that they had worldwide consequences in the sense that prison systems all over are measured in terms of grades of their implementation. Of course, there still are quite a few countries where such implementation is more on paper than in existence; but the Standard Minimum Rules continue to be of an important influence in the direction of their gradually being turned into reality.

It is for this very reason that it would not make much sense to more or less repeat the exercise in view of institutions for juvenile offenders, all essentials being contained already in the Standard Minimum Rules just mentioned (accommodation, architecture, bedding, clothing, complaints and requests, contact with the outside world, food, medical care, religious service, separation of ages, staffing, work, etc. etc.). Even for dangerous offenders there would be sufficient provisions (on discipline, on restraints, on arms, etc.). If only the gist and spirit of all this were turned into reality in juvenile offenders' institutions, progress were real and considerable.

For the same reason it would not make

much sense either to attempt, within the scope of Standard Minimum Rules for the *Administration* of *Juvenile Justice*, to modify the existing Standard Minimum Rules for Prisoners with a perspective of adjusting them to the particular characteristics (in practice differing widely) of institutions for juvenile offenders, at least not *in detail*. For by this very enterprise the "new" rules to be worded (which should better be done by an up-dating of the "old" rules) would only run the risk to detract from their Human Rights nature: Requirements of educating and training the *young* always tend to make them more the object than the subject of treatment. It is for this reason that Rule No. 28.2 is focussing all treatment and training procedures on the specific needs of the juvenile according to his or her age.

To No. 29

It may be questioned whether the power to order conditional release should rest with the competent authority or with the institution or with another organ. In view of Rule No. 23, it seems adequate to refer here to the "appropriate" authority. Conditional release from an institution is one of the most responsible decisions to be taken in the process of implementing (or executing) disposition orders.

Conditional release shall be preferred to letting the young offender do full time—for quite obvious reasons. Even "dangerous offenders" (see Rule No. 17) should be conditionally released whenever feasible, in their own interest and in that of society. Like probation (see Rule No. 17.2), conditional release implies that the condition is the released offender's good behaviour for a period of time to be fixed in the decision. The rule does not take up the question of the offender's consent with being conditionally released, this not being a really critical question; for if consent is refused, this will necessarily (and negatively) influence the prediction of his or her future behaviour on which a positive decision has to be founded.

In the case of offenders conditionally released from an institution, assistance and supervision by a probation officer should not only be regular (see Rule No. 17.2) but cogent; this again for the quite obvious reason of these offenders' personalities.

To No. 30

The importance of after-care after a period of institutionalization needs not be emphasized. It is tried to knot the possibility of conditional release—which, along with its possible shaping in detail, is but one form of after-care (see previous rule)—to other means existing or in discussion. All these should form a net not so much of social control but, where necessary, of various offers to young offenders on their way out of the institution.

The term "re-integration" is used here (at the end of the rule) instead of "(re-)socialization," because the necessity of after-care originates from previous institutionalization. The semi-institutional arrangements referred to will of course be set up not only in view of juveniles released from institutions, but may, by the same time, serve as instruments of crime prevention for pre-delinquent juveniles.

To No. 31

The combination of social policy with research, accompanying or fundamental, already seems to be widely acknowledged as an instrument to keep practical measures in accordance with scientific insights.

In juvenile matters the mutual feedback between research and policy is all the more important since otherwise the quick and drastic changes in the living conditions for the young would all too soon be neglected by society's ways and means of "dealing" with its juveniles. The rule therefore sets out the minimum standards for building research into the policy system.

To No. 32

The final provision of these Standard Minimum Rules once more connects them with the fundamental principles set out in Rule No. 1.

To have the young generation participate extensively and seriously in the planning and development of society is one of the most promising ways to link rights and responsibilities and to create an attitude of belonging and identification. The importance of these processes for any given society or community cannot be over-estimated.

Rule No. 32, as forming part of *these* Standard Minimum Rules, is emphasizing the conviction that young offenders are not (by their offence) excluded from society but remain an integral part of it.

The 62nd International Seminar
(14 February – 19 March, 1983)
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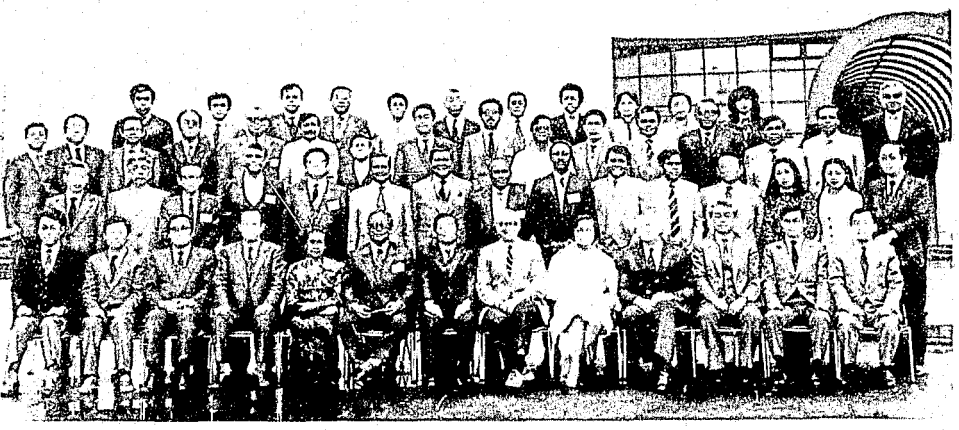

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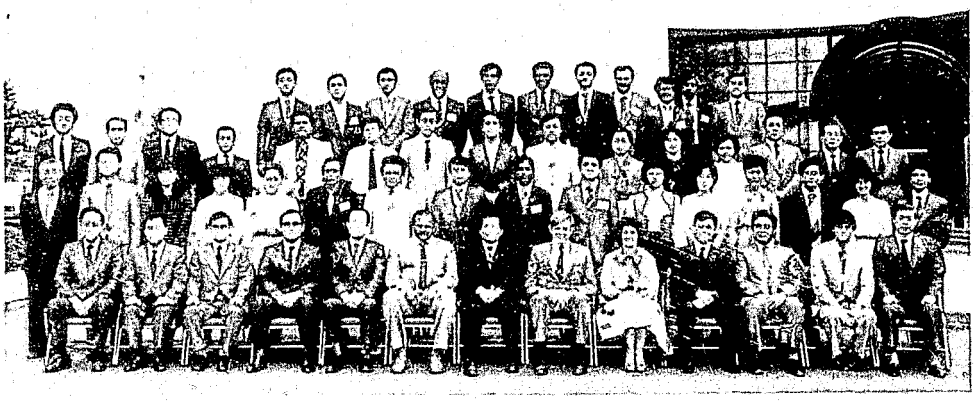

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The 64th International Training Course
(13 September – 3 December, 1983)
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4th Row:	S. Sato (Staff), Saito (Staff), Sano (Staff), K. Sato (Staff), Takashima (Staff), Jensen Pennington (Costa Rica), Nakata (Japan), Tavai (Fiji), Tripathi (Nepal), Asao (Japan), Chantarasapt (Thailand), Konishi (Japan), Omata (Japan), Hirai (Staff), Fujioka (Staff)
3rd Row:	Kanai (Staff), Oikawa (Staff), Usui (Coordinator), Yamashita (Japan), Tada (Japan), Okamura (Japan), Yahaya (Malaysia), Sawai (Japan), Ito (Japan), Kim (Korea), Hirohata (Japan), Shibata (Staff), Sanao (Staff), Kai (Staff), Watanabe (Staff), Naka (Staff)
2nd Row:	Wong (Hong Kong), Anno (Staff), Annomae (Japan), Obata (Japan), U Kyaw Mint (Burma), Amiruddin (Indonesia), Ranaraja (Sri Lanka), Rogers (Visiting Research Fellow), Kalia (India), Chattha (Pakistan), Seddiki (Morocco), U Tin Aung (Burma), Tilakawardena (Sri Lanka), Wu (China), Tria Tirona (Philippines), Salguero Fernandez (Peru), Ng (Singapore)
Seated:	Noda (Faculty), Hagiwara (Faculty), M. Suzuki (Faculty), Kato (Faculty), Kaiser (Visiting Expert), Ishikawa (Director), Palmer (Visiting Expert), Hino (Deputy Director), Ikeda (Faculty), Y. Suzuki (Staff), Sugita (Faculty)