Report of the Proceedings

NATIONAL CONFERENCE ON THE DISPOSITION OF OFFENDERS IN CANADA

Convened by the
Centre of Criminology
UNIVERSITY OF TORONTO

May 14th – May 17th, 1972

OTHER CONFERENCES CONVENED BY THE CENTRE OF CRIMINOLOGY

National Conference of Judges on Sentencing	1964
Conference of the Chief Justices of Canada	1964
National Conference on the Prevention of Crime	1965
Conference of the Chief Justices of Canada	1965
Workshop on the Use of Sanctions in Controlling Behaviour on the Roads	1972
National Symposium on Medical Sciences and the Criminal Law	1973
Private Policing and Security in Canada: A Workshop	1973

Proceedings of the

NATIONAL CONFERENCE ON THE DISPOSITION OF OFFENDERS IN CANADA

Held in Hart House, University of Toronto
May 14th to May 17th, 1972

Convened by the Centre of Criminology, University of Toronto

Conference Director:
Professor J. Ll. J. Edwards, Director of the Centre of Criminology

Assistant Conference Director:
Mr. J. Irvin Waller, Research Associate, Centre of Criminology

Second Printing 1974
ISBN 0-919584-11-X

ACKNOWLEDGEMENTS

The Centre of Criminology gratefully acknowledges the financial support extended to the Conference by the federal Department of Justice, the federal Department of the Solicitor General and all the Provincial Governments whose representatives are listed later in these proceedings.

The Centre also wishes to express its appreciation of the support extended to the Conference by the National Judicial Council, the Law Reform Commission of Canada, and the University of Toronto.

Finally, I am happy to record my considerable indebtedness to my colleague in the Centre of Criminology, J. Irvin Waller, who assisted me with the arduous task of preparing the guidelines for discussion and in selecting the background reading material; to my academic and professsional friends in different parts of Canada who willingly responded to my invitation to participate as chairmen and rapporteurs of the respective discussion groups; to Mr. Patrick McClory and other members of the staff of Hart House for their customary helpfulness and efficiency in looking after the arrangements during the conference proceedings; and, finally, to Mrs. Anna Mallin, Miss Cathy Wilson and Miss Denise Rush for cheerfully and uncomplainingly looking after the innumerable administrative details that are associated with a conference of this kind.

August 1972 J. Ll. J. Edwards

TABLE OF CONTENTS

PARTICIPANTS

Federal Government

Mr. R. S. Beames,
District Representative, Toronto Office,
National Parole Service

Mr. A. J. Currie, Q.C.,
Criminal Law Section,
Department of Justice

Professor M. L. Friedland,
Member, National Law Reform Commission,
Dean (designate), Faculty of Law, University of Toronto

Me Jean-Paul Gilbert,
Member, National Parole Board

Hon. Mr. Justice E. P. Hartt,
Supreme Court of Ontario,
Chairman, National Law Reform Commission

Mr. J. H. Hollies, Q.C.,
Departmental Counsel,
Department of the Solicitor General

Hon. Mr. Justice A. Lamer,
Superior Court of Quebec,
Vice-Chairman, National Law Reform Commission

Mr. M. Maccagno,
Member, National Parole Board

Mr. David Matas,
Special Assistant to the Solicitor General

Mr. W. T. McGrath,
Executive Secretary,
Canadian Corrections and Criminology Association

Mr. F. P. Miller,
Executive Director,
National Parole Service

Mr. J. Moloney,
Regional Director for Ontario,
Canadian Penitentiary Service

Mr. M. J. Nadon,
Deputy Commissioner,
Royal Canadian Mounted Police

Professor W. F. Ryan,
Member, National Law Reform Commission

Mr. S. F. Sommerfeld,
Director, Criminal Law Section,
Department of Justice

Mr. T. G. Street, Q.C.,
Chairman,
National Parole Board

Mr. A. Therrien,
Vice-Chairman,
National Parole Board

Alberta

Mr. Edward Adolphe, Q.C.,
Lawyer, Calgary

Judge Guy Beaudry, Q.C.,
Magistrate, Edmonton

Hon. Mr. Justice C. W. Clement,
Appellate Division, Supreme Court of Alberta

Hon. Mr. Justice André M. Dechene,
Trial Division, Supreme Court of Alberta

Hon. Mr. Justice N. D. McDermid,
Appellate Division, Supreme Court of Alberta

Mr. Y. Roslack,
Assistant Director, Criminal Justice,
Department of the Attorney General

British Columbia

Hon. Mr. Justice M. M. McFarlane,
Court of Appeal of British Columbia

Hon. Mr. Justice F. G. Munroe,
Supreme Court of British Columbia

Manitoba

Hon. Mr. Justice R. G. B. Dickson,
Court of Appeal of Manitoba

Mr. G. R. Goodman,
Director of Public Prosecutions,
Department of the Attorney General

Mr. H. ff Gyles,
Chief Magistrate, Winnipeg

Hon. Mr. Justice J. E. Wilson,
Court of Queen's Bench for Manitoba

New Brunswick

Mr. Robert J. King,
Director of Correctional Services,
Department of Justice

Mr. Harry McKay,
Chief of Police, Saint John

Judge Henry J. Murphy,
Provincial Court, Moncton

Mr. Patrick A. A. Ryan, Q.C.,
Lawyer, Fredericton

Newfoundland

Judge A. E. Cramm,
Magistrate, Corner Brook

Judge C. J. Goodyear,
Magistrate, Goose Bay

Hon. Mr. Justice J. D. Higgins,
Supreme Court of Newfoundland

Nova Scotia

Judge Nathan Green, Q.C.,
Judge of the Provincial Magistrate's Court, Halifax,
Member of the Advisory Council, Centre of Criminology

Professor K. B. Jobson,
Faculty of Law, Dalhousie University

Hon. Mr. Justice M. C. Jones,
Trial Division, Supreme Court of Nova Scotia

Judge H. Russell MacEwan,
Provincial Magistrate's Court, Amherst

Judge R. F. McLellan,
County Court Judge, Colchester County

Judge Peter J. O Hearn,
County Court Judge of the Metropolitan County of Halifax

Ontario

Chief Harold Adamson,
Metropolitan Toronto Police,
Member of the Advisory Council, Centre of Criminology

Judge Colin E. Bennett,
Chief Judge of the County and District Courts of Ontario

Miss Margaret Benson,
Psychologist, Toronto

Dr. B. A. Boyd,
Superintendent, Mental Health Centre,
Penetanguishene

Mr. Austin M. Cooper, Q.C.,
Toronto

Mr. A. K. Couse,
Executive Director, John Howard Society, Ontario

Mr. A. R. Dick, Q.C.,
Deputy Provincial Secretary for Justice

Professor P. J. Fitzgerald,
Carleton University, Ottawa

Professor P. J. Giffen,
Chairman, Department of Sociology,
University of Toronto

Professor Alan Grant,
Osgoode Hall Law School,
York University

Hon. Mr. Justice Campbell Grant,
High Court of Ontario

Mr. Ed Greenspan,
Lawyer, Toronto

Judge R. G. Groom, Q.C.,
Provincial Judge, Woodstock

Dr. T. Grygier,
Director, Centre of Criminology,
University of Ottawa

Mr. L. R. Hackl,
Special Adviser, Ministry of Correctional Services,
Member of the Advisory Council, Centre of Criminology

Mr. Robert G. Hann,
Centre of Criminology,
University of Toronto

Miss Phyllis Haslam,
Executive Director, Elizabeth Fry Society, Ontario

Senior Judge F. C. Hayes, Q.C.,
Provincial Court (Criminal Division), Toronto

Mr. M. Healy,
Regional Director for Northern Ontario,
Ontario Probation Service

Professor John Hogarth,
Osgoode Hall Law School,
York University

Professor Anthony Hooper,
Osgoode Hall Law School,
York University

Mrs. Lois James,
Centre of Criminology,
University of Toronto

Hon. Mr. Justice Arthur R. Jessup,
Court of Appeal of Ontario

Chief Leonard Lawrence,
City of Hamilton Police Department

Commissioner M. F. A. Lindsay (Rtd.),
Royal Canadian Mounted Police,
Member of the Advisory Council, Centre of Criminology

Professor Peter Macnaughton-Smith,
Centre of Criminology,
University of Toronto

Mr. Harvey McCulloch, Q.C.,
Crown Attorney for Metropolitan Toronto and Hamilton

Mr. George G. McFarlane,
Assistant Director,
Ontario Probation Service

Dr. C. K. McKnight,
Chief of Forensic Service,
Clarke Institute of Psychiatry

Professor Alan W. Mewett,
Faculty of Law,
University of Toronto

Dr. J. W. Mohr,
Osgoode Hall Law School and Department of Sociology,
York University

Professor R. W. Outerbridge,
Centre of Criminology,
University of Ottawa

Hon. Mr. Justice W. D. Parker,
High Court of Ontario

Professor R. R. Price,
Faculty of Law,
Queen's University

Mr. J. E. Sampson, Q.C.,
President, Crown Attorney's Association of Ontario,
Kingston

Mr. D. Sinclair,
Deputy Minister,
Ministry of Correctional Services

Mr. Vernon Singer,
Member, Legislative Assembly, Toronto

Professor Richard Sullivan,
Department of Economics,
Carleton University, Ottawa

Professor Stephen Waddams,
Faculty of Law,
University of Toronto

Judge Harry Waisberg, Q.C.,
County Court Judge, York County

Mr. J. Irvin Waller,
Centre of Criminology,
University of Toronto

Mr. R. M. Warren,
Deputy Solicitor General,
Department of the Solicitor General

Professor Paul Weiler,
Osgoode Hall Law School,
York University

Professor T. C. Willett,
Chairman, Department of Sociology,
Queen's University

Professor John Willis, Q.C.,
Faculty of Law,
University of Toronto

Mr. Frank Wilson, Q.C.,
Acting Director of Public Prosecutions,
Department of the Attorney General

Hon. J. Yaremko,
Solicitor General of Ontario

Prince Edward Island

Judge W. Chester S. MacDonald,
Provincial Magistrate, Summerside

Mr. Wendall MacKay,
Deputy Minister,
Department of Justice and the Attorney General

Hon. Mr. Justice G. J. Tweedy,
Supreme Court of Prince Edward Island

Quebec

Dr. Maurice Gauthier,
Director of Probation and Houses of Detention,
Department of Justice

Judge Guy Guerin,
Court of Sessions of the Peace,
Montreal

Professor André Normandeau,
Chairman, School of Criminology,
University of Montreal,

Me Michel Proulx,
Lawyer, Montreal

Hon. Mr. Justice G. Edouard Rinfret,
Court of Appeal of Quebec

Me Donat Tardif,
Assistant Chief Inspector of Police,
Montreal Urban Community

Saskatchewan

Hon. Mr. Justice D. C. Disbery,
Court of Queen's Bench of Saskatchewan

Hon. Mr. Justice P. H. Maguire,
Court of Appeal of Saskatchewan

Judge R. H. McClelland,
Judge of the District Court, Regina

Yukon

Hon. Mr. Justice J. C. B. Maddison,
Territorial Court of the Yukon Territory

U.S.A.

Mr. W. B. Eldridge,
Director of Research,
The Federal Judicial Center,
Washington

United Kingdom

Hon. Sir George Waller,
High Court Judge, Queen's Bench Division,
Vice-Chairman, English Parole Board,
Member of the Home Secretary's Advisory Council on the Penal System

INTRODUCTORY REMARKS

BY THE DIRECTOR OF THE CENTRE OF CRIMINOLOGY

In opening this National Conference on the Disposition of Offenders in Canada I should like to begin by welcoming each of you to the University of Toronto and especially to this historic room in Hart House which, as some of you may recall, was the scene of the earlier national conferences convened by the Centre of Criminology. You may already have speculated as to why so many years have been allowed to elapse since the previous conferences of 1964 and 1965. I will pass over the major undertaking that this kind of venture represents, especially with the limited nature of our administrative resources. In truth, the intervening years have been occupied with the development of the Centre's research programme, a major part of which has been devoted to studying empirically many of the unchallenged assumptions and unresolved issues that figured prominently during the discussions at the first National Conference of Judges on Sentencing.

Leading the way in the long research haul has been the Ontario Sentencing Project, conducted by my colleague Professor John Hogarth and assisted by Miss Barbara Schloss. The findings of this study, which are before you today, have been published as the first volume in the series "Canadian Studies in Criminology", a joint enterprise of the University of Toronto Press and the Centre of Criminology. The title of the book *Sentencing as a Human Process* aptly summarises the principal explanation - I refrain from using the word justification - for the bewildering disparities that exist in the sentencing practices of our criminal courts. It has been suggested to me that the findings, derived as they are from the Ontario provincial courts, bear no relationship to the situation in other parts of Canada, a comment which I find unconvincing and somewhat disingenuous. Thanks to the courage and unselfishness of the Ontario provincial judges in extending their full co-operation to the project, we now have laid out before us the full dimensions of how sentences are in fact determined. In Professor Hogarth's words:

> The most obvious fact which emerges ... is that there are enormous differences among magistrates in nearly every aspect of the sentencing process. Magistrates differ in their penal philosophies, in their attitudes, in the ways in which they define

> what the law and the social system expect of them, in how they use information, and in the sentences that they impose. In a variety of ways it was demonstrated that magistrates interpret the world selectively in ways consistent with their personal motivations and subjective ends. Regardless of what position one takes with regard to the social purposes that sentencing should serve, it is likely to be repugnant to the average man's sense of justice if such differences are allowed to persist.

It has been said many times before, but it apparently needs re-emphasis, that there is no simple, unilateral remedy for this state of affairs. We delude ourselves if we accept uncritically the solution, so often propounded with greater fervour than substance, of administrative sentencing boards composed of experts with the ability to scientifically determine the most appropriate disposition. Stripped of the fanciful language that so often accompanies adherence to the rehabilitative and treatment ideals, and no less so when the deterrent principle is being invoked, what remains is fundamentally a value judgment. In my view, prosecutors and defence lawyers, judges and members of parole boards must concern themselves, far more actively than has been their practice in the past, to investigate the claims put forward as to the effectiveness of alternative correctional measures. Much of the relevant literature in this field has been placed before you at this conference. It makes sober reading, but it also contains distinct pointers as to how to avoid making bad decisions that cannot stand up to objective examination.

The Centre of Criminology makes no claims to a monopoly of knowledge or insights as to how the police, prosecutors, judges and the correctional authorities are better to fulfil their responsibilities to society and to those who are accused and convicted of criminal offences. The Centre does believe, however, that it has a clear duty to provide opportunities for sharing more fully with you, and those public agencies which you represent, the growing body of criminological knowledge derived from research findings in different jurisdictions. However unpalatable this information often may prove to be it is no longer possible to ignore the implications.

The evidence grows that for a judge to impose a sentence of imprisonment, with the avowed aim of bringing about the offender's rehabilitation, falls so wide of the mark that it is time the courts were awakened to the realities of the situation. It serves little purpose at this stage to apportion blame for the perpetuation of the beliefs that the provision of educational opportunities, vocational training or psychiatric treatment in our penal institutions

are capable, by some magical process, of effectuating a transformation in the behavioural patterns of offenders in terms of the probabilities of recidivism. The sad fact, however, is that such ideas are deeply ingrained in most of our judges. And if we look to parole supervision as a correctional instrument designed to bring about a change of habits, outlook and a more law abiding way of life on the part of those selected for parole, I can only indicate that the findings of two parole studies carried out over the past few years in the Centre of Criminology by Mr. Irvin Waller and Professor Peter Macnaughton-Smith provide little comfort for such entrenched beliefs.

This is not to decry the use of parole. It has other, more valid reasons to support its wide application but we do a disservice to society if we fail to dispel the illusions that surround the parole experience. One further word: it may pay us all to have a little more regard for the opinions entertained about prisons, penitentiaries and the parole system by the inmates themselves. Enlightenment on this relatively ignored area is to be found in the research report *Prisoners' Perceptions of Parole* by another of my colleagues, Mrs. Lois James. I have only touched on some of the salient questions that derive from these various research studies. The wider ramifications are the subject of many of the questions which have been prepared for discussion at this conference.

Thus, much is being heard at the present time of new approaches aimed at alleviating or eliminating some of the totally negative features associated with prison regimes. Experimental programmes are in vogue in some of the provinces and in the federal penitentiary service. They reflect a welcome realism in their move towards equating the serving of a sentence of imprisonment with the assuming of the responsibilities and headaches of normal community existence. Pre-release centres, temporary absence programmes, and intermittent sentences served at night or weekends, are simple extensions of the principle underlying the use of probation and parole. Of course, there are risks involved and one of the crucial questions upon which your opinions are sought is to estimate the levels of acceptable risk which society is capable of tolerating. It is so easy to dramatise situations out of all proportion to the realities and I would hope that the distillation of your combined experience, diverse as it is, will provide valuable guidance for those who have to make the decisions in these experimental programmes.

One final word. Much of this conference will be concerned with questions affecting the disposition of offenders in the areas of sentencing and parole. I suggest that we stand back for a moment and take a broad look at the overall criminal justice system, both in the provincial and federal spheres. If Canada is to make sensible decisions in any one of the areas that are the special concern of the police, prosecutors, the courts, probation, parole and after care, prisons and penitentiaries, to name the principal components, it is important that each problem be approached with heightened awareness of the inter-relationships that permeate the total system.

My own feelings are that we may have been concentrating our attention too exclusively on the end products of the system, to what happens to the offender when he is sentenced and handed over to the correctional authorities. The flow of cases, in terms of volume and costs, is surely determined at a much earlier stage with the exercise of the very considerable discretionary powers entrusted to the police and the crown prosecutors. Delicate and sensitive as these areas undoubtedly are, it is important that we gain a better appreciation of why and how these powers are constantly exercised. And, as the preliminary findings of the simulation study conducted by Mr. R. G. Hann in the Centre of Criminology show, we must direct our minds increasingly to probing the delays and backlogs in the processing of criminal cases through the courts. Administrative problems are one thing and they are surmountable. But are we confident that the law and its procedures are without fault in the manner in which criminal charges are dealt with in the courts? It would be a bold person who would assert otherwise. As part of the current reappraisal of the disposition of offenders it is necessary always to remember that we are concerned not only with measures of efficiency and effectiveness but also with standards of justice. I wish that I were more confident that the criminal justice system, as we know it, adheres convincingly to those concepts of fairness and equality that are at the heart of any principles of justice.

May, 1972

J. Ll. J. Edwards

AGENDA

Monday, May 15th - Criminal Sanctions

The aims, justification and relative effectiveness of criminal sanctions as measures for controlling crime. The current state of criminological research knowledge on the use and effects of such sanctions.

A. The aims and justifications of criminal sanctions and limitations on their operation.

B. The criminal sanction as one means to control crime, its significance to the ordinary citizen and victims of criminal activities.

C. The impact and correctional effectiveness of various forms of judicial and administrative dispositions. The importance of the economics of crime and corrections.

Tuesday, May 16th - Discretion in the Use of Dispositions

A. Disparity in decision making; specification of criteria as a means to equality of consideration and appeal procedures.

B. The role of legislatures, the judiciary and corrections in controlling decision making about the offender.

C. The assessment and judging of the offender; the pre-disposition report and the assessment of risk.

Wednesday, May 17th - Modifications, Improvements and Alternatives

A. Conclusions and recommendations from previous discussions.

B. Supplementary items.

GUIDELINES FOR DISCUSSION OF THE AGENDA

Introduction

It is unlikely that any measure of full agreement will be achieved during the Conference. However, the Rapporteurs for each discussion group will be recording any conclusions and recommendations for circulation before the last day of the Conference when these may be further considered by the respective groups. They will form the basis for reports and discussion in the final plenary session.

Monday, May 15th - Criminal Sanctions

A. The Aims and Justifications of Criminal Sanctions and Limitations on their Operation

1. One role of the Criminal Code has been to reaffirm society's abhorrence for particular types of crime. To what extent should the courts and penal agencies be concerned with the denunciation of crime? How effective are the criminal justice agencies in reinforcing societal morals or values?

2. Some believe the imposition of punishment constitutes our primary control over anti-social behaviour. To what extent are we justified in imposing criminal sanctions on those who behave in an anti-social manner? Can the criminal sanctions effectively control crime in society? Should we attempt to limit their use and consider invoking alternative methods for resolving situations that presently are subject to the criminal law?

3. Legislatures and criminal justice agencies often react to waves of certain types of undesirable behaviour by increasing the severity of sentences. What evidence is there that this approach is effective? The consensus of modern opinion is that rehabilitation should be the primary goal of criminal justice agencies. How do the courts and correctional agencies measure rehabilitation? In what sorts of cases does rehabilitation occur? While prison may protect society while the inmate is inside, it apparently does not protect society after his release. How can the public be protected? To what extent should the criminal justice agencies be concerned with social defence by way of deterrence, rehabilitation or isolation?

4. General deterrence may play a role, e.g. in controlling traffic offences, but its role for traditional crime seems limited to specific effects on specific groups of persons with respect to specific forms of behaviour. Is there substance in the belief that the majority of people do not need deterrents to refrain from criminal actions or to avoid arrest and that the select minority, for example, those who engage in professional and semi-professional crime, take no notice? In view of the uncertainty as to the effectiveness of the principle of general deterrence, to what extent is it a justified aim when sentencing offenders?

5. It has been argued that parole, probation and the semi-institutional dispositions such as pre-release centres, half-way houses, day parole and temporary absence, were first introduced to minimize correctional costs and, in particular, to avoid incurring capital expenditures. To what extent should the courts be concerned with the social and financial cost of alternative dispositions?

6. Changing values as to what constitutes inhumanitarian punishment has contributed significantly to public attitudes towards the abolition or restricted use of the death penalty and corporal punishment. Should criminal justice agencies be concerned with minimizing the severity of the impact of penal sanctions on both the offender and his family? What should be the proper response by the courts and parole boards where it is evident that the public mood points in the direction of expecting that severe sentences be imposed and served? Research suggests that judges and parole boards are not always attuned to such general community feelings. Is there any way this communication could be improved?

B. *The Criminal Sanctions as One Means to Control Crime, Its Significance to the Ordinary Citizen and Victims of Criminal Activities*

1. The ordinary citizen initiates the criminal justice process by calling the police. He also serves on juries, which have been traditionally regarded as the means of ensuring that criminal law reflects the community's standards. In the area of corrections, however, the ordinary citizen's position is relatively one of total isolation and ignorance of what goes on. Does the growing movement to involve the public through community corrections do more than educate the public about the offender? Do we need to educate the public about the offender or do we need to educate the public about crime? Does the criminal justice system really reflect what any of the public wants? Should it?

2. The criminal justice system emphasizes expensive measures to apprehend, convict and incarcerate an offender. This system often incapacitates his ability to compensate the victim. At the same time schemes of compensation to the victims of crimes of violence have been instituted. Should the purpose of the criminal justice system be solely to punish offenders or should more emphasis be given to providing direct restitution or compensation to the victim? What emphasis should be given to the contributory responsibility of the victim? What role should the state play in providing insurance against the loss resulting from crime? Should compensation be integrated as a normal part of the criminal court's powers of disposition or should it be handled, as at present, by some other agency? Should Canadian criminal law follow the recent example set by the English Criminal Justice Bill 1971 in adapting the bankruptcy procedures to ensure that certain classes of offenders are prevented from gaining pecuniary advantage from their criminal activities?

3. Instead of resort to the criminal courts, many governments and private companies use insurance and technical devices such as better locks, burglar alarms, street lighting, television surveillance, keeping photographic record of those cashing cheques, and thumb print identity cards to prevent crime or to increase the certainty of detection if a crime occurs. Do these methods question the general effectiveness of the criminal sanction in controlling crime? Should public funds be allocated to specific programmes designed to reduce street crime such as those announced by the Law Enforcement Assistance Administration in the U.S.A.? Should legislation be introduced requiring such measures as compulsory insurance against theft?

4. Social and economic policies probably have as much impact on the amount of crime as police and correctional measures. Should resources, now expended on the criminal justice system, be shifted to the improvement of education, welfare, special employment programmes, social service agencies and urban renewal in the hopes of preventing crime?

5. The Canadian government spends approximately ten percent of its defence budget on research and all major corporations allocate a significant proportion of their budgets to research and development. Yet, approximately one tenth of one percent only of the total public expenditure for law enforcement, judicial administration, and corrections is spent on criminological research of any kind in Canada. Are we making sufficient attempts rationally to understand and control crime? Is there a need for a federal agency to coordinate, stimulate and to emphasize the importance of criminological research?

C. *The Impact and Correctional Effectiveness of Various Forms of Judicial and Administrative Dispositions. The Importance of the Economics of Crime and Corrections.*

1. Men sent to prison are most often young, poor, single or have broken marriages, have been previously incarcerated and are from an urban area, Indian or born in Canada, educationally and occupationally are under-achievers, and experience problems with alcohol. Research evidence confirms the extent to which prison further breaks up the family, impedes the future employment of offenders, acts as a school for crime and creates difficulties of transition back to the outside world from both regimented or therapeutic institutions. These problems are particularly acute during pre-trial incarceration and short jail sentences. Should the use of prison be restricted to the isolation of dangerous offenders? Would this change the design of prisons to prison villages in isolated parts of Canada where a man is able to live with his family on earned wages? What alternatives are available both for the dangerous offender and the man who fails on probation and parole?

2. For the dangerous offender, what criteria of identification should be used and what degree of confidence is entertained as to the validity of such judgements? What tribunal should be invested with the power to thus label an offender and to review the original determination and its consequences?

3. Most prisons still place prime emphasis on custody, many are geographically isolated, architecturally deplorable. Attempts to inculcate notions of the therapeutic community raise hopes of those who would like to eliminate crime by curing the criminal; yet, with the possible exception of a limited group of sex offenders, the results have not met expectations. Some believe that the entire process of attempting to prepare the imprisoned man for life in the community is an exercise in futility. Is society offering men sent to prison the means for social restoration? What programme should the prison organize for these men? Are the attempts to turn prisons into therapeutic communities justified in terms of (a) ameliorating prison life, (b) reducing the possibility of riots, or (c) assisting towards post-release rehabilitation? What substance is there to the oft-repeated assertion that many so-called "treatments" are more punitive in effect than so-called "punishments"? If this is so, should reconsideration be given to setting limits to treatment interventions both with respect to prison and mental hospital inmates?

4. Of the traditional forms of penal sanctions, judged in terms of reconviction rates, fines appear to achieve the highest degree of effectiveness, particularly in the area of theft. Should consideration be given to extending their application more widely with respect to other property offences and what about crimes of violence? Should a system of day fines, proportional to net income, be introduced into Canadian criminal law? In enforcing payment of fines, what alternative measures to imprisonment should be resorted to by the courts?

5. The cost of supervising a man in the community on probation or parole is said to be one tenth of the average annual maintenance cost of keeping a man in jail ($6,000) or in a penitentiary ($10,000). Looking at the proportions of probationers or parolees reconvicted of indictable offences within specified time periods, research findings suggest that low failure rates arise from differential selection of those to serve their sentences under supervision in the community. Should society tolerate the risk of placing more persons on probation and parole even though it is not correctionally effective? Does probation provide important advantages over suspended sentences or the newly proposed sentences of absolute and conditional discharge? What other community dispositions might be developed?

6. Systematic research suggests that during residence in suitable probation hostels an offender's probability of reconviction is reduced, but this is not sustained once liberty is restored. Such hostels appear to "contain" offenders more effectively than probation or parole, but in ways that are partially similar to prison restrictions. Should more use be made of adult "foster home" placements and probation hostels and what steps can be taken to overcome public suspicion and opposition to the locating of such establishments in their neighbourhoods?

7. Most criminologists agree that in terms of the probability of reconviction, the current sanctions available to the criminal courts are interchangeable. Others go further and suggest that as penal dispositions bear only a negligible relation to outcome, cost benefit analyses would tend inevitably to favour the cheapest forms of disposition. To what extent are the courts aware of this? What does this mean for their every-day operations? What are the cheapest dispositions and how could they be used more?

Tuesday, May 16th - Discretion in the Use of Dispositions

A. Disparity in Decision Making; Specification of Criteria as a Means to Equality of Consideration and Appeal Procedures

1. Disparity between courts in sentencing practices, and between parole board members, probation and parole officers in making administrative decisions, is an acknowledged fact. It also seems reasonably clear that such dispositions are accounted for more adequately by the beliefs and goals of the decision maker than by the objective facts of the individual case. What solutions can be advanced towards achieving equality of consideration; at least within individual provinces? How can the present appellate courts contribute to this goal? Should there be correctional appeal courts to review penitentiary classification, reformatory allocation, parole board and parole and probation supervision decisions?

2. The role of the judge in sentencing is generally understood to require the finding of a just balance between the needs of society and the individual circumstances of the offender and the offence charged. More often than not the declared aims of the judge are couched in simple phrases such as, "punishment corrects" or "society is protected by the rehabilitation of the offender". Frequently, all the classical theories of punishment, i.e. deterrence, the protection of society and the rehabilitation of the offender, are made manifest in the public judgement of the court. Can dispositions consistent with conflicting aims be found? Does the person selecting a disposition need to opt for a particular sentencing philosophy? Should proof be required, by resort to available criminological knowledge, that a disposition under consideration is capable of achieving the sentencing aims of the judge? If dispositions do not achieve their stated aims, is their continued use justified? Would written reasoned sentences reduce disparity and ensure equality of consideration? Should sentencing criteria be legislated to eliminate sentencing disparities between different courts?

3. Research in several countries suggests that parole boards are more concerned with general considerations of justice and retribution than would appear from their public statements of policy. Recently there was a public outcry in Ontario against the early granting of parole to several men convicted of kidnapping, an outcry that seemed dictated by the feeling that the right balance had not been maintained between the seriousness of the offence and the time actually served in the penitentiary. Many critics also expressed the view that the early release

constituted an undue interference with the sentence of the court by the parole board. What substance is there in these criticisms? To what extent do the courts and parole boards need to consider the same criteria in the disposition of a particular offender? What sort of relationship should there exist between the judge or magistrate and the parole board? Are existing means of communication between them adequate? Should judges and magistrates be kept informed of the parole board's disposition of individual cases in which they have been directly concerned? Should judges serve part-time on the parole board? Should parole board members sit as assessors in courts?

4. Decisions in recent years by various courts in the United States indicate a willingness on the part of the judiciary to utilize constitutional grounds for improving correctional practices in prisons, parole granting, parole and probation suspensions and revocations, and in the operation of mental hospitals. Is it visualized that a similar trend may begin to exhibit itself in Canada and, if so, how should it be done?

5. Suggestions are being heard to the effect that decisions regarding parole should be decentralized and dealt with, in normal circumstances, at the local level with active participation by lay members of the public. General policies would continue to be set by the parole board to whom appeals would lie from the local committee. Is such a pattern of decision-making regarded favourably? Should ultimate recourse to the courts be contemplated? To what extent should legal representation at such hearings be available as of right to the prisoner or parolee? What are the implications for defence lawyers, in terms of their criminological education, when representing the interests of the accused, the inmate or the parolee?

6. The results of the Ontario Sentencing Study demonstrate that the social background of the sentencer reinforces his sentencing philosophy. This conclusion is likely to be equally applicable to crown prosecutors who tend to be identified with pleas for the imposition of punitive sanctions. Efforts are discernible in different parts of Canada to improve the training of those who represent society in their judicial or prosecutorial positions, but the undoubted fact remains that no formal criminological training is required before appointment to these positions. Should this be changed with a training curriculum that includes the social sciences, particularly theories of punishment and the realities of penal measures? Should they be made aware of the social economics of criminal justice in such areas as the cost of incarceration both in tax dollars and the negative social impact on offenders' future lives? Should they be responsible for discussing these in court?

C. *The Impact and Correctional Effectiveness of Various Forms of Judicial and Administrative Dispositions. The Importance of the Economics of Crime and Corrections.*

1. Men sent to prison are most often young, poor, single or have broken marriages, have been previously incarcerated and are from an urban area, Indian or born in Canada, educationally and occupationally are under-achievers, and experience problems with alcohol. Research evidence confirms the extent to which prison further breaks up the family, impedes the future employment of offenders, acts as a school for crime and creates difficulties of transition back to the outside world from both regimented or therapeutic institutions. These problems are particularly acute during pre-trial incarceration and short jail sentences. Should the use of prison be restricted to the isolation of dangerous offenders? Would this change the design of prisons to prison villages in isolated parts of Canada where a man is able to live with his family on earned wages? What alternatives are available both for the dangerous offender and the man who fails on probation and parole?

2. For the dangerous offender, what criteria of identification should be used and what degree of confidence is entertained as to the validity of such judgements? What tribunal should be invested with the power to thus label an offender and to review the original determination and its consequences?

3. Most prisons still place prime emphasis on custody, many are geographically isolated, architecturally deplorable. Attempts to inculcate notions of the therapeutic community raise hopes of those who would like to eliminate crime by curing the criminal; yet, with the possible exception of a limited group of sex offenders, the results have not met expectations. Some believe that the entire process of attempting to prepare the imprisoned man for life in the community is an exercise in futility. Is society offering men sent to prison the means for social restoration? What programme should the prison organize for these men? Are the attempts to turn prisons into therapeutic communities justified in terms of (a) ameliorating prison life, (b) reducing the possibility of riots, or (c) assisting towards post-release rehabilitation? What substance is there to the oft-repeated assertion that many so-called "treatments" are more punitive in effect than so-called "punishments"? If this is so, should reconsideration be given to setting limits to treatment interventions both with respect to prison and mental hospital inmates?

4. Of the traditional forms of penal sanctions, judged in terms of reconviction rates, fines appear to achieve the highest degree of effectiveness, particularly in the area of theft. Should consideration be given to extending their application more widely with respect to other property offences and what about crimes of violence? Should a system of day fines, proportional to net income, be introduced into Canadian criminal law? In enforcing payment of fines, what alternative measures to imprisonment should be resorted to by the courts?

5. The cost of supervising a man in the community on probation or parole is said to be one tenth of the average annual maintenance cost of keeping a man in jail ($6,000) or in a penitentiary ($10,000). Looking at the proportions of probationers or parolees reconvicted of indictable offences within specified time periods, research findings suggest that low failure rates arise from differential selection of those to serve their sentences under supervision in the community. Should society tolerate the risk of placing more persons on probation and parole even though it is not correctionally effective? Does probation provide important advantages over suspended sentences or the newly proposed sentences of absolute and conditional discharge? What other community dispositions might be developed?

6. Systematic research suggests that during residence in suitable probation hostels an offender's probability of reconviction is reduced, but this is not sustained once liberty is restored. Such hostels appear to "contain" offenders more effectively than probation or parole, but in ways that are partially similar to prison restrictions. Should more use be made of adult "foster home" placements and probation hostels and what steps can be taken to overcome public suspicion and opposition to the locating of such establishments in their neighbourhoods?

7. Most criminologists agree that in terms of the probability of reconviction, the current sanctions available to the criminal courts are interchangeable. Others go further and suggest that as penal dispositions bear only a negligible relation to outcome, cost benefit analyses would tend inevitably to favour the cheapest forms of disposition. To what extent are the courts aware of this? What does this mean for their every-day operations? What are the cheapest dispositions and how could they be used more?

Tuesday, May 16th - Discretion in the Use of Dispositions

A. Disparity in Decision Making; Specification of Criteria as a Means to Equality of Consideration and Appeal Procedures

1. Disparity between courts in sentencing practices, and between parole board members, probation and parole officers in making administrative decisions, is an acknowledged fact. It also seems reasonably clear that such dispositions are accounted for more adequately by the beliefs and goals of the decision maker than by the objective facts of the individual case. What solutions can be advanced towards achieving equality of consideration; at least within individual provinces? How can the present appellate courts contribute to this goal? Should there be correctional appeal courts to review penitentiary classification, reformatory allocation, parole board and parole and probation supervision decisions?

2. The role of the judge in sentencing is generally understood to require the finding of a just balance between the needs of society and the individual circumstances of the offender and the offence charged. More often than not the declared aims of the judge are couched in simple phrases such as, "punishment corrects" or "society is protected by the rehabilitation of the offender". Frequently, all the classical theories of punishment, i.e. deterrence, the protection of society and the rehabilitation of the offender, are made manifest in the public judgement of the court. Can dispositions consistent with conflicting aims be found? Does the person selecting a disposition need to opt for a particular sentencing philosophy? Should proof be required, by resort to available criminological knowledge, that a disposition under consideration is capable of achieving the sentencing aims of the judge? If dispositions do not achieve their stated aims, is their continued use justified? Would written reasoned sentences reduce disparity and ensure equality of consideration? Should sentencing criteria be legislated to eliminate sentencing disparities between different courts?

3. Research in several countries suggests that parole boards are more concerned with general considerations of justice and retribution than would appear from their public statements of policy. Recently there was a public outcry in Ontario against the early granting of parole to several men convicted of kidnapping, an outcry that seemed dictated by the feeling that the right balance had not been maintained between the seriousness of the offence and the time actually served in the penitentiary. Many critics also expressed the view that the early release

constituted an undue interference with the sentence of the court by the parole board. What substance is there in these criticisms? To what extent do the courts and parole boards need to consider the same criteria in the disposition of a particular offender? What sort of relationship should there exist between the judge or magistrate and the parole board? Are existing means of communication between them adequate? Should judges and magistrates be kept informed of the parole board's disposition of individual cases in which they have been directly concerned? Should judges serve part-time on the parole board? Should parole board members sit as assessors in courts?

4. Decisions in recent years by various courts in the United States indicate a willingness on the part of the judiciary to utilize constitutional grounds for improving correctional practices in prisons, parole granting, parole and probation suspensions and revocations, and in the operation of mental hospitals. Is it visualized that a similar trend may begin to exhibit itself in Canada and, if so, how should it be done?

5. Suggestions are being heard to the effect that decisions regarding parole should be decentralized and dealt with, in normal circumstances, at the local level with active participation by lay members of the public. General policies would continue to be set by the parole board to whom appeals would lie from the local committee. Is such a pattern of decision-making regarded favourably? Should ultimate recourse to the courts be contemplated? To what extent should legal representation at such hearings be available as of right to the prisoner or parolee? What are the implications for defence lawyers, in terms of their criminological education, when representing the interests of the accused, the inmate or the parolee?

6. The results of the Ontario Sentencing Study demonstrate that the social background of the sentencer reinforces his sentencing philosophy. This conclusion is likely to be equally applicable to crown prosecutors who tend to be identified with pleas for the imposition of punitive sanctions. Efforts are discernible in different parts of Canada to improve the training of those who represent society in their judicial or prosecutorial positions, but the undoubted fact remains that no formal criminological training is required before appointment to these positions. Should this be changed with a training curriculum that includes the social sciences, particularly theories of punishment and the realities of penal measures? Should they be made aware of the social economics of criminal justice in such areas as the cost of incarceration both in tax dollars and the negative social impact on offenders' future lives? Should they be responsible for discussing these in court?

B. The Role of Legislatures, the Judiciary and Corrections in Controlling Decision Making about the Offender

1. The average daily prison population in Canada remained stable at 20,000 between 1965 and 1970. During that period increasing use was made particularly of fines but also of probation and parole. Research suggests, however, that the use of these alternative measures has only temporarily delayed an expected substantial increase in this country's prison population. The introduction of mandatory supervision will add significant prison time to those sentenced to reformatories and penitentiaries. Possible solutions to such burgeoning prison populations include the following measures: building more prisons, increased use of semi-custodial and non-custodial dispositions (particularly for those who fail on mandatory supervision), shortening prison sentences, and granting earlier paroles. What are the advantages and disadvantages of each of these alternatives? Which measures should be given priority in implementation? Should imprisonment for certain broad categories of offenders be made illegal? Should administrators of prisons be able to refuse more inmates?

2. In the debate about the proper goals of individual sentences it is frequently overlooked that decisions made by governments concerning the allocation of resources are determinative of the range of dispositions available to the courts. Approximately half the criminal justice resources are devoted to law enforcement, in comparison with a third to maintain the operation of custodial institutions. Should resources in the form of public funds be allocated differently, and, if so, in what direction? Support is likely to be exhibited towards the view that cost-benefit should be the basis on which resources should be redistributed to subsidize programmes. What are the relevant costs and benefits? How can they be weighed?

3. In considering the attributes conducive to successful rehabilitation the comment is often heard that certain classes of offender are not really criminal because they have steady jobs to return to, responsible friends, money, and families that are prepared to stand by them. To what extent are criminal justice agencies justified in repressing those who do not have these assets? In what ways can legislatures, government departments, the criminal justice agencies and the public become involved in trying to alleviate or eliminate what are perceived to be injustices? What modifications of the criminal justice system similar to the Bail Reform Act are called for?

4. Police decisions whether or not to lay criminal charges against suspected offenders significantly control judges' workloads. In turn, the choice of alternative dispositions by the courts are the most pertinent determinant of workloads in different parts of the correctional system. The persistent failure rates of correctional programmes complete this vicious circle by their contributions to future police, court and correctional responsibilities. When planning reforms in one section of the criminal justice system, should not the effects on other related agencies be taken into consideration as a matter of course? Does the present division of responsibility within government for police, courts, corrections and after-care mitigate against applying a "systems" approach to criminal justice planning?

5. The antiquated design of most court rooms is demeaning to the accused and predisposes the court against him, hearings average a few minutes only and it is often difficult for an accused to talk with his family in private. Should major improvements be instigated in courtroom design, increased time to hear cases and provision of private visiting facilities in court buildings? Should efforts be made to apply management science techniques in the scheduling of cases and the determination of judicial workloads? Would the reduction of backlogs ensure a fairer trial?

C. *The Assessment and Judging of the Offender; the Pre-Disposition Report and the Assessment of Risk*

1. It has been claimed that the principal justification for pre-sentence reports is to enable the individualization of sentences. Given the relative ineffectiveness, however, of the rehabilitative measures currently available, should the pre-sentence (and the pre-parole) report be eliminated or its scope limited to the mitigation of sentence, the immediate protection of the community and the humanization of the court and correctional processes? Are our impressions of the utility of pre-disposition reports created only by rare successful exceptions? Often pre-sentence and pre-parole reports intrude into the offenders' private lives and create a sense of humiliation for both the accused and their families. In fact, research suggests that the number of significant items of information used in making a sentencing decision are severely limited. Should pre-disposition reports be shortened to contain only certain specific pieces of information that research has shown to be of special importance to both the sentencing decision and its outcome? What allowance should be made for exceptional circumstances?

2. The U.S. President's Commission on Law Enforcement and Administration of Justice stated in its report, *The Challenge of Crime in a Free Society*, (1967, pp. 133-4): "Procedures are needed to identify and divert from the criminal process mentally disordered or deficient persons. Not all members of this group are legally insane or incompetent to stand trial under traditional legal definitions. The question of how to treat such offenders cannot be satisfactorily resolved by recourse to the definitions of forensic psychiatry. It is more fruitful to discuss, not who can be tried and convicted as a matter of law, but how the officers of the administration of criminal justice should deal with people who present special needs and problems." What contribution has psychiatry made in developing the kind of approach outlined in the above report? How far does past experience in Canada point towards insufficient attention or too ready acquiesence on the part of courts and correctional agencies in subscribing to psychiatric concepts of mental illness, the treatment of offenders and the predictions of future criminal conduct?

3. Validated statistical prediction methods based on information known at time of disposition predict only 10% of the reconvictions of released offenders. Studies consistently show this to be at least as high as predictions made by courts, parole boards, psychiatrists or probation officers. Identification of dangerous offenders is even less accurate. Is risk important in criminal justice agency decisions? If so, how do we face our inability in individual cases to assess risk? Risk consists both of the seriousness of an offence and the probability of the offence occurring. What would be regarded as an acceptable level of risk in terms of (a) non-custodial, and (b) semi-custodial forms of disposition?

4. Would it be preferable to separate the functions of trying cases and that of determining the appropriate disposition of offenders found guilty of criminal charges, assigning the latter responsibility to sentencing tribunals? If so, how should the tribunal be composed? What prospects are there that if such a change were to be instituted the outcome would be markedly different from the present situation? In resolving these issues it is pertinent to consider the composition of the English Parole Board on which are represented (a) the police, (b) the judiciary, (c) parole and probation staff, (d) those who have studied the causes of crime and the treatment of offenders, (e) psychiatrists, and (f) members of the general public, particularly women.

5. Are there any known indicators of imminent involvement in crime for offenders under supervision in the community? Long term unemployment, drinking or associating with other criminals indicate deterioration towards crime. At what stage is discretionary suspension or revocation of probation and parole justified to prevent the commission of criminal acts by a supervised man? Are half-way houses and fines realistic alternatives to jail in enforcing supervisory conditions? What other methods are possible to enforce conditions in probation and parole agreements? Should such agreements only be enforceable through courts of law?

Wednesday, May 17th - Modifications, Improvements and Alternatives

A. Conclusions and Recommendations from Previous Discussions

The final day will be devoted to the discussion and formulation of specific modifications or improvements in the existing machinery and forms of disposition. It is anticipated that each discussion group will have certain conclusions or recommendations tentatively prepared from the issues examined during the first two days of the Conference for presentation to the final plenary session.

B. Supplementary Items

In addition, each group may wish to express its views with respect to the specific supplementary items that are set out below. Some of these items are adapted from the recommendations put forward by Professor John Hogarth in the Afterword to his Ontario Sentencing Study, carried out in the Centre of Criminology, University of Toronto, and published in *Sentencing as a Human Process* (University of Toronto Press, 1971).

1. Maximum penalties give little guidance to the courts when making individual decisions. Those specified in the Criminal Code and other statutes should be drastically reduced to accord more closely with contemporary sentencing standards.

2. A sentencing and parole assessment guide, incorporating relevant factors to be taken into consideration, should be required to be completed by the judge in serious or important cases and become part of the court record.

3. At the discretion of both the courts and the accused, all or some prison terms should be permitted to be served under some form of intermittent detention; such as incarceration only at weekends, by day or at night.

4. Criteria for the selection of particular types of sentences and parole selection should be incorporated in legislation. These should take the form of setting down fundamental principles and specific guidelines for the benefit of judges and parole authorities.

5. Training in the criminological sciences for newly appointed judges and prosecutors should be instituted as a regular feature in the administration of justice. This might be done through the aegis of a federal/provincial institute or each province could utilize the resources of its university law schools, social science and criminology departments. The same objective should be set for members of parole boards. Consideration should also be given to short term study leave for appellate and trial judges as a complementary method to the criminological training visualized for newly appointed decision makers in the criminal justice system.

6. Opportunities should be provided for members of the judiciary at all levels to sit, in an unofficial capacity, at parole hearings involving the granting and revocation of parole. Likewise, encouragement should be extended by the courts to permit members of parole boards to observe at first hand the procedures that are followed in determining the appropriate disposition in individual cases.

7. A quota of visits to prisons, which would include discussion with a small group of randomly selected inmates, should be required of all those holding judicial office, whose responsibilities include making decisions that involve sending offenders to prison or to some other form of correction. Particular emphasis should be given to visiting the worst and best of custodial and non-custodial agencies.

8. Feasibility studies should be undertaken to establish the possible role of computers as an aid to the assessment of "risk" and to ensure, through "experience tables" detailing relevant data, greater consistency and more informed decision making by the courts and other correctional agencies. In particular the aim would be:

   (a) to provide the courts with sentences given by other courts in comparable circumstances;

   (b) to provide parole boards or parole local committees with the length of prison terms served in comparable cases as determined by other parole bodies;

   (c) to provide reconviction results of those comparable sentences or parole releases;

   (d) to provide estimates as to the probability of reconviction of the particular offender whose case is before the court or the parole board for disposition;

   (e) to provide variations, if any, in the degree of probability of reconviction as between alternative dispositions;

9. Where imprisonment is being considered in cases that include the non-payment of a fine or the violation of probation or parole, the tribunal should have the assistance of two assessors, one drawn from those responsible for operating prisons and one who has served time or has studied the effectiveness of the disposition.

REPORTS OF THE GROUP DISCUSSIONS

GROUP A

Criminal Sanctions

In response to the first question, "To what extent should the courts and penal agencies be concerned with the denunciation of crime?" the proposition was raised whether it would be possible to separate the sentence expressing denunciation of the crime and the disposition for the specific offender. This question transferred itself later on into the question of deterrence and reformation. Other questions that were raised early and also followed by the group either explicitly or implicitly were the questions whether the criminal law, as it stands at the present time, was trying to do too much and was therefore over-extended. Also of early concern was the question of changing standards and changing needs which quite obviously in the group differed between different regions in Canada. Regions with stable or fairly stable populations and a sense of social knowledge and social cohesion posed lesser, or at least different, problems than other areas, especially large metropolitan regions. Soft drugs and obscenity were given as two examples of changing standards and showed, as discussed in more detail later on, that the court in its sentence does reflect community feelings.

Protection of the public and general deterrence were still seen as the predominant aims of the criminal justice system and even if the present research on rehabilitation is discouraging, judges do consider the nature of the various resources available in making their sentence. Although a number of alternatives in sentencing have developed, when it comes to serious cases, the options in terms of sentencing are still limited.

Present maximum penalties which are no longer in accord with actual sentencing practices should be reconsidered, and the group unanimously recommends that minimum sentences be abolished. Even in terms of deterrence, some members felt that the length of the sentence is less important than the certainty of conviction.

The judges did not see a way under the present system which would make it possible to keep control over the carrying out of the sanction and rather delegate this function to the parole board or other correctional authorities.

In terms of alternatives, a number of ideas were developed. The imposition of fines as far as possible was generally supported, but posed the problem of non-payment. It was felt that certain fines were imposed with an expectation of payment, certain other fines, such as given in

drunkenness offences, are in fact jail sentences. Manitoba has instituted a procedure in which the non-payment of fines in traffic offences would be followed by a revocation of the licence and the question was raised whether this kind of procedure could not be extended to other offences since the deprivation of driving would be seen as a more serious deprivation than spending a few days in jail. In terms of the rehabilitative process, it was felt that although research does not show any significant changes that some individuals desire benefits under certain conditions. There was a fairly extended discussion about the rehabilitative process and it was felt that the possibilities that some of the institutions may offer is counteracted by the dehumanizing elements that they contain and in terms of rehabilitation on probation and parole that it takes a long time to form a human relationship that has any impact on the offender and that this also depends on the nature and quality of of the officers involved.

There was general agreement among the judges that they do tend to reflect the public mood in their sentences without being carried away by the hysteria that sometimes tends to develop. The problem in the discussion that emerged was how at the present time and present social situation one knows what the public mood is. Again regional differences emerged since in some areas, judges still feel that they are in touch with the general public mood; in some other areas this is becoming increasingly difficult to discern. In terms of length of sentences, judges feel that the major constraints are the courts of appeal. An example was given in the case of a man who went after his wife with a rifle, where the judge tried to separate the denunciatory part of the sentence from the practical part and gave the person a four year sentence, but suspended the sentence. He had sufficient knowledge of the case to feel that prison was not indicated in this case. However, the court of appeal reversed the sentence and gave the man a prison term.

Other dispositions such as night jail, weekend jail, etc. should be tried even though there are some negative reports on those forms of sentences too. The system of day paroles and work releases were look upon very favourably, but it was felt that these programmes should not be extended for too long a time in a particular case. These powers should also be made available to the courts. Serious constraint on the process is that the same or similar forms of criminal procedures are devised for a whole range of offences only for some of which it is appropriate, usually the more serious ones. A number of provinces, for instance, have eliminated the crime of drunkenness, and other categories of offenders could well be taken out of the criminal process.

Concerning other ways of coming to terms with crime producing situations, attempts should be made to control crimes such as shoplifting by other means. This also applies to cheque offences and credit cards, where some responsibility should be placed on those who promote those modes of payment. Joy riding was given as another example which could be reduced by appropriate security devices.

Although the negative effect of prisons was not shared by all members, high recidivism rates were expected by most people which disturbed some members but not others. There was again support for community based programmes, hostels and release centres. As a special problem, the habitual petty offender came up and some provinces seemed to solve their problems by giving offenders an option to go to a different province.

The first day closed with the group deploring the paucity of information that is still available in the area of sentencing and supporting studies, especially those which would show contingencies and results in specific regions.

Discretion in the Use of Disposition

There was some, but insufficient, discussion about the discretion of the police concerning their function of keeping the peace as contrasted with the function of law enforcement officers. On the court level, reasons for sentencing should be compulsory on all court levels, excluding standard fines and mandatory sentences. There were a number of questions as to what would be the best way to give substance to those reasons since although one can command reasons by law, one cannot command a valid reason. That question was again taken up in connection with the training for judges.

Halfway houses, pre-release centres, etc. are important, but should exist in sufficient variety ranging from government institutions to those run by ex-offenders to accommodate different kinds of needs.

The use of court workers such as Indian court workers was recommended to assist the offender with the understanding of the process as well as to apprise the courts of the possibilities that may exist for various offenders. This system has been in operation in some provinces in a limited way; the experience seems to be a good one and should be extended.

A small experiment in the group of a sentence on a particular case showed that in arriving at the various sentences, the judges were influenced to a large degree by the nature of the institutions that they have in their province. In some cases, provincial institutions were found to be preferable to federal ones and in some cases, it was the other away around. Disparities also occur in terms of various provisions such as the indeterminate sentence in Ontario, higher juvenile court age in Manitoba and so on.

The training of judges remained a problem for the group. Although various institutions such as judicial conferences were supported such as those instituted by the National Judicial Council, it was felt that judges in larger areas could give some support to each other, but that special provincial judges in more isolated areas were at a disadvantage.

Concerning the projected increases in the prison population, the group agreed that we should try to reduce the 20,000 we have in prison now. Even for deterrence (for those who believe it is operative) one does not need that many cases to demonstrate the point. Alternatives should be shorter sentences or sentences which are based on a combination of jail and probation. The combination sentence of jail and probation seemed to depend on the confidence of the judges in probation, but probation services are not always happy with such a sentence.

Concerning the sentencing tribunal, the group felt that although the involvement of more than one person may decrease the disparity in sentencing, a tribunal which sits through the whole trial may be a waste of resources and if they do not sit through the trial, they may have less information than the trial judge. Consultation for sentencing should, however, be sought from as many people as possible. It was felt, eg. that probation officers should bring to bear their knowledge of community facilities, and institutional personnel should be consulted about the facilities and programmes they have to offer.

Recommendations

The group went over the notes of the discussion of the previous two days and then proceeded to discuss the recommendation from John Hogarth's book, *Sentencing as a Human Process*. The group agreed with recommendation 1, that maximum penalties give little guidance to the courts and has already given its own recommendations on that point. Recommendation 2, concerning parole assessment guides was accepted in principle, but it was felt that there would be difficulties in practice, especially in the provincial courts which deal with a great number of cases. Some of the higher courts are in fact using the parole assessment guide now. There was again general agreement with recommendation 3, concerning intermittent detention, but in regard to recommendation 4, it was felt that the whole field of sentencing at the present time has not sufficiently gelled to develop legislative authority. Some of the same feelings were expressed in regard to recommendation 5, since although education (rather than training) is, of course, accepted the group was not too sure as to what kind of education would in fact help in the sentencing process. If actual courses are envisaged, then they should contain members of institutions, parole boards and other bodies which carry out sentences so that judges can be informed of the actual resources that these bodies contain. Recommendations 6 and 7, concerning parole hearings and prison visits, were again accepted, but the discussion made it clear that the system at this point in time is so defracted that practical difficulties

are very hard to surmount. Concerning recommendation 8, it was found it would be helpful to have more information on sentencing practices, but recommendation 9 was rejected as already outlined in previous discussion.

Rapporteur: Professor J. W. Mohr

GROUP B

During the two days of discussion, a number of things tended to appear again and again in Group B under the chairmanship of Professor Giffen. A review of notes taken during the two-day group discussion tended to elicit a number of issues which assumed a greater importance by virtue of their becoming the subject of repeated discussion.

Apparent Anomalies Within the Criminal Justice Aggregate

The criminal justice aggregate is characterized by many apparent conflicts between the various agencies that represent its stages. Very early, it was found that the members of Group B were representative of the various stages of this aggregate in having among its members, representatives from law enforcement at one end of the continuum, through prosecution, the courts, penal institutions, to parole and finally after-care. Thus, we were forced, very early in our discussions, to attempt to define the purpose of this aggregate in a manner which could reinforce the common purposes found throughout the total process.

It was recognized that the various purposes of the criminal law are met in different ways and in a different "mix" at different stages of the criminal trial process.

The most effective illustration of this is found in the following quotation from an article by Professor Henry M. Hart, entitled, "The Aims of the Criminal Law":

> A penal code that reflects only a single basic principle would be a very bad one. Social purposes can never be single or simple or held unqualifiedly to the exclusion of all other social purposes, and efforts to make them so can only result in the sacrificing of other values which are also important.
>
> Examination of the purposes commonly suggested for the criminal law, will show that each of them is complex and that none may be thought of as wholly excluding the others. Suppose, for example, that the deterrence of offenders is taken to be the chief end, it will still be necessary to recognize that the rehabilitation of offenders, the disablement of offenders, the sense of right and wrong, and the satisfaction of the community's sense of just retribution, may all serve this end by contributing to the ultimate reduction in the number of crimes. Even socialized vengeance may be accorded a marginal role if it is understood as the provision of an orderly alternative to mob violence.

Professor Hart proceeds to translate this theoretical stance into operational terms. He suggests that different purposes become dominant at different stages of the criminal law process. At the initial stage, detection and apprehension are dominant; during detention and trial, blameworthiness and deterrence. At the next stage, namely sentencing, Professor Hart suggests that the ultimate aim of condemning irresponsibility, is training in responsibility. Therefore, considerations of treatment of the offender in a manner to effect this aim, become of prime importance. When conditional release is considered, blameworthiness and condemnation are no longer dominant. Issues of protection of society and rehabilitation of the offender become of special consideration with, in the Canadian system, anyway, the inevitability of eventual release in most cases lending a sense of urgency to the dilemma of the decision.

Disparity of Sentence

Group B found the issue of disparity in sentencing to be a focal issue to which we returned again and again during our discussion. We were led to recognize the essential paradox found in an ideological system which, on the one hand, seeks individualization of sentencing, and, on the other, a degree of uniformity. There tended to be consensus within the group that, at the level of practice, this paradox should be resolved in favour of individualization. At the same time, it was recognized that attempts should be devoted to seeking uniformity of principle underlying practice.

This problem was seen as being infinitely more complex as a result of the findings of recent research which indicate the essential subjectivity of the decision-making process. This led us to a recognition of the importance of making explicit the assumptions that underlie various dispositions and the reasons for judgment.

Even though we recognized that a measure of disparity was inevitable within such a large system, it was accepted that many measures could be adopted to encourage the development of uniformity of principle:

(i) to facilitate procedures to encourage more written judgements of Appellate courts which would offer some measure of control and guidance to courts of inferior jurisdiction,

(ii) to ensure the appointment of a high calibre of persons to positions that involve judicial or quasi-judicial functions,

(iii) to increase the use of pre-sentence reports as an aid to data gathering in preparation for the imposition of sentence, or the giving of disposition,

(iv) to train judges by both formal means, such as Conferences, and by informal means, such as sentencing councils which, we were informed, were being used with increasing frequency, particularly in courts of superior jurisdiction in Canada.

The issue of a sentencing tribunal was raised as a possible alternative measure to help reduce disparity, but this alternative was rejected as a practical solution to the problem. Among many reasons submitted, it was felt that the judicial decision-making currently practice was more "open", both to public view and to review by Appellate courts. Of importance as well, was the practical question as to whether the number of such councils required in order to take over the total sentencing function would in fact be so numerous as to result in a practice not much less disparate than the current situation.

We discussed decision-making exercised by quasi judicial bodies and administrative tribunals. In particular, discussion surrounded the Warden's Court. Although our discussion of this matter was not extensive, it tended to support the notion that the degree of external control and review, and the degree of protection afforded the inmate, should vary directly with the effect of the resulting judgement on the remission of the offender's sentence or the revocation of his freedom. We did not discuss in any detail review procedures as they apply to the powers of the Parole Board.

Penal Sanctions

Another issue interlaced with the two previous ones, was that of the use of penal sanctions and the degree to which imprisonment should be limited to the dangerous offender, however, defined. A degree of consensus was attained in the rejection of this notion of limiting prison to dangerous offenders, partly because of our inability, given the current stage of knowledge, to differentiate between those who are and who are not dangerous. More importantly, however, this notion was rejected because, within the overall purpose of the protection of society, the element of general deterrence was held to be a significant one.

Because of the concern expressed by many members of the group that imprisonment was, by and large, an ineffective rehabilitative measure, belief was expressed in the economical use of sanctions. It was felt that imprisonment should be employed only as a last resort when other measures less severe would not suffice. It was also felt that the reasons for rejecting these alternatives should be made explicit during the imposition of sentence.

Once again, it was felt that the judiciary should be afforded the widest possible discretion in imposing sentence. While holding to this general principle, it was of interest to note that the new proposed disposition of absolute discharge was not supported by a significant number of persons in Group B. It was believed that this alternative disposition was in part unnecessary, having regard to the discretion now resting with the prosecution, and because of the many practical difficulties of administration which were likely to be attendant upon the implementation of such a new procedure. It was recognized that we could learn something from the British experience and that this should be reviewed carefully before this new disposition should be added to the alternatives now possessed by criminal courts.

Correctional Research

Correctional research measures which deal with issues of effectiveness of the various correctional alternatives, although stoutly defended by some, came under attack from most of the members of the group. Of particular concern, were those studies which measure success or failure in the hard currency of rates of recidivism.

The question was raised as to whether other criteria of effectiveness less stringent than recidivism rates should be employed in evaluating penal effectiveness - criteria based upon cost-benefit analyses or on the impact of reducing hostility of inmates in institutions, or even more simply, as some measure of relative humaneness of various programmes. It was suggested further, that perhaps, we should be thinking in terms of career models of effectiveness; that is, by developing measures of cost to the State of "untreated" offender types against which the comparative costs of those "treated" by various penal measures could be weighed.

Dissatisfaction With the Level of Communication Within the Aggregate

Finally, and of general concern throughout the whole of our discussion, was the dissatisfaction with the level of communication between various agencies within the overall criminal justice aggregate. Full and timely communication among all those concerned with various aspects of the penal process was felt to be essential if conflicts and misunderstandings are not to arise. The present situation in this respect was felt to be far from satisfactory.

Rapporteur: Professor Outerbridge

GROUP C

NOTE

This report attempts, in part I, to indicate the general nature of the discussion that took place. The remarks recorded are not to be taken as the considered view of any member of the group; still less should they be construed as the consensus of the group as a whole. On most points the group did not attempt to reach a consensus, aiming rather at raising questions than at answering them. On some questions however, there was a consensus, and those are described in part II.

Part I Discussion

The discussion started with a hypothetical example. The case was put of an 18 year old high school drop-out with a history of petty offences but with no major conviction, convicted of breaking and entering premises and injuring their occupant in the course of making his escape. The general sense of the discussion appeared to be that from the point of view of the offender a suspended sentence with a probation order might give the best hope for rehabilitation, particularly if the offender could be assured a job. However, several members of the group made it clear that the interests of the offender would not in current Canadian sentencing practice prevail in such a case, and that in view of the violence involved a custodial sentence would be imposed. It was made clear that in Ontario at least the Crown would expect to appeal successfully against anything less than a substantial term of imprisonment. It was not argued that such a sentence would be at all beneficial from the point of view of rehabilitation, but nevertheless it was thought by several to be justified for other reasons. There was some discussion of the influence of strong public feeling on the disposition of such a case, and it seemed clear that the public abhorrence of violence was one of the factors that would demand a sentence of imprisonment.

The discussion turned then to the kind of violence involved. Was it a case of carefully planned sadistic violence, or was it the case of a young man who panicked on being surprised by the householder? In the case of a psychopathic offender there might be a real danger to the public from the man himself, and a custodial sentence would be justified from the point of view of preventing a repetition. But it was pointed out that our present knowledge offers a very poor guide to prediction of dangerousness.

Would the intelligence of the offender be relevant to the disposition? Certainly it might be relevant to his chance of employment, and it was suggested that after sentence the treatment of the offender in any institution might depend on many factors of which intelligence would be one, but it did not seem clear to some of the members of the group why intelligence should be relevant to the initial disposition. Indeed it was even suggested, though not without protest, that nothing was relevant except the facts of the offence itself, the age of the

offender, and any previous record of convictions. It was suggested by one member that increased knowledge of the individual offender was not in fact a useful aid to making a satisfactory disposition of his case. It could not be said, however, that there was any consensus on that question.

The discussion turned to the question of the usefulness of present methods of treatment. It was suggested that a philosophy of treatment often led to a longer sentence of imprisonment than might otherwise be imposed, on the basis of a belief that something useful could be done for the offender. But if this assumption were false, such longer terms of imprisonment would lose their rationale, and would raise serious problems of civil liberties. From the point of view of defence counsel it was suggested that whatever might be said about treatment, imprisonment was always regarded by the offender himself as an evil to be avoided if possible. Sometimes the threat of imprisonment might be used indirectly in order to secure the consent of the offender to hospital treatment, as by a sentence suspended on condition of such treatment being received, but several members thought that little faith could be placed in the efficacy of imprisonment itself from the point of view of treatment. On this question, it was suggested, it was essential to distinguish between types of offenders. Some offenders perhaps could be successfully treated by psychiatric methods, for example, the mother who murdered her child. A contrasting possibility was put forward in the shape of a suggestion that differentiation of offenders should be ignored in favour of disposition merely on the basis of the offence itself. Others pointed out that no disposition had yet been shown to affect the rates of recidivism one way or the other.

The discussion then turned to the possibility of demanding more efficient restitution by the offender to the victim, to whom little sympathy is shown by the delays and other attributes of the adversary process. It was suggested that by restitution it might be possible to introduce a relationship between the offence and the punishment in the shape of an immediate recompense to the victim himself, rather than a delayed and indirect recompense to society in the abstract. It was further suggested that such a philosophy might justify some relaxation in the rigours of criminal procedural requirements, on the analogy of the Juvenile Court, where the good of the offender was the object of the proceedings. As might have been predicted opposition was expressed to such a proposal. Others suggested that types of offences might be distinguished in this regard, with formalities reduced for certain minor kinds of offence.

More general questions were raised. The criminal process is being attacked in the United States from all sides, and a similar lack of confidence could occur in Canada. Could a sense of community be imparted to the administration of justice? What useful measures could be taken to involve the public more closely with the criminal process? Prison visitors were one possibility; another was increased use of techniques involving the release of prisoners on a temporary basis into the community.

Next the question of general deterrence was raised. Was it justifiable to impose a long sentence, perhaps out of proportion to what the offender might have expected, on the ground that the particular offence was prevalent and others ought to be discouraged from committing it? It was pointed out that many criminals expect not to be caught, and considerable doubts were expressed about the whole theory of general deterrence, though it was apparently one of the chief considerations taken into account by the Ontario Court of Appeal. Even assuming that sentences did have a general deterrent effect, it would be difficult to make out a case that ten years imprisonment would deter more effectively than five.

The question was then raised of the role of parole boards and the relationship of their discretion to the sentence of the court. It was suggested that the court might sentence for the offence, and the parole board might take into account the individual characteristics of the offender. However, it was clear that in the United Kingdom for example, the parole board did consider the offence, and parole would be difficult if not impossible to obtain in the case of an offender convicted, say, of armed robbery, or of drug trafficking, since it was felt that such offences required particular discouragement. On the other hand, if the court is to confine its considerations to the offence in the abstract, leaving matters peculiar to the offender to be considered by the parole board, then it would appear to be true to say that the existence of the parole board leads the court to impose a longer sentence than would otherwise be proper. This question recurred later in the discussion when it was suggested that often a judge would impose a heavy sentence in a case where he thought that the offence was to be discouraged, even though the individual offender could not be expected to profit by a long sentence, and there was no question of likely repetition. In such a case the judge might write to the parole board suggesting an early release on parole. There were some who saw nothing wrong with such a procedure, but others forcibly protested that in no case ought the existence of the parole board to affect the sentence imposed by the court.

Little was known about the criteria at present used by parole boards. Not indeed that anyone suggested that parole was a bad thing; simply that there was no evidence that boards had any good reasons for choosing which prisoners to release. Probability of reconviction might not be an appropriate test. It was suggested, for example, that it might be justifiable to release a prisoner who was a bad risk in terms of probability of reconviction, if his offence was likely to be a minor one. Should employment or employability be a requirement for release? If so it was difficult to avoid the conclusion that the disadvantaged were subject to a form of adverse discrimination.

Something was said about the setting of sentencing standards by the Court of Appeal, and it was suggested that certain offences had begun to acquire sentencing rules. In Ontario, drug offences were the clearest example of such a trend.

The discussion then reverted to the question of imprisonment as compared with other dispositions. If it were true that there was no indication of which dispositions were the most effective, would it be justifiable to choose the cheapest? It was suggested that the greatest advances in criminology will come now not from criminologists but from systems analysts, who will point out the extravagant variations in the cost of imprisonment as compared with other dispositions.

What about the increased use of fines that seemed to be making an appearance in Canada some years after a similar change in the United Kingdom? Such a disposition was certainly cheap, and might be quite effective. Imprisonment as an alternative to payment might be abolished, with the Crown left to pursue civil remedies against a defaulter. There were other changes that could be made. Fines might be increased according to the means of the offender, so that one could envision fines of $100,000 for impaired driving. The Swedish system of day fines might be considered, though an English study had apparently rejected them as too complex to administer.

After a brief discussion of the sentences for contempt of court recently imposed on the labour leaders in Quebec, and a comparison with the new Industrial Relations Court in England, the discussion returned to parole. Specifically the question was raised of the recent release on parole of the kidnappers of Mary Nelles.* From the point of view of the individual offenders parole would seem to be justified, since there was thought to be no likelihood of their repeating such an offence. But the public reaction to the decision might endanger the whole system of parole. Further there was the question of whether release on parole might destroy the purpose of the sentence, particularly in the case of a deterrent sentence for a planned deliberate offence. It was thought to be important to explain and articulate the relationship between the courts and the board, or else there was a danger of the public thinking that the effect of the board was to set at naught the sentences of courts. Against this suggestion of increased public understanding of the role of the board was the wish not to focus the glare of publicity onto individual parolees. But increased public understanding of the general principles of policy accepted by the board was thought to be desirable, and a comparison was drawn with the changing public attitude towards the release of inmates of mental hospitals. An ill-informed public places restraints on parole board policies.

The discussion turned towards the rights of a parolee to redress in case of arbitrary or unfair decisions made by his parole officer whose recommendations may lead to suspension or revocation of parole. There were instances where a harsh penalty could be imposed for minor violations on the last day of a prisoner's parole. One wanted to

---

* The kidnappers who came from middle-class backgrounds were sentenced to about 10 years for a carefully planned crime. They were released by the Parole Board after about 2 years.

to avoid too much procedural formality such as a full-blown adversary system, but it was suggested that some kind of safeguard against arbitrary decisions might be evolved. There seemed to be a consensus that a permanent research arm would be a useful addition to the parole board, and that public awareness and understanding of its function and role ought to be increased.

The question of decentralisation of the parole board was taken up, together with the question of lay membership on the board or on panels of the board. It was difficult to avoid disparity between regions if any really local board was to make decision. One suggestion was that a local member might sit with a travelling parole board member to form a two man panel.

The giving of reasons by the board was discussed. If the board did not give reasons, reasons would be imagined or invented. On the other hand there were cases where the giving of reasons would require the disclosure of confidential information. The point was made that the requirement of giving reasons does effect some control over a decision making body. In favour of reasons it was pointed out that increased openness is always desirable, and that no evidence has been produced to suggest that an applicant can be harmed by knowing the reasons for the disposition of his case.

The discussion turned to lay involvement in the criminal process in general and in parole board decisions in particular. There were marked advantages to be obtained from the sharing of decision making responsibility among lay citizens chosen on a random basis. Lay assessors chosen in this way might sit with provincial judges and magistrates, and it was suggested that on questions of fact the court might decide by majority vote. A judicial opinion was that lay assessors would be more useful in sentencing than in fact finding. Clearly there is a difference between assessors chosen at random, and members of the community appointed to fulfil such a function. In the latter case the appointees would become semi-professionals. Random choice would involve the community in decisions of provincial judges in somewhat the way that jurors are involved in the decisions of higher courts. The involvement of laymen had worked well, for example, in legal aid area committees, and there would be much to be gained from the visible demystifying criminal court decisions. But no attempt was made to reach a consensus on the precise function of laymen or their relationship with the judge.

The discussion turned to the victim of crime. The victim was often treated poorly by the criminal process especially, for example, the complainant in a rape case, who might find the experience of the trial worse than that of the alleged offence. The Criminal Injuries Compensation Board provides some financial compensation from public funds, but rarely succeeds (in Ontario) in collecting from the offender himself. It was pointed out that in some cases a judge could extract informally a promise by the offender to compensate the victim by offering to reduce sentence if compensation is made.

The discussion turned to John Hogarth's project in East York. The aim of it was to settle minor cases without resort to the courts. The offender, it was hoped, could be persuaded to settle his dispute informally with the victim by compensation or otherwise. Compensation would not necessarily be financial. A shoplifter, for example, had agreed to work for a day in the shop where he had committed his offence. There were problems of voluntariness and of violation of due process in such a scheme, but it seemed to offer a hopeful alternative to present methods. The experiment could be seen as an attempt to solve a social problem rather than as the traditional win-loss approach of a case in court. The social approach was particularly appropriate where the offender and victim had a continuing relationship, and where, indeed, it might often be difficult to distinguish the one from the other. It also offered community involvement in the solution to a community problem and in some cases a means of averting the fear of other members of the community; for example, the fear of indecent assault on children might be avoided if the potential offender could be isolated without resort to the criminal process.

Another form of restitution was offered by the Criminal Bankruptcy system now before the U.K. parliament. The U.K. experiment is very limited in scope and it remains to be seen how well it will work.

Another feature of the U.K. Bill is the possibility of ordering an offender to undertake community service. For example under the new Bill an offender could be sentenced to work for up to 40 hours on some project of value to the community such as cleaning a beach or helping the aged.

The next question raised was that of disparity of sentences, and it was asked whether or not the Parole Board has any role to play in mitigating the disparity. The point was made that the release of a prisoner on parole need not be regarded as in opposition to the court's disposition since the sentence of the court might be regarded as directing a period of supervision or control by the State, and supervision continued for the specified time even when the prisoner was released on parole. The need for communication between the judges and the parole board was again emphasised, and it was suggested that judges might occasionally sit with the parole board and vice versa, in order that each office should gain an appreciation of the other's function.

Part II Recommendations

On the following matters a consensus was evident and the group as a whole would support the following recommendations.

1. Parole is an important and useful correctional method and its further use and development should be encouraged.
2. There should be established as soon as possible a research arm of the National Parole Service to gather information on which future development and policies can be based.

3. A major effort should be made to provide public information on the relationship between the sentence of imprisonment and the use of parole. In helping the public to understand parole, it would be useful to emphasize that release on parole or on temporary absence is not a denial of the court's sentence, but is rather a continuation of State supervision and control by another method than imprisonment. Further, greater efforts should be made to involve the public in prison and parole programmes across Canada. Public confidence in parole should be developed by the clear articulation by parole boards of the criteria on which they base their decisions.

Rapporteur: Professor S. M. Waddams

GROUP D

Introduction

An eminent theologian, after discussion religion with Julian Huxley, said to him "You remind me of a man in a darkened room looking for a black cat that isn't there." To this Huxley, unabashed, replied; "But the trouble with theology is that it will find the black cat whether it is there or not." Now criminology, unlike Huxley's view of theology, does not profess to know all, or even any, of the answers, and it is hardly possible to report our conclusions, such as they are, without being conscious of the grave danger of "grasping at black cats which are not there at all."

Suitably cautioned against the danger of seeking illusory "simple solutions" we took as our general theme the question, "What is the aim and justification of the criminal process?" In approaching this topic we looked at three different, but inter-related things;

1) The intention of the people involved in the process,
2) The facts as they exist, and
3) The ideal towards which we should be striving.

Intention

From our perspective, our intention can be shortly stated: we seek to protect society from anti-social behaviour and to reduce the occurrence of crime. From another perspective, however, this intention can be seen to be much more complex. We hope to rehabilitate offenders and thus to keep them from future criminality and we hope to deter potential offenders from transgressing at all. In achieving the latter, however, we may be faced with the dilemma of over-punishing an individual in a manner which might be counter-productive to his own rehabilitation.

Whilst the rehabilitative ideal remains persuasive there is legitimate space for an unashamed recognition that society has the right to denounce certain conduct in no uncertain manner and to punish its wilful breach in as humane a manner as possible. The value of this denunciation is not diminished by the fact that the minority who did offend were not deterred thereby. It might be seen in terms of society's letting those persons, who have voluntarily complied with the law, see that their refraining from anti-social conduct has not been in vain. We try, as best we can, to reduce the incidence of crime but if we fail we must treat our failures with humanity and dignity. In this equation the public is both manufacturer and consumer and, somewhat schizophrenically, must decide the tolerance level of anti-social conduct at which it is proper for the criminal sanction to be imposed and the humanitarian level beyond which steps to check such behaviour must cease.

The Fact

By and large we seek to achieve our intention by a formalized court process sanctioning a wide variety of human conduct by means of a host of different forms of punishment from the fact of conviction itself, on through a progression of state-condoned unpleasantness at the head of which stands imprisonment (for present purposes we ignored the question of corporal and capital punishment).

One, and admittedly only one, of the reasons why there is so much crime around at present is because there is a great deal of federal, provincial and municipal legislation, which seeks to proscribe conduct under a penalty. It is all drawn up in a form which, unthinkingly, follows the shape of legislation in serious criminal cases. We have a statement of the offence and a penalty which is sometimes imprisonment, and often, a fine with imprisonment as an alternative.

One, and admittedly only one, of the reasons why many courts have long and lengthening lists is that the legislation mentioned above largely envisages enforcement through the ordinary courts in the form of a criminal or quasi-criminal prosecution.

One, and admittedly only one, of the reasons why many prisons are full to overflowing is that, since all of the above legislation follows through the ordinary court process, no matter what varied "palliatives" may exist at the lower end of the official sanctioning scale, the ultimate penalty, in default of obedience to the others, is the custodial sentence.

In connection with the effectiveness of the variety of sanctions available, one piece of research has continually haunted us in our discussions.[1] In their conclusions, the authors state:

> Will the clients act differently if we lock them up, or keep them locked up longer, or do something with them inside, or watch them more closely afterward or cut them loose officially? ... Probably not.

Waller's research in respect of parole points in a similar direction in Canada.[2] This has resulted in a minority view being forcibly made that if the type of sentence used makes no difference to recidivism then this seriously questions the use of imprisonment as a sanction because of its special dangers in contributing to the institutionalisation of the accused and the breaking down of his family ties.

---

1. "The Effectiveness of Correctional Programs" by Robison & Smith, *Crime and Delinquency*, Vol. 17, No. 1, Jan. 1971, pp. 67-80.

2. *Men Released From Prison: A Means Towards Understanding the Correctional Effectiveness of Parole* by Irvin Waller, Centre of Criminology, University of Toronto

In reply, the majority made the point that the researchers do, after all, say it "probably" does not make a difference to recidivism. In addition, the lack of comprehensive Canadian statistics on this point over the whole range of possible dispositions was emphasized, as was the fact that even if recidivism is unaffected, that is not to say that such a clear public denunciation has no result upon the rest of the community, since it may have a generally deterrent effect.

Towards the Ideal

In this section our group attempted to reach consensus on improvements which could be made in the criminal process. Our efforts could clearly be characterised as "tinkering with the system" rather than an attempt at revolutionary insights. This, no doubt reflects our feeling that in the absence of a "final solution" pragmatism and caution should not be scorned.

We must limit the use of the criminal process to matters which are generally agreed to be truly criminal in nature. Further, we must tailor the sanction to have special reference to the conduct we wish to control (e.g. the use of mandatory injunctions to enforce safety regulations in buildings. Many driving offences should only be the subject of an accumulation of demerit points with suspension of the licence to drive as the ultimate sanction. Basically we should be seeking workable alternatives,in the area, to the present stereotype of fines with a jail sentence in default of payment.)

For those matters which must remain as offences and must be dealt with in the criminal courts, the judge must be given means of deterring (if that is thought to be appropriate to the case), whilst not interfering with rehabilitation, (e.g. week-end jail or nights-only incarceration, so that work and family obligations can be fulfilled).

We must ensure that we do not rely on the formal criminal sanction too much, even then. We should be encouraging government departments increasingly to publicise their objectives to educate the public in what is being undertaken and why, especially when a radical departure from past practice is involved.

We should also be alive to the possibilities of reducing further the cases which go through the ordinary courts by properly structuring and encouraging police and Crown Counsel's discretion not to prosecute in a proper case where no obvious end of justice would be attained.

To try to ensure a fair and proper Criminal Justice System we discussed three main areas of concern:

a) the court,
b) the sentencing decision,
c) judicial intervention after sentencing,

a) The Court as a Piece of Hardware in our System

One of the factors which may be most important in rehabilitation is the treatment which both victim and offender receives in court. It is thought that in less crowded conditions more time would be available to individualize cases and to explain to the parties involved what is done and why. Whilst this may be done, to some extent, in superior courts, it is often very difficult in busy, provincial judges' courts in urban areas. It may well be that judges should not hesitate to require a greater share in the money allotted for law enforcement purposes to ensure that courtroom conditions are improved.

There is also legitimate public concern about the extent to which available court space is under-used. Studies which indicate that a 3-hour use is common, prompt consideration of a more intensive use of the courts if the co-operation of the law employees and others could be obtained.

There was agreement that decentralization of municipal offences courts in big cities would aid in the quality of the judicial process but there was disagreement whether decentralization in truly criminal cases would achieve this end.

b) The Sentencing Decision

The judge, by his legal training, is ideally suited to weigh the question of guilt or innocence, or to charge a jury in that respect, but should he continue to pass sentence? We considered whether the judge should take no part in this aspect, or be assisted by assessors or have the matter dealt with by jury or sentencing board. On the whole, it was thought that the judge should continue to perform this most difficult and perplexing task. Others clearly participate in the decision at present, by the calling of expert, professional and character witnesses and by the availability of pre-sentence reports. But certain conditions should prevail to ensure that the judge is assisted in this work.

It is thought that, where a sentence of imprisonment is being considered as a possibility, a defendant, whatever the charge, should be given the opportunity of being represented by counsel and that sufficient time to consider all aspects of the case should be found. Whilst this is usually the position at the end of a trial on the issue of guilt, on pleas of guilty a defendant or his family can get the impression of assembly-line justice which might hamper rehabilitation and being the administration of justice into dispute. Once again the busy, urban, provincial judges' court is a high-risk area in this respect.

Pre-sentence reports, if inadequately and inexpertly prepared can be worse than useless and every effort should be made to ensure that only qualified people are engaged in this work and that adequate time for detailed preparation is allowed.

In particular, more information should be made available to the judge on the apparent effectiveness of the sentence which he and his brother judges are passing; e.g. research departments attached to the Department of Correctional Services could possibly analyze the usefulness of particular conditions written into probation orders, or the success-rate of probation orders in a particular part of the country where a given defendant might be placed. It is essential that this information be fed back of the judge to improve the quality of his decision. A small minority would have been in favour of the jury having a say in the sentence but the majority felt that the range of possible sentences would be so wide as to prevent the jury from attaining even that tenuous degree of uniformity which prevails at present.

Many of the maximum penalties in the Code are unrealistically high and although there may be a danger that in lowering them the new maxima might be seen as "reasonable" and therefore the appropriate sentence in a given case, on balance, more will be gained by reducing maximum sentences for offences. It would then be possible to deal with dangerous offenders in a separate trial where the issue of their danger to the public would be specifically at issue. It is particularly thought that over heavy maxima may be used improperly in plea bargaining where an accused may be intimidated by the enormous sentence which he sees himself as running the risk of receiving on conviction for the major crime, with the result that he offers to plead guilty to a lesser offence.

It was thought to be essential that a judge passing a custodial sentence should give his reasons for doing so as part and parcel of the judgment, this being sufficiently important to justify a mandatory requirement to that effect being included in the Criminal Code. Such reasons should be attached to whatever document of committal accompanies an accused person to the prison or other institution concerned.

There was some disagreement upon whether the judge could impose conditions on the executive as to the particular institution where the sentence would be served. Some felt this to be essential since the character of the institution might be a special element in the sentence, whilst others saw this as a purely administrative matter on which judicial preference could be noted by allocation officers but that the latter could not be legally bound thereby.

In fixing a custodial sentence a judge should ignore the existence of the Parole Board. Otherwise there is the danger that an overlong sentence will be passed to ensure a minimum period in custody irrespective of parole.

c) Judicial Intervention After Sentence

It was strongly felt that a judge's favourable comments on the applicability of parole in any given case should be included in his written reasons for giving a custodial sentence but that statements to the effect that parole should not apply to the accused should not be permitted. Neither should a judge pass a sentence aimed at general deterrence in open court and then address private doubts on the matter to the Parole Board. Such matters were felt to be best dealt with in open court and within the context of the judge's reasons for sentence. Should the Parole Board seek the advice of a judge, however, he should give what help he can.

There was no support for the view that a trial judge should have a power of veto over the Parole Board if it was considering allowing the parole of a prisoner sentenced by that judge. Nor was it felt that a formalised structure of mandatory consultation by the Parole Board, before acting, would achieve any effective purpose, although the prisoner should be informed of the reasons why his case was dealt with in any particular way by the Parole Board.

Conclusion

It has been suggested that the criminal trial is an example of society acting out a form of morality play. We must constantly try to keep our processes relevant to modern conditions. In protecting society and seeking to reduce the incidence of crime we must look critically at our factual situation and constantly inquire whether it is achieving our intention.

The value of discussion such as this is that we have the opportunity of assimilating current empirical research and, in that context, re-examining our personal theories and biases. We are then assisted to go back to our own areas of concern and encourage thought and research aimed at securing those changes in the criminal process which will advance our intention in the direction of our ideal.

Rapporteur: Professor Alan Grant

GROUP E

In discussing general principles, the group soon encountered a recurring problem: an inability to support beliefs with convincing empirical data. Typical of this was the idea that the criminal law and sentencing practice has a denunciatory effect on the behaviour proscribed. Probing discussion showed that this could not really be substantiated. Though the law might, in itself, have some effect of this kind it was thought unlikely that exemplary sentences made much difference to deeply held moral values. Hence the selective sentencing or parole of serious offenders would not make any appreciable difference in stiffening or undermining public morality. The denunciatory effect of law and sentencing might be more useful, and perhaps more powerful, in dealing with the less serious offences that are more commonplace, e.g. impaired driving and shoplifting; but here again they are only one of many means of influencing public attitudes.

The main problem affecting denunciation, deterrence, and indeed intelligent toleration, is that of communication between sentencer, sentenced and public. So often the reasons for action are not evident, nor understood. Hence the group stressed the necessity for all sentences to be explained in court to the offender, and for the reasons for decisions to be recorded. The latter is, of course, of particular value to parole authorities, and in considering their needs the point was that special attention should be given to public relations. The success of parole depends on public acceptance of it, and its credibility depends on convincing information: otherwise we find weakening of support by uninformed criticism, albeit sincere, as in the recent case of the Nelles kidnappers.

After a long discussion about the deterrent effect of punishment it was evident once more that we were floundering in an area of speculation about the realities of 'general' deterrence. Only one postulation seemed to be utterly convincing: that the most powerful deterrent was the high probability of detection, and here again the point was made that there are many difficulties in making this a self-evident fact.

The inclusiveness and practicability of the classical principles of punishment were established by the further discussion of the aims of sentencing. It was thought that deterrence had a place despite its shaky empirical foundations; prevention, and reformation also; but there was much discussion of retribution as a necessary principle that should be maintained despite denunciation of it as being vindictive and archaic. Too often, it was said, was the victim forgotten; he becomes a faceless person who really gets nothing from the sentence other than, perhaps, some kind of emotional satisfaction or dissatisfaction. Hence the group favoured ongoing attention to developing means of effecting restitution to the victims of crime and more frequent use of those that now exist.

In considering punishment there was a strong feeling that it was justified, *sui generis*, in some cases, and there should be no hesitation in making it clear that what was being imposed was punishment..... period.

As a means of restitution, insurance was discussed; it is clear that this is a practicable and established principle of restitution especially of damaged or stolen property or for injuries sustained. It may be that the function of insurance could be examined more intensively in relation to crime, and especially with regard to prevention. Note was taken of the tendency for insurers directly to encourage crime by the payment of rewards which led criminals to steal and then arrange for the return of the property through an intermediary. Also discussed was the role insurers could play in discouraging crime by charging high rates or refusing payments to those who seemed deliberately to provoke by, for example, displaying goods in self-service stores in such a way that theft was simplified.

The general view was expressed that there was not enough determined action in preventing crime and only lip-service was being paid to an important principle. It was, however, important not to lean on the criminal law as the main means of prevention by creating more offences, such as leaving ignition keys in unattended vehicles. Creating more offences and more offenders is unlikely to remedy a situation that is partly induced by a grossly overloaded system of legal control and enforcement. In this connection, there was general reference to problems of law reform, and the point was made that it was necessary to consider the impact on local resources, e.g. at provincial level, when making changes in the Criminal Code. The examples were cited for the introduction of mandatory supervision, vastly increasing the numbers of parolees to be handled by already overburdened supervisors, and in England the recent changes in the law relating to drugs placing dependence on treatment centres which had not been established in anything like the numbers required.

With regard to particular sanctions, it was agreed that maximum use should be made of fines and other kinds of non-custodial disposition. Imprisonment was a last resort and appeared to offer nothing save the temporary suspension of the defendant's criminal activities; there was no support for the view---presented for argument's sake--- that prison rehabilitates. It was recognised that alternatives to non-custodial penalties are difficult to find when there are breaches, e.g. failure to pay fines without good reason. The illogicality was pointed out of sending someone to prison for failing to pay a fine when the decision not to confine in the first place showed that incarceration was not needed to protect the public or the offender.

There was much interest in the English proposals to give courts power to order offenders to undertake some form of community service, especially something that might give them more insight into the consequences of their offence. The idea was thought to be valuable,

especially in its obviously constructive purpose which should predominate over any desire to give offenders tasks which are no more than tedious chores. It was thought that powers of this kind should be available here, and that urgent attention be given to examining forms of service in which offenders could usefully participate.

The group was much concerned about the effect of sanctions on the families of offenders. It was thought that this should not be mitigated as a general principle since the pressure from families could be an important part of the societal sanction, though it was recognised that this was not so in some cases in which the effect of a penalty might disrupt family ties. The importance of family ties was recognised, and consequently the desirability of not using sanctions that might break them.

Much time was spent by the group in discussing problems related to dangerous offenders, especially dangerous sexual offenders. These were seen as presenting formidable difficulties at all levels of the penal process. Though they are a minority of all offenders, they do much to challenge the credibility of the system as a means of protecting society through changing offenders, and as a means of prevention by confinement in a humane and constructive manner. Given the poor prognoses that are now so often presented, disposition is difficult and, in the absence of alternatives, these people have to be sent to maximum security institutions where treatment facilities are gravely limited and they may have to face hostility and danger from other inmates.

It was recognised and emphasised that the proper place for these people is not a penitentiary but a secure psychiatric facility similar to that at Penetanguishene. There is an urgent need for such facilities to be established in all provinces, or at least regionally.

It should be possible for the court to make a hospital order, independently of any other disposition, for the commitment of sexual and other mentally disordered persons to a psychiatric facility. Now this cannot be done. Moreover it was felt that it should be incumbent on the superintendents of psychiatric hospitals to accept mentally disordered offenders from the court or on transfer from penal institutions; at present it appears that there is often refusal to accept these people as in-patients for often than very brief periods.

Even given these structural improvements, the hopeless condition of the mentally disordered offender, especially dangerous sexual offenders, must give rise to concern, and the need was stressed for them to have some hope. One necessary basis for this is the regular and intensive review of their cases which could, it was felt, be much improved by the establishment of a special review board, similar to the Lieutenant-Governor's Review Board in Ontario, composed of psychiatrists, members of the judiciary and laymen which could function as an adjunct of the National Parole Board and under its aegis.

After hearing something about the developments in hormonal and aversion treatment for dangerous sexual offenders, it was felt that efforts should always be made to avoid thinking of them as "chronic" or "incurable" with the consequent lowering of priority accorded to the innovation of improved facilities for them.

For the less dangerous mentally disordered offenders there is a need for more residential facilities from which offenders can be treated as out-patients or where they can stay between brief periods of in-patient treatment. In such facilities, varying degrees of surveillance seem possible, and they could well be used for short periods of observation and report before trial. The undesirability of committing these offenders to jails was stressed; now this often has to be done if there is nowhere else for them to go where they can be under some kind of supervision, and where the necessary investigation can be ensured.

Clearly, urgent research is necessary to look at the structural problems associated with the handling of mentally disordered offenders, embracing the penal system at all levels. The groups would like to see a pilot project established for this purpose soon.

Consideration of dangerous offenders and the hopeless conditions under which they now spend much of their lives led to the discussion of capital punishment. The group was divided about its retention though it recognised the difficulties in control made by the presence of individuals in prisons, and sometimes at large having escaped, who had already killed once and had nothing much to lose by doing so again; the hazards to police and to prison staff were appreciated. The arguments were not, however, sufficiently persuasive to unify the group for retention, though some doubt had to be expressed about the validity of comparisons between retentionist and abolitionist societies in terms of homicide rates since one could not make deductions about deterrence where the probability of reprieve from the death penalty differed, even if it existed at all. But here again we found ourselves back on beliefs: there were those who "felt" that the death penalty was necessary and that it was a deterrent; but there were as many who "felt" that it was neither and should go.

Questions concerning disparities in sentencing raised much discussion, especially where the more serious offences were concerned. It was felt that the aim should normally be to make the sanction fit the offender as much, if not more than the offence; and the need to deal with problems within local contexts was recognised. But disparity must not be incongruous or paradoxical; the reasons for sentences must, as previously stated, be clear. It was felt that marked disparities could be reduced by the issue of a general guide to sentencing, establishing some general principles. For less serious regulatory offences there might even be tariffs as are sometimes used for motoring offences, e.g. speeding. The other important medium was frequent consultation between sentencers who might participate frequently together in sentencing exercises, using simulated cases, especially when changes in the law made different approaches to sentencing necessary. This raised the issue

of frequent consultation between sentencers and members of the police and the penal services, who, it seems, have little regular contact: each tends to work in their own sphere of interest despite great dependence on what the others do. That regular meetings, even training sessions, embodying all these people can do nothing but good seemed to be accepted.

Of equal, and indeed prior, importance is the training of new incumbents for judicial sentencing. Since so much of our discourse had been about sentencing it was all too clear that this was something that must form a major part of preparation for the bench and it should not be left to "take care of itself". Experience was cited of the value of the English system requiring for all new Justices of the Peace at least one year's training in rules of procedure and sentencing before becoming "operational".

The matter of consultation and training in sentencing was seen to be linked closely to the question as to whether legislation should impose minima or maxima in sentencing and so limit the flexibility of the sentencer. While this does, to some extent, bring uniformity, it can frustrate the trained sentencer and the offender, since inappropriate degrees of severity have often to be imposed perforce: it also leads to manipulation of charges and plea-bargaining which seems to bring the law into disrepute before ordinary citizens who may not grasp its subtleties. Given better training and more consultation between penal agencies, and more feed-back about the effects of sentencing, it was felt that flexibility rather than rigidity seems to serve the interests of society best, especially bearing in mind the presence of parole to allow for unforeseen changes in the offender's state of mind and behaviour.

Having referred constantly to parole in the three days of discussion it was characteristic of our group that we should end our work in discussing it specifically.

It seemed that parole is not really understood for what it is: a form of *custody* that is closer than is appreciated at first: the parolee is a marked man who is under constraint by family, friends and neighbours; if he offends again the consequences may be drastic, especially if he is returned to prison after publicity antipathetic to parole which would make him a target for other inmates who would see their own chances as threatened by what he had done. It emerged in our discussions so clearly that incarceration in walls is not the only means of custodial control; the controlling power of other people is often far greater than that of walls, bolts and bars.

There is ample evidence to support the commonsense view that the risks of recidivism are greatly lessened by the acceptance and support of ex-inmates by ordinary citizens, as distinct from social workers and other specialists. It is this which helps to regain the self respect as a citizen that is so essential to resettlement. Hence the group stresses

the need for more residential and "port of call" facilities where friendly "ordinary" human relations are fostered; also it is thought that this is a field in which suitable ex-offenders can do much to help in interpreting the "straight world" so that is is more credible and less threatening than it may seem to the parolee.

The group made the following recommendations:

1. That urgent attention be given to the use of forms of community service as a part of the sentence of the court.
2. That the provision of secure psychiatric facilities, on the lines of the Ontario hospital at Penetanguishene, be established on a regional basis for the treatment of mentally disordered offenders, including dangerous sexual offenders. The practice of confining the latter in penitentiaries should cease.
3. That unequivocal support should be given to Parole as an important, indeed perhaps the most important, element in penal treatment. It should not be undermined by uninformed criticism of the decisions that have to be taken which are, of necessity, calculated risks.
4. Continued research in criminology is essential to fill the many gaps in our knowledge of the penal system, and of the effects it produces. We need better evidence than intelligent assumptions.

Rapporteur: Professor T. C. Willett

GROUP F

REPORT

Aims and Justification of Criminal Sanctions
and Limitations on Their Operations

While all members agreed that it lay within the power of judges to "reprimand" the offender at the time of sentencing, only about one-half of the judges and less than one-half of the whole discussion group felt that retribution as expressed through a denouncing of the offence by the judge was a proper function of the court. Supporters of the retributist position differed on whether the denunciation should be oral or expressed in the written reasons for judgment, and whether it should be given only in certain offences such as drug offences.

Supporters also differed on whether the denunciation would have individual or general deterrent effects.

Non-supporters were sceptical as to the deterrent effect of a tongue lashing particularly on the alienated offender or the bewildered and confused offender who typically found the whole trial process quite incomprehensible.

Non-supporters also had doubts as to the general deterrent effects of denunciation. This scepticism was rooted in the belief that no more than 5% of the population bothered to read the press reports even of those few cases that were reported. This estimate was based on a study conducted by the University of Montreal.

Some opponents of retribution thought that it would be better if rehabilitation were stressed by the trial judge, particularly in the case of first offenders. There was general agreement that greater effort should be made to keep the young offender out of the criminal process.

All members of the group were agreed that reasons for the sentence should be given to explain the sentence.

Doubts were also expressed as to whether criminal sanctions could control crime in society. Punishment was seen to be ineffective unless it was timely and followed with a high degree of probability upon the commission of the offence. In most criminal offences, punishment was neither swift nor a highly probable outcome of the offence.

In referring to the limitations on the criminal process, judges reported that they did not consider themselves hampered by the probable cost of a particular disposition and stated that it would be wrong to take administrative and institutional costs into account in selecting a proper sentence. Social costs on the other hand were seen to be proper costs to be considered in sentencing.

There was some resistance to the notion that judges should take account of public sentiment in passing sentence. If public feeling were based on reason and common sense as in drug possession cases, the judge should take community mood into consideration. Where the public mood was more transitory and fanciful, however, it was thought that a judge had an obligation to balance the scales between the demands of the public and justice to the accused.

The police, too, expressed the view that they were not particularly influenced by public opinion in the setting of priorities in law enforcement, although attempted suicide and gambling were suggested as examples indicating exceptions to the general position.

At this point, considerable doubt was expressed as to the efficacy of the criminal process, and emphasis was placed on the need for preventive measures.

The Criminal Sanction and the Citizen

In a review of community involvement in corrections across Canada it became apparent that the use of volunteers, self-help programs, or other community oriented measures was still in the development stage. Indeed, a lack of awareness as to what really was developing became quite apparent. A suggestion was made that there be a clearing house of information relating to community involvement in criminal justice programs across Canada.

The group appeared to endorse the view strongly held by some members that citizens should be encouraged to participate in corrections. The rationale was that participation was not only a useful antidote to alienation but was also a useful strategy to achieve changes in attitudes and values.

Restitution and compensation to victims of crime found considerable support within the group. Some doubt was expressed as to the ability of some offenders to pay restitution. Restitution in the form of community service was not, apparently, in use. Because of the importance placed upon restitution, it was argued that increased efforts be made to see that offenders were afforded an opportunity of employment at reasonable wages.

A discussion followed on the economic aspects of crime including the various sociological and psychological explanations as to why society defines certain conduct as criminal.

Whatever the explanation for crime, it was agreed that imprisonment as it exists now is really a sanction of last resort, taken up only in despair. Great doubt was expressed as to the effectiveness of prisons, at least in their present form, either in training or rehabilitation.

Not knowing how to rehabilitate, what sentences should be used? Confidence in probation was expressed time and again, although it was not clear whether the group was willing to abandon prison sentences in favour of probation for recidivists repeatedly convicted of break and enter of theft.

Again considerable stress was placed upon the need for preventive action, and for increased budgetary allocations for services supportive of the child in his school and family.

Agreement was reached that education of the public respecting the purposes and processes of the law is an important element in a program of general prevention.

Dangerous Offenders

While the dangerous offender should be imprisoned, for what other reasons should offenders be imprisoned? In short what room is there for deterrence or retribution?

The view was expressed that general deterrence was a legitimate reason for passing sentences of imprisonment, but not in crimes of passion or carefully planned crimes for in these offences general deterrence probably has no effect.

Judges took the view than exemplary sentences in cases of gang rape or bank robberies were effective in deterring those types of crimes.

Another view was that in regulatory offences a sharp sentence could serve to make people more careful.

Retribution in the sense of "just desert" as a limiting principle found general support.

Again caution was urged with respect to the diagnosis of "dangerousness". Research has indicated the difficulty psychiatrists have faced in predicting with accuracy which offenders are likely to be dangerous. One view was that "dangerousness" was a matter that should be decided by the judge, for the offences and the characters of the offenders themselves may give evidence of "dangerousness".

Another view was that dangerous offender legislation should, among other things, give authority to judges to sentence a dangerous offender to a definite term of imprisonment with possibility of parole. In addition the law should provide that upon the expiration of the term, on hearing, the offender could be subjected to a further definite term of control and custody.

Disparities in Sentences

In some provinces courts of appeal appear to feel that the lower courts do not pay enough attention to the guidelines and principles set down in cases on appeal. Exceptions were noted particularly in respect of cases relating to counterfeit money.

Trial judges tend to find a lack of consistency in sentencing principles even within the provincial court of appeal itself, and an even greater divergence may be noted among the different provincial courts of appeal.

Trial judges also appeared to feel that they were in closer touch with the reality of sentencing than the Courts of Appeal whose work may not include a large number of criminal cases.

It was agreed that the problem of disparities could be met by a legislative statement as to principles, criteria and priorities that ought to be followed in sentencing. The sort of statement appearing in the Model Penal Code was referred to as a useful one.

While an "average" sentence for a particular offence was felt to be a useful guide in exercising sentencing discretion there was general opposition to a legislative enactment of such a "tariff". Rather the group tended to the view that the "average" could better be developed through judges meeting at sentencing conferences, through the circulation of sentencing reports, or through the circulation of a policy memorandum from the court of appeal.

Sentencing conferences were felt to be necessary and to be encouraged through some financial assistance from the governments concerned. In Ontario the regional sentencing conferences were favourably commented on, it being noted also that judges in Alberta met regularly but discussed sentencing problems only to a limited extent.

Some judges foresaw problems in sentencing conferences attended by all the judges including judges of the Court of Appeal.

The relations between the courts and the Parole Board provoked lively interest. The group heard a very helpful statement outlining the practice and policy of the Board. It was not the function of the Board to displace but to complement the work of the court; the Board did not see its function to be one of interfering in sentencing nor to certify that offenders were ready for "rehabilitation" but to make an assessment of the risks to be run in a parole release at a specific point in time.

There was unanimous support for the existence of the parole system, although the need for further research into effectiveness was also agreed on by all.

From the discussion it seemed to be agreed that the Parole Board and the courts should make greater efforts to keep individual judges informed that specific offenders were being released. The other view was that release was a matter for the Parole Board and not a judicial function.

One view was that judges ought to be invited to sit as observers on the Parole Board, conversely Parole Board members ought to be invited to sit with judges as observers in sentencing in the courts.

Another suggestion was that sentencing itself should be done by a judge sitting with an assessor specialized in the human sciences, and that the Parole Board should then refer parole applications to the Sentencing Board for their information and comment.

During the discussion on parole the suggestion was made that early release on parole in cases of long sentences may tend to undermine respect for the court in the eyes of the offender.

To counteract this risk it was suggested that in granting parole there be mandatory consultation with the sentencing judge. This consultation would serve to inspire liaison between courts and the parole board and also contribute to the judicial education in the human sciences.

RECOMMENDATIONS

1. We were convinced of the disparity between sentences and recognized that this resulted in part from the lack of legislative criteria and in part from subjective differences between individual judges. We recommend that the Criminal Code be amended by the insertion of priorities similar to those found in the Model Penal Code.

   We also recommend that further study be done respecting sentencing jurisdiction. In particular:

   a) should the present status be maintained,
   b) should sentencing be entrusted to a sentencing body comprised of the trial judge and an assessor specialized in human sciences, or
   c) should sentencing be entrusted to a sentencing tribunal composed of a judge, specialized in sentencing, similar to the *juge d'application de peines* in the European system, assisted by the trial judge and an assessor specialized in the human sciences.

2. Considering the heavy cost of crime, considering the limited funds available, considering the great difficulties encountered in rehabilitation, we recommend, while maintaining present rehabilitative services, that priority be given to the prevention of crime, by such methods as the following:

a) education,
b) involvement of citizens in the preventive process,
c) the police establish Youth Bureaus in cities across Canada,
d) investigation of the effects of the broader social and economic policies on the incidence of crime, and
e) extension of child care services.

Rapporteur: Professor K. B. Jobson

"JUDICIAL ROLES IN THE ENGLISH PENAL SYSTEM" *

by the

Hon. Mr. Justice George Waller, Queen's Bench Division

The Parole Board

Although the English Parole Scheme owes much to Canada - it has many similarities - there are three particular differences which I would like to mention tonight; these are:

1) It is 2 tier, i.e., Local Review Committee and Parole Board,
2) it is composed of part-time members,
3) it is advisory and not executive.

Every prison has a Local Review Committee consisting of the Governor (or Deputy Governor), a senior probation officer, a member of the Prison Visiting Committee and other independent members. One member interviews the applicant in order to ensure that he makes his case properly to the Committee.

The Local Review Committee acts as a sieve for sending cases to the Board. Originally only those cases recommended by the Local Review Committee were seen by the Board. Now as I shall explain, certain other cases go before the Board.

Part-time membership has advantages and disadvantages. To illustrate these I must briefly indicate the membership. There are four main groups - probation officers, psychiatrists, criminologists and Judges. In addition there are some women members and certain other interests are represented, e.g., the Prison Service and the Police. The balance of views expressed at a panel consisting of one of each of these four main groups and one or two others is stimulating and does, I think, help to a wise decision.

There are three High Court Judges on the Board and they, like all members, do 3 years on the Board. I have just completed my term, the last 16 months being as Vice-Chairman. The Judge is in the same position as any other member - he has one vote. In some cases obviously his opinion will carry more weight than others. This also applies to the psychiatrist in relevant offences. And as the Board is advisory a dissent may help the Secretary of State in making up his mind. But the presence of High Court Judges on the Board has a public relations aspect with other Judges and helps to prevent any feeling of distrust in the Board. As the Judges are part-time on the Board, it may well happen that one of the Parole Board Judges may be sitting in the Court of Appeal on criminal appeals the week after sitting on the Parole Board. Judges can have more confidence that a bad man will not be let out after a few weeks. If someone is, as they think wrongly released there is the opportunity of informal contact and protest.

---

* This is the text of Sir George Waller's address at the dinner given to the Conference participants by the University of Toronto in Hart House on May 16, 1972.

I have said that the presence of a Judge makes decisions more acceptable to other Judges. It is of the greatest importance that there should be no effect on sentencing. At each annual review stage something like 29 per cent of persons are paroled. As there are several reviews, however, the total percentage of persons who are paroled is higher but in an experimental period of six months it was found that 60 per cent of all eligibles did not get parole. It follows therefore that if there were any tendency to increase sentences many persons would have their sentences increased unjustly. I am glad to say however that there has been no detectable effect.

Effect on the Judge

I have been dealing so far with the effect on the Board and the public of having High Court Judges on the Board. But there is also a benefit to the Judge. The experience is highly educational. The exchange of views with other members of the Board from different disciplines is of great benefit. One sees more of the social effects of a sentence, one sees the anomalies which our sentencing statutes can produce, one learns more of the statistics of crime and one sees more of the training side of prison regimes. On the other hand, in my view, the three year term of service on the Board is long enough. During that time a point of view will have been modified but by the end of that time, this being an extra chore, the reading of the papers in addition to all the other work which one has to do begins to pall.

It would be wrong not to mention what I think is the disadvantage of the part-time system. It is its limiting effect. There is a limit to the amount of time a part-time member can give and there is a limit to the number of members who can be moulded into a consistent whole.

Prediction Scores

You may be interested in the use of prediction scores in the English system. The Parole Board reviews three classes of cases:

1) those recommended by Local Review Committees,
2) those associated with cases recommended by Local Review Committees, that is to say fellow offenders,
3) those with a prediction score of 35 or less. This last group was introduced in order to achieve greater uniformity over the country as a whole and it has enabled Local Review Committees to adjust their criteria one with another.

In all cases of male offenders we have the prediction score available with the papers. But this prediction score is just one of the facts to be taken into consideration. I said "all male offenders"; we do not have prediction scores for female offenders because the numbers are not sufficient to give reliable figures. I said it is just one of the facts

Home Office Research Unit

Another aspect of our system is the fact that we have at our service part of the Home Office Research Unit concerning itself entirely with the work of the Parole Board. Its work has guided the Board on several important matters.

1. The most important was the research into the uneveness of decision-making of Local Review Committees which I have already mentioned. It was found that every Committee made a choice within its own range. Accordingly a man rejected by a LRC at an open prison would if he had been at a closed prison perhaps have been strongly recommended. In order to achieve greater uniformity those offenders with prediction scores of 35 or less were referred to the Board even if not recommended. By means of feedback this has done much to even up the decision-making between one LRC and another. Two further matters - research shows that nearly 50 percent of the non-recommended cases with less scores from open prisons are paroled and it looks as if these have a better than average failure rate.

2. Another instance has had its effect in producing the procedural modification contained in the present Criminal Justice Bill. Clause 28 enables the Secretary of State to act on the advice of the LRC in classes of cases to be defined by regulation. Research showed that in cases where the sentence was 30 months or less and the offence was a property offence not involving violence the Board followed the LRC in over 80 percent of cases. And in those in which it did not the difference was readily explainable most often by the receipt of further information. As a comparatively short period on licence was involved it was thought that the Board could be relieved of much work by making this amendment to the law.

3. A third instance has been to identify those petty persistent offenders whom I mentioned earlier.

   When the law has been altered to enable the Secretary of State to act on the advice of the LRC the load on the Board will be lightened and there will be some available capacity for additional cases. It is thought that the prediction score will be used again to increase the number of cases which are sent to the Board, e.g., property offenders with a score of 50 or less; all offenders with a score of 50 or less on second review.

   Sufficient time has nearly elapsed to enable some estimate to be made of the effects of parole. When the Criminal Justice Bill was launched the Government of the day put forward hopes for the parole system in a restrained manner. It would not be unfair to claim success.

to be taken into account, this is because high score recidivists may be just the people who need help. In some cases the Board has made special efforts to parole some of the petty persistent offenders with high scores; inadequate persons who retreat to prison for security but who it would be advantageous to try to encourage to live lives in free society.

Nature of Risk

On the other hand low score violent offenders may present an unacceptable risk. It is not the greater risk of failure that matters but the risk of greater failure. In 1971 the rate of recall whilst on parole expressed in relation to the total number of recommendations was 7.6 per cent and about half of these were for further offences whilst on parole. I realise that this is very low compared with many other systems. But the success of the system requires a balance to be maintained between the various bodies concerned: the Police, the Probation Service, the Press, the Judiciary and Parliament. There has been no criticism of the failure rate itself, indeed there could not be. In an individual case there may be police criticism of a parole failure but whenever this has happened we have tried to talk face to face with the police force concerned and we have endeavoured, as far as possible, to talk to police forces throughout the country so that they understand the way in which the system works.

In our system nobody is eligible for parole until he has served 12 months from the date of sentence and there has been some pressure for extending the scheme by lowering this threshold. This has been resisted because we feel that to lower the threshold will make it difficult for the prison authorities to assess the offender and will also make it more likely that parole will become less selective and more automatic. If this did happen it is quite possible that Courts would take this factor into account and might tend to increase sentences.

I have been asked how I would define acceptable risks. My answer perhaps dodges the question. In my view a risk is acceptable if a failure on parole will not bring the parole scheme into disrepute. The risk is unacceptable if failure on parole would cause a public outcry because public confidence in the scheme as a whole is essential. Therefore much bigger risks can be taken with non-violent, non-notorious crime. If a violent offender repeats his violence on parole there will be adverse comment. If a notorious offender commits another offence of notoriety again there will be adverse comment. It is not possible to put the risk in statistical form but as the British system is advisory and the Board's advice to release does not have to be accepted by the Secretary of State it is perhaps a guide to say that in 1970 there were 9 recommendations out of 2,210 which the Secretary of State did not accept and in 1971 there were 15 out of 2,971. These figures represent roughly .4 percent and .5 percent respectively.

a) It would be possible to quote a number of individuals with previous good character whose contact with prison has been decisive, who with help and parole supervision have been restarted on a career and who will never come near the criminal law again.

b) In 1971 nearly 3,000 (2,971), representing nearly 29 percent of all those dealt with, were paroled. This was approximately 700 more than 1970. (N.B. This is not to be confused with my earlier figure of 60 percent who do not get paroled). Of these 3,000 as I have already stated 7.6 percent failed on parole. It can be said that no harm was done, that there was benefit to children and to marriages and in many cases the parolee was earning a living instead of being a cost on the State being kept in prison himself with his family being supported with Social Security benefits.

c) Evidence is accumulating that in some cases parole is having an effect on the parolee's behaviour. The effect may not be permanent but it may be prolonged. It appears that where a man is given a short period of after-care after a short sentence there is no measurable effect on his behaviour. In other words these cases act very much in accordance with prediction. But where he is given a longer period of after-care after a longer sentence, i.e., over six months after more than 18 months in prison, his behaviour is measurably better. It seems therefore parole is more valuable with longer sentences and longer periods of supervision.

d) The Research Unit is also useful in checking the week to week work of the Board. It has shown for example a tendency in the early stages for one Panel to adopt different standards from another and so led to a modification of the Board's practice. It also keeps an eye on the general trend to see that there are no sudden changes in decision-making. This is perhaps the most comforting of all that the general level of decision-making should remain consistent; not remaining stationary but making steady progress.

Advisory Council

I am also a member at the present time of the Advisory Council on the Penal System. At various stages in the past twenty or thirty years there have been Advisory Councils either on the treatment of offenders, or, as at present, on the Penal System. Between 1966 and 1970 a sub-committee of the Advisory Council on the Penal System considered non-custodial penalites and reported in June 1970. There were two main recommendations from that sub-committee which are being incorporated in the current Criminal Justice Bill.

1. Deferment of Sentence. Giving power to the Court to defer sentence for a limited time and on one occasion only. This can be used to give time for reparation to be made. Some Courts did this at one time but the Court of Criminal Appeal expressed disapproval. The Committee thought the balance of advantage was in favour of the power.

2. Community Service Orders. With the offender's consent he may be sentenced to undertake unpaid work of 40-240 hours on community projects ranging from constructional enterprises to acts of personal service. This is to be started on an experimental basis in 5 areas of different population characteristics. The Council advised that the working of the experiment should be the subject of carefully controlled research.

Criminal Bankruptcy

Another sub-committee produced a third recommendation, namely, Criminal Bankruptcy. Where the victim or victims of an offence or offences have suffered a loss in excess of £15,000 the Court may make an order of criminal bankruptcy.

The object is to prevent convicted criminals from enjoying the fruits of their crime. By fixing £15,000 the number of cases will be limited. This has been done in order to try out the scheme in a limited fashion. It is estimated that there will be about 100 cases per year. The whole Council is now considering the treatment of young offenders.

Membership of Council

It has been the practice to include in the membership of the Advisory Council a High Court Judge and since 1970 I have been that Judge. There is also a Circuit Judge who was the Chairman of London Sessions and between us we have experience of the whole range of sentencing. The remaining members of the Council cover a wide range. There are Juvenile Court Magistrates, criminologists, educationalists, a Chief Constable, a Bishop, a Clerk to a local authority, a psychologist and two Q.C.s. Each member, of course, brings his own point of view to the discussion and exercises his function in accordance with his background. I see my function on such a Council to make such contributions as will help towards a conclusion and to achieve a sentencing structure which is satisfactory and in particular is satisfactory to me. I try also to use my influence so far as possible to see that the rights of the individual are safeguarded and I hope that by my part in the discussions the final recommendations will be reasonably acceptable to the Judiciary as a whole.

Terms of Reference

The terms of reference are "To review the arrangements for the treatment of young offenders aged 17 and over, with particular reference to custodial methods of treatment (including after-care arrangements) and the powers of the Courts; and to make recommendations."

These terms are wide and the Council has been taking evidence and considering them for approximately two years.

I do not know how crime is distributed among age groups in Canada but the latest figures for England and Wales show that approximately 25 percent of all male indictable crime is committed by the 17-21 age group. If one takes the higher courts alone the percentage is 28 percent. In 1970 nearly 15,000 (14,961) of this age group were sentenced to custodial sentences - there were 2,401 sentences of imprisonment, 6,283 of borstal training and 6,277 to detention in a detention centre. Another 9,231 were put on probation. The figure of 15,000 represents over 21 percent (21.5%) of the offenders in this group. The Advisory Council is concerned to see that young persons are not unnecessarily given custodial sentences and to see that both the sentencing structure and the treatment consequences are shaped towards this end.

There is a basic difference in point of view between the Treater and the Treated. The former emphasises the courses available and the various forms of training that can be undertaken. He may well wish that he had more time to do the job properly. (Many express regret at the shortening of the period of borstal training which has taken place). The latter, whilst not always ignoring these, is mainly concerned with time. To him the dominating factor is deprivation of liberty and any training which takes place is a bonus, but not something for which he would give up his freedom. Accordingly, if the length of time can be influenced by behaviour there will be a tendency to behave.

After-Care

Some members of the Council have been to California and have seen there the results of the experiment involving a greater use of Probation. I have also been struck with evidence that after-care which has been earned is better received and is more effective than after-care which is automatic. A simple example is the contrast between a YP licence and the same thing when it has been partly earned in the shape of parole. In practice a YP is entitled to be released on licence after serving 2/3 of his sentence. He resents this because if he were an adult who had behaved in prison he would be free and not on licence. If, on the other hand, he is paroled earlier then although the licence runs to the same date the resentment goes. With parole (where supervision is done by Probation Officers and not Parole Officers) and a general increase

in the use of after-care there is a wish to recommend a system which gives the Courts control where necessary but also enables the best possible use of after-care to be made.

It is, of course, quite impossible to say what the Council will finally recommend, because it has a very wide spread of opinion among its members. My own view is in favour of approximating the sentencing structure to the adult system whilst maintaining a young offender treatment organisation which is much more flexible and which will allow considerable freedom to release early with provision for after-care.

I have during my career at the Bar and on the Bench had considerable experience both in the practice and in the problems of sentencing. I have had experience of the practice of sentencing both at the Bar and as a Recorder for twelve years and as a Judge. Whilst, of course, the problems arise in all these capacities they have arisen more acutely both in conducting sentencing seminars at the Institute of Criminology at Cambridge, and on the Parole Board where one is seeing in the course of a year a very large number of sentences indeed, and to a lesser extent on the Advisory Council.

I have found the difficulties of justifying the philosophical basis of sentencing more and more difficult to formulate. Denunciation, retribution, deterrence, reformation and protection, each plays a part in varying degrees and almost every sentence involves a compromise between the various aspects. Sometimes the needs of society require that the needs of the individual have to be disregarded in the sentence. Sometimes the needs of the individual predominate.

In the former case the parole scheme is available to mitigate the full rigours of a heavy retributive sentence. In the latter case the retributive principle may protect the individual from the full force of a long rehabilitative sentence.

I do not believe that because a man with defects in his character or personality has committed some comparatively trivial offence which brings him into the ambit of the law that society then has the right to use the opportunity to try to remedy these defects without regard to the gravity of that offence. It may be alright to take children out of the control of their parents and send them compulsorily to schools because the State there is substituting itself for the parents. Once this stage is passed however I am wary of those who say, "If only we had him longer we could do so much more." If the offence does not justify longer then in my view society has no right to keep him.

From time to time sentencing by Judges is criticised and it is suggested that panels of experts such as social workers, psychologists and psychiatrists, perhaps presided over by a Judge, would be a great improvement. I do not agree; I believe that in a free society the practice of sentencing by Judges, with all its faults, has the least disadvantages.

In a totalitarian society or,if it be different, in a society where the State is supreme and the individual takes second place the State will claim the right to mould the individual until he accepts. Where the free expression of views is restricted it may take a long period of treatment to make a dissenter conform.

I believe that the Judge should set the sentence and that the Treaters should operate within the limits which the Court has prescribed. Francis Allen says "Experience has demonstrated that, in practice, there is a strong tendency for the rehabilitative ideal to serve purposes that are essentially incapacitative rather than therapeutic in character."

The effect of this may well be that if the Treater determined the sentence it would often be longer than that fixed by the Judge. And there is little or no evidence that the benefits would be better.

The system of sentencing which we have in Britain today is sometimes called (particularly by critics) a tariff system. Whether that adjective is right or not, it is a system (with some exceptions) of determinate sentences the length of which is controlled by the Court of Appeal. It is not an exact system, no system could be because no two offences are exactly alike. But because an application for leave to appeal can readily be made excessive sentences (but not inadequate sentences) can be controlled by the Court of Appeal. I favour this system which gives a degree of flexibility to the Court.

There has also been an increase in the last few years of what might be called a merciful life sentence. These are in cases where the Court has decided that the offender is potentially dangerous, that the cause of the danger may quickly disappear and the Court passes a life sentence indicating that the man can be released as soon as the authorities think it is safe. There are over 100 persons serving life sentences in England for offences other than homicide. While no doubt many of these are highly dangerous it is possible that some are in the category I have described. If they had been given determinate sentences they would have had to be released at the end probably without any serious risk. In their case the onus is the other way and the authorities have to be satisfied that it is safe to release.

Modern society is full of dangers. Everytime you cross the street you run a risk. Millions of people the world over are happy to run the risks which we are told cigarette smoking causes. Who among us might not act out of character if sufficient pressures were exerted? A free society in my view does not have the right to detain persons for long periods because no one can guarantee that they will not offend again. Provided that they are not highly dangerous offenders society must be prepared to accept the risks inherent in releasing from prison those whom experience shows are quite likely to offend again. I must make it clear that I am not referring to dangerous offenders, i.e., potential killers, those who commit sexual assaults on children, or whose

personalities disclose a dangerous defect. I do refer to large numbers of offenders, young and old, who are not model citizens, who have problems, who are products of insecure and unhappy childhood, who come from a delinquent environment and who may or may not commit further offences when free. The sentence in such cases should be appropriate to the offence and to the offender, but should not be made longer because somebody thinks that further treatment might change the character of the individual or might repair the defects of personality which are at the root of the trouble. If there were evidence indicating that, without a gross departure from a penalty for the offence and offender, wonderful things were done to re-integrate offenders into society so that they never offended again I might wish to think again.

I have discussed ameliorative measures and you may wonder at a Judge of the Queen's Bench Division expressing these views. I believe prison is a necessary evil. Society must have the right to remove from its midst those who are dangerous or who commit dangerous offences. Bank robbers, lorry hijackers, killers, those who commit sexual assaults - all may have to be locked away for a very long time. There are other offences which are unlikely to be repeated but for which society requires punishment either as an end in itself because of the gravity of the offence or to deter others. Imprisonment may often be the only punishment which is possible. Or the offences may be committed by young adults for which cases treatment may be a very important factor.

While I have expressed my preference for the present sentencing machinery I must not be taken as believing that all is well. Crime rates continue to rise in nearly all industrial societies throughout the world. This is a statistic which must give us all concern. All aspects of crime, means of detention and of disposal after conviction including education of sentencers and treaters must be kept constantly under review. I have been looking at the other side of the coin to see that in our anxiety to reduce crime we do not overdo the treatment of the individual. A free society requires that a balance be struck between the needs of society including the protection of its members and the rights of the individual. By such meetings as this may we all move towards the balance.

APPENDIX A - COMPOSITION OF THE DISCUSSION GROUPS

Group A

Chairman:	Professor M. L. Friedland, University of Toronto, Member, National Law Reform Commission
Rapporteur:	Professor J. W. Mohr, Osgoode Hall Law School and Department of Sociology, York University

Mr. Roger S. Beames	Toronto Office, National Parole Service
Miss Margaret Benson	Psychologist, Toronto
Judge H. ff Gyles	Chief Magistrate, Winnipeg, Manitoba
Mr. R. G. Hann	Centre of Criminology, University of Toronto
Hon. Mr. Justice Higgins	Appellate Division, Supreme Court of Newfoundland
Mr. Robert J. King	Director of Correctional Services, Department of Justice, New Brunswick
Hon. Mr. Justice McDermid	Appellate Division, Supreme Court of Alberta
Mr. George G. McFarlane	Assistant Director, Ontario Probation Service
Mr. W. T. McGrath	Executive Secretary, Canadian Corrections and Criminology Association
Judge Henry J. Murphy	Provincial Court, Moncton, New Brunswick
Deputy Commissioner M. Nadon	"O" Division, Royal Canadian Mounted Police, Toronto
Judge Peter J. O Hearn	County Court Judge, Halifax, Nova Scotia
Hon. Mr. Justice W. Parker	High Court of Ontario
Judge Harry Waisberg, Q.C.	County Court Judge, York County

Group B

Chairman:	Professor P. J. Giffen, Chairman, Department of Sociology, University of Toronto
Rapporteur:	Professor R. W. Outerbridge, Centre of Criminology, University of Ottawa

Mr. Rendall Dick, Q.C.	Deputy Provincial Secretary for Justice, Ontario
Mr. W. B. Eldridge	Director of Research, The Federal Judicial Center, Washington
Mr. G. R. Goodman	Director of Public Prosecutions, Department of the Attorney General, Manitoba
Mr. L. R. Hackl	Special Adviser, Ministry of Correctional Services, Ontario
Miss Phyllis Haslam	Executive Director, Elizabeth Fry Society, Ontario
Mr. J. H. Hollies, Q.C.	Departmental Counsel, Federal Department of the Solicitor General
Mrs. Lois James	Centre of Criminology, University of Toronto
Mr. M. Maccagno	Member, National Parole Board
Mr. Harry MacKay	Chief of Police, Saint John, New Brunswick
Hon. Mr. Justice McFarlane	Court of Appeal, British Columbia
Judge R. F. McLellan	County Court Judge, Nova Scotia
Mr. Y. Roslack	Assistant Director for Criminal Justice, Department of the Attorney General, Alberta
Professor Paul Weiler	Osgoode Hall Law School, York University
Hon. Mr. Justice Wilson	Court of Queen's Bench, Manitoba

Group C

Chairman:	Hon. Mr. Justice E. P. Hartt, Supreme Court of Ontario, Chairman, National Law Reform Commission
Rapporteur:	Professor Stephen Waddams, Faculty of Law, University of Toronto

Mr. Edward Adolphe, Q.C.	Lawyer, Calgary
Chief Harold Adamson	Chief of Police, Metropolitan Toronto
Judge Colin E. Bennett	Chief Judge of the County Courts of Ontario
Mr. Austin M. Cooper, Q.C.	Defence Lawyer, Toronto
Mr. A. K. Couse	Executive Director, John Howard Society, Ontario
Mr. A. J. Currie, Q.C.	Criminal Law Section, Department of Justice, Ottawa
Me Jean-Paul Gilbert	Member, National Parole Board
Judge C. J. Goodyear	Magistrate, Goose Bay, Newfoundland
Judge R. G. Groom	Provincial Judge, Woodstock, Ontario
Professor John Hogarth	Osgoode Hall Law School, York University
Hon. Mr. Justice Jessup	Court of Appeal of Ontario
Hon. Mr. Justice Maguire	Appellate Division, Supreme Court of Saskatchewan
Professor R. R. Price	Faculty of Law, Queen's University, Ottawa
Mr. D. Sinclair	Deputy Minister of Correctional Services, Ontario
Hon. Sir George Waller	High Court Judge, Queen's Bench Division, London, Vice-Chairman, English Parole Board
Mr. Frank Wilson, Q.C.	Acting Director of Public Prosecutions, Department of the Attorney General, Ontario

Group D

Chairman:	Hon. Mr. Justice A. Lamer, Superior Court of Quebec, Vice-Chairman, National Law Reform Commission
Rapporteur:	Professor Alan Grant, Osgoode Hall Law School, York University

Hon. Mr. Justice Clement	Appellate Division, Supreme Court of Alberta
Judge Guy Beaudry, Q.C.	Magistrate, Edmonton, Alberta
Hon. Mr. Justice Disbery	Trial Division, Supreme Court of Saskatchewan
Professor P. J. Fitzgerald	Carleton University, Ottawa
Hon. Mr. Justice C. Grant	High Court of Ontario
Judge Nathan Green, Q.C.	Judge of the Provincial Magistrate's Court, Halifax, Nova Scotia
Mr. E. Greenspan	Defence Lawyer, Toronto
Senior Judge Hayes, Q.C.	Provincial Court (Criminal Division), Toronto
Professor Anthony Hooper	Osgoode Hall Law School, York University
Commissioner Lindsay (Rtd.)	Royal Canadian Mounted Police
Professor Macnaughton-Smith	Centre of Criminology, University of Toronto
Mr. J. E. Sampson, Q.C.	Crown Attorney, Kingston, Ontario
Mr. A. Therrien	Vice-Chairman, National Parole Board
Hon. Mr. Justice Tweedy	Supreme Court of Prince Edward Island

Group E

Chairman:	Professor A. W. Mewett, Faculty of Law, University of Toronto
Rapporteur:	Professor T. C. Willett, Department of Sociology, Queen's University

Hon. Mr. Justice Dickson	Court of Appeal of Manitoba
Dr. Maurice Gauthier	Director of Probation and Houses of Detention, Quebec
Judge H. Russell MacEwan	Provincial Magistrate's Court, Amherst, Nova Scotia
Mr. Wendall MacKay	Deputy Attorney General of Prince Edward Island
Hon. Mr. Justice Maddison	Territorial Court of the Yukon Territory
Judge R. H. McClelland	Judge of the District Court, Regina, Saskatchewan
Mr. Harvey McCulloch, Q.C.	Crown Attorney for Metropolitan Toronto and Hamilton
Dr. C. K. McKnight	Chief of Forensic Service, Clarke Institute of Psychiatry, Toronto
Mr. J. Moloney	Regional Director, Canadian Penitentiary Service
Hon. Mr. Justice Munroe	Supreme Court of British Columbia
Mr. Patrick A. A. Ryan, Q.C.	Defence Lawyer, Fredericton, New Brunswick
Professor W. F. Ryan	Member, National Law Reform Commission
Mr. Vernon Singer	Member of the Ontario Legislative Assembly
Mr. S. F. Sommerfeld	Director, Criminal Law Section, Federal Department of Justice
Mr. T. G. Street, Q.C.	Chairman, National Parole Board
Me Donat Tardif	Assistant Chief Inspector, Montreal Urban Community Police
Mr. J. Irvin Waller	Centre of Criminology, University of Toronto
Hon. Mr. John Yaremko	Solicitor General of Ontario

Group F

Chairman:	Professor John Willis, Q.C., Faculty of Law, University of Toronto
Rapporteur:	Professor K. B. Jobson, Faculty of Law, Dalhousie University

Dr. B. A. Boyd	Superintendent, Mental Health Centre, Penetanguishene
Judge A. E. Cramm	Magistrate, Corner Brook, Newfoundland
Hon. Mr. Justice Dechene	Trial Division, Supreme Court of Alberta
Dr. T. Grygier	Director, Centre of Criminology, University of Ottawa
Judge Guy Guerin	Court of Sessions of the Peace, Montreal
Mr. Michael Healy	Regional Director, Ontario Probation Service
Hon. Mr. Justice Jones	Trial Division, Supreme Court of Nova Scotia
Chief Leonard Lawrence	Hamilton Police Department, Ontario
Mr. F. P. Miller	Executive Director, National Parole Board
Judge W. C. S. MacDonald	Provincial Magistrate, Prince Edward Island
Professor André Normandeau	Chairman, School of Criminology, University of Montreal
Me Michel Proulx	Defence Lawyer, Montreal
Professor Richard Sullivan	Department of Economics, Carleton University, Ottawa
Hon. Mr. Justice G. Rinfret	Court of Appeal of Quebec
Mr. R. M. Warren	Deputy Solicitor General, Department of the Solicitor General of Ontario

APPENDIX B - BIBLIOGRAPHY OF MATERIAL CIRCULATED PRIOR TO THE CONFERENCE

May 15, 1972

Section A — The Aims and Justifications of Criminal Sanctions and Limitations on their Operation

1. N. Walker, "The Aims of a Penal System:, Sentencing in a Rational Society, London, The Penguin Press, 1969, pp. 1-22.

2. J. Andenaes, "The General Preventive Effects of Punishment", University of Pennsylvania Law Review, 114:7, May 1966, pp. 949-983.

3. F. E. Zimring, Perspectives on Deterrence, a Monograph Series, Chicago, National Institute of Mental Health Center for Studies of Crime and Delinquency, January, 1971, pp.1-31.

4. P. Macnaughton-Smith, What is Crime and Why Do We Fight It?, Toronto, Centre of Criminology, University of Toronto, 1970.

5. F. A. Allen, "Legal Values and the Rehabilitative Ideal", The Borderland of Criminal Justice, Chicago, University of Chicago Press, 1964, pp. 25-41.

May 15, 1972

Section B — The Criminal Sanction as One Means to Control Crime, its Significance to the Ordinary Citizen and Victims of Criminal Activities

1. United States, Task Force Report: Science and Technology, The President's Commission on Law Enforcement and Administration of Justice, Chapter 5, "Analysis of Crime and the Overall Criminal Justice System", Washington, U.S. Government Printing Office, 1967, pp. 53-67.

May 16, 1972

Section C The Assessment and Judging of the Offender; the Pre-disposition Report and the Assessment of Risk

1. R. M. Carter and L. T. Wilkins, "Some Factors in Sentencing Policy", Journal of Criminal Law, Criminology and Police Science, 584 (1967), pp. 503-514.

2. N. Morris, "Psychiatry and The Dangerous Criminal", Southern California Law Review, Vol. 41, 1967-68, pp. 529-536.

3. Professor R. R. Price, "Mentally Disordered and Dangerous Persons Under the Criminal Law", Canadian Journal of Corrections, Vol. 12, 1970, pp. 241-264.

4. C. Sheppard, "The Violent Offender: Let's Examine The Taboo", Federal Probation, December 1971, pp. 12-19.

5. Frances H. Simon, Prediction Methods in Criminology, Including a Prediction Study of Young Men on Probation, London, H.M.S.O., 1971, pp. 156-158.

6. N. Christie, "Scandinavian Criminology Facing the 1970's", Scandinavian Studies in Criminology, Oslo, E. Sem A/S-Halden, 1971, pp. 140-145.

Further Reading

J. Hogarth, *Sentencing as a Human Process*, Toronto, University of Toronto Press, 1971, a Bibliography, pp. 401-432.

K. Hawkins, *Parole: a select bibliography with especial reference to American experience*, (unpublished), Cambridge, Cambridge University, 1961.

L. Radzinowicz and M.E. Wolfgang, *Crime and Justice*, New York, Basic Books, Inc. 1971.

2. M. Lipsky, "Attrition in the Legal Process", Law and Order Police Encounters, U.S.A., Aldine Publishing Co., 1970, p. 94.

3. Citizen calls and police response in Toronto (unpublished table) prepared by Clifford Shearing.

4. J. Q. Wilson, "The Patrolman", Varieties of Police Behaviour, Cambridge, Harvard University Press, 1968, pp. 16-18.

5. A. J. Reiss, Jr., The Police and The Public, London, Yale University Press, 1971, pp. 102-120.

6. Tables of Selected Offences known to police, rates of convictions, as reported in "The Incidence of Crime in Canada", Report of the Canadian Committee of Corrections, March 31, 1969, Ottawa, Queen's Printer, p. 26, 24, 25, 27, 29, 470.

7. U.S. National Commission on the Causes and Prevention of Violence, section on International Comparisons in Task Force Report: Causes of Violence, 1970

8. Criminal Justice Newsletter, Special Bulletin, (Supplement to Vol. 3, No. 2, Jan. 17, 1972).

9. D. R. Cressey & D. A. Ward, Delinquency, Crime and Social Process, London, Harper & Row, 1969, pp. 60-66.

10. K. T. Erikson, "Notes on the Sociology of Deviance", in H.S. Becker (ed.) The Other Side, Toronto, Collier-Macmillan Canada Ltd., 1967, pp. 9-21.

11. Great Britan, Reparation by the Offender, Report of the Advisory Council on the Penal System, London, H.M.S.O., 1970.

12. United States, The Challenge of Crime in a Free Society, The President's Commission on Law Enforcement and Administration of Justice, Washington, U.S. Government Printing Office, 1967, pp. 38-43.

May 15, 1972

Section C The Impact and Correctional Effectiveness of Various Forms of Judicial and Administrative Dispositions. The Importance of the Economics of Crime and Corrections.

1. J. Robison, "The Effectiveness of Correctional Programs", Crime and Delinquency, Vol. 17, No. 1, pp. 67-80.

2. R. Hood and R. Sparks, Key Issues in Criminology, Toronto, McGraw-Hill Book Co., 1970, pp. 171-186.

3. Canada, Dominion Bureau of Statistics, Correctional Institution Statistics, 1970, Ottawa, Queen's Printer, p.5

4. Selected Tables on Inmate Statistics and Maintenance Costs of the Canadian Penitentiary Service

5. J. I. Waller, Men Released From Prison: The Impact of Prison and Parole, with some views on future growth of the pentientiary population.

6. N. Holt and D. Miller, Explorations in Inmate-Family Relationships, Research Division, Department of Corrections, State of California, Sacramento, January, 1972, pp. 60-64

7. K. B. Jobson, "Imprisonment", Ottawa Law Review, Vol. 4, No. 2, Winter, 1971, pp. 435-457.

8. N. Morris and G. Hawkins, "Rehabilitation: Rhetoric and Reality", Federal Probation, Vol. XXXIV, No. 4, December, 1970, pp. 9-17.

9. "A Review of Reconviction Rates: England", from United Kingdom, (Home Office), The Sentence of the Court: A Handbook for Courts on the Treatment of Offenders, London, H.M.S.O., 1964, pp. 40-42, 44, 48-51.

10. "The Effectiveness of Probation: A Review", from R. F. Sparks, "Research on the Use and Effectiveness of Probation, Parole and Measures of After-Care", in a Council of Europe report on The Practical Organization of Probation and After-Care Services, Strasbourg, Council of Europe, 1968, pp. 4-7, 8-11, (unpublished).

11. M. Davies and I. Sinclair, "Families, Hostels and Delinquents: An Attempt to Assess Cause and Effect", The British Journal of Criminology, Vol. 11, No. 3, July, 1971, pp. 213-229.

12. Canada, Bill C-2, Sections 57, 58 and 72, The House of Commons of Canada, 1972, Ottawa, Queen's Printer, 1972.

13. Great Britain, "Non-Custodial and Semi-Custodial Penalties", Report of the Advisory Council on the Penal System, London, H.M.S.O., 1970, pp. 12-21, 51-56, 66-70.

May 16, 1972

Section A Disparity in Decision Making: Specification of Criteria as a Means to Equality of Consideration and Appeal Procedures.

1. Canada, Report of the Canadian Committee on Corrections, March 31, 1969, Ottawa, Queen's Printer, 1969, p. 480.

2. Canada, Report of the Canadian Committee on Corrections, March 31, 1969, Ottawa, Queen's Printer, p. 487.

3. Table Showing Number of Adults Placed on Probation and Number on Probation on January 1st, annually in Ontario, 1961-1970.

4. R. Hood and R. Sparks, Key Issues in Criminology, Toronto, McGraw-Hill Book Co., 1970, pp. 141-170.

5. "Principles of Sentencing Under the Model Penal Code", reprinted from H. Wechsler, "Codification of Criminal Law in the United States: The Model Penal Code", Columbia Law Review, 68:8, December, 1968, 1450-1456.

6. "Stating Reasons for Decisions", reprinted from D.A. Thomas, "Sentencing - The Case for Reasoned Decisions", Criminal Law Review, April, 1963, pp. 243-253.

7. K. Hawkins, Parole: The American Experience, Ph.D. dissertation, Cambridge University, pp. 127-130.

8. Tables on Application for Granting and Termination of National Parole in Canada, 1959-1971.

 STORAGE

9. K. Hawkins, Parole: The American Experience, Ph.D. dissertation, Cambridge University, pp. 63-66.

May 16, 1972

Section B The Role of Legislatures, the Judiciary and Corrections in Controlling Decision Making About the Offender

1. H. L. Packer, The Limits of the Criminal Sanction, California, Stanford University Press, 1968, pp. 292-295.

2. R. G. Hann, Decision Making in the Canadian Criminal Courts: A Simulation. Paper read at Operations Research Society of America Annual Meetings, New Orleans, April, 1972.

3. H. L. Packer, The Limits of the Criminal Sanction, California, Stanford University Press, 1968, pp. 149-173.

4. "Judicial Sentencing or Treatment Tribunals?", reprinted from Sir John Vincent William Barry, The Courts and Criminal Punishment, Wellington, New Zealand, A.R. Shearer, Government Printer, 1969, pp. 38-41, 43-46, 62-63.

5. D. A. Thomas, Principles of Sentencing, London, Heinemann, 1970, p. xlix.

6. R. Cross "Paradoxes in Prison Sentences", Law Quarterly Review, Vol. 81, 1965, pp. 205-222.

7. R. Cross, "Sentencing in a Rational Society", Criminal Law Review, 1970, pp. 4-15.

8. G. Saleebey, "Five Years of Probation Subsidy", California Youth Authority Quarterly, Vol. 24, No. 3, Fall, 1971, pp. 3-15.

9. R. F. Sparks, "The Use of Suspended Sentences", The Criminal Law Review, July, 1971, pp. 384-401.

10. J. Hogarth, Sentencing as a Human Process, Toronto, University of Toronto Press, 1971, Vol. 11, (Sentencing Study Sheets), pp. 183-187.