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Academy of Criminal Justice Sciences

ACQUISITIONS

Sheraton Century Hotel, Oklahoma City, U. S. A.

Thursday, March 13, 1980. 4:30-6:00 p.m.

Derrick Room

Panel #96

"Juvenile Delinquency and Juvenile Justice: Japan"

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Five girls who are accommodated in the Aiko Training School, visit a municipal office in order to learn the self-governing system of the local community.

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1. The History of Juvenile Laws in Japan

In the fourth century our country was first unified by emperors, whose descendant is the present emperor. They didn't know well how to govern the whole country. Therefore, they introduced an imperial regime from China into our country. Then, in imitation of Chinese laws penal ordinances were laid down. We know one of them, which was enacted in 645. It contained a provision that a child under 7 years old would not be criminally responsible, even if he violated any penal ordinance.

In the feudal age, warriors had developed a customary law, after which each feudal lord formed his own law. It was simpler than imperial ordinances, which continued to be applied only to the aristocrat in the feudal age. However, some feudal criminal laws prescribed on the criminal responsibility of juvenile offenders.

In 1868 the feudal regime was broken down by lower-class warriors. First they intended to restore the complete old imperial regime. But they found out soon that it was not fit for the new era, when our country was in danger of being colonized by western countries. They began to establish a new imperial regime after the example of a modern regime in western countries. They advocated a slogan, "Enrich our country, strengthen our military forces, and catch up with western countries". In 1873 they invited Dr. Boissonade, an agrège of Paris University, in order to establish a new legal system. After the example of the French Code, a modern penal code was enacted in 1880. It provided that if a child between 12 and 15 years of age committed an offense without any ability to distinguish between right and wrong, he was not criminally punished, but might be sent to the Disciplinary House. Disciplinary Houses also accommodated loitering and delinquent children between 8 and 19 years of age, in case their parents requested. But it is said that the Disciplinary House didn't succeed in reforming these children. On the other hand some Moral Reformatory

Homes were founded privately. For example, in 1899 Mr. Tomeoka founded the Family School, in which teachers' family lived with loitering and delinquent children.

In 1900 the Law on Regulation of Reformatory Work was enacted. It authorized the Moral Reformatory Home. Under this Law, an orphan between 8 and 15 years of age, who had been loitering, begging or associating with immoral peers, was sent to the Moral Reformatory Home by the order of a prefectural governor. And by the permission of a court the Reformatory Home might accommodate a juvenile delinquent in place of the Disciplinary House.

In 1908 a new penal code, which has been in force for 72 years, was enacted. It was drawn up under the influence of the positivist school. It provides that an act of a person under 14 years of age is not punishable (Article 41). With the enactment of a new code, the Disciplinary House was abolished and substituted by the Moral Reformatory Home.

In 1922 the Juvenile Law was enacted in the democratic atmosphere after World War I. The Juvenile Law emphasized on protecting and educating juvenile delinquents. For the first time it had the provision on a juvenile who was prone to commit an offense. The Juvenile Law prescribed nine educative and protective measures for a juvenile delinquent; he was cautioned by a policeman, warned by the principal of his school, ordered to write an oath, delivered to his parents or guardian, placed under probationary supervision in the community, or committed to the privately operated home, the Moral Reformatory Home, the Reform & Training School or the the hospital. Under the Law on Regulation of Reformatory Work, a prefectural governor weighed the materials collected by policemen, and decided whether or not to commit a juvenile delinquent to the Moral Reformatory Home. With the enactment of the Juvenile Law, the Committee for Screening Juveniles, which had discretion in dispositional decisions, was founded. This semi-judicial committee had staff specialists to investigate a juvenile.

In 1945 our country was defeated in World War II. We began to reform our legal system under the guidance of the General Headquarters of Allied Powers, in which the high officers of U. S. A. had a leadership. In 1946 a new constitution was enacted. It declares the popular sovereignty (Art. 1), the renunciation of war (Art. 9) and the respect for fundamental rights, which include the due process right (Art. 31), the right to trial by a court (Art. 32), the right to speedy, fair and open trial (Paragraph 1 of Article 37) and the right to an attorney (Para. 3 of Art. 37). But the right to trial by a jury is not included.

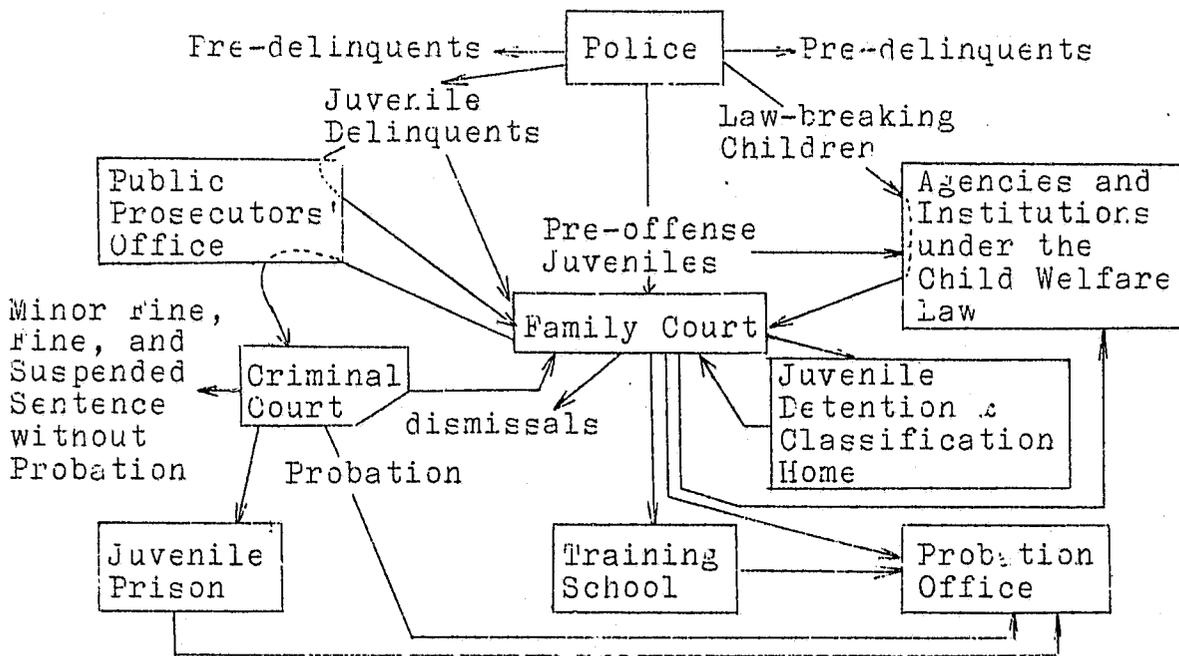
A new Juvenile Law, which was fit for the new constitution, was enacted in 1948. It has been in force for 32 years. Figure 1 shows our Juvenile Justice System under the present Juvenile Law. However, by the request of the Minister of Justice the Judicial Council has drafted the drastic amendment of the Juvenile Law.

2. Definition of Juvenile Delinquent

Although the old Juvenile Law used the term "Juvenile" as meaning a person under 18 years of age, the present Law uses it as a person under 20 (Art. 2). The Juvenile Law provides for the three categories of juvenile delinquents (Art. 3). (1) "Juvenile Offender" is a juvenile under 20 years of age and not less than 14, who has committed an offence provided for in the Penal Code or special criminal laws. (2) "Law-Breaking Child" is a child under 14 years of age who has violated any criminal law. (3) "Pre-Offence Juvenile" is a person under 20 years of age who is prone to commit an offence, judging from his character or circumstances.

The draft published by the Judicial Council in 1976, entertained a provision that a juvenile delinquent between 18 and 19 years of age was subject to special procedures, in which the Public Prosecutor might have more important part. The Public Prosecutor is prone to emphasize on protecting the community against juvenile offences rather

Figure 1. Juvenile Justice System of Japan



Source: The Summary of the White Paper on Crime, 1978

Table 1, The Number of Juvenile Delinquents guided or investigated by Plicemen in 1977

Juvenile Offender	Penal Code Offerder	119,199
	Special Law Offerder.	24,449
Law-Breaking Child		35,337
Pre-Offence Juvenile		5,253
Pre-Delinquent*.		991,041
The total number of cases violating the Road Traffic Law.		1,180,163

*Pre-Delinquent is a juvenile who is only guided because of smoking, drinking, fighting and so on.

Source: The White Paper on Police, 1978

than educating a juvenile delinquent. Therefore, I think that the draft is not desirable for advancing the welfare of a juvenile delinquent. The rate of non-traffic offenders between 18 and 19 years of age per 1,000 population of the corresponding age group decreased from 9.4 in 1967 to 7.6 in 1977. Even from viewpoint of the protection against juvenile offences, the draft does not seem to be necessary.

3. Guidance and Investigation by Policemen

The rate of juvenile offences is the highest in the amusement quarters of big cities. Besides ordinary policemen the special policemen in charge of guidance to a juvenile delinquent always patrol in the amusement quarters. With policemen volunteers in the community sometimes patrol to guide a juvenile. And policemen endeavor to have some intimate contact with residents in the community to prevent juvenile offences. For example, they have some periodical meetings with teachers or leaders in the community.

Table 1 shows the number of juvenile delinquents guided or investigated by policemen. Under the present Juvenile Law policemen must respect the due process rights of a juvenile, especially the principle of nullum crimen sine lege (no crime without law). Therefore, they avoid to investigate a juvenile as a juvenile offender, a law-breaking child or a pre-offence juvenile without considerable reasons. In most cases they only guide a juvenile. The great total number of pre-juveniles not stipulated by the Juvenile Law, shows it.

4. Disposition by Public Prosecutors

Under the old Juvenile Law a Public Prosecutor was empowered to determine whether or not to institute prosecution, in case the suspect was a juvenile. But with the enactment of a new Juvenile Law, he lost this power. Because the object of the new Law is not to punish a juvenile but to rear him soundly (Art. 1). After inves-

tigation a Public Prosecutor must refer all cases to the Family Court with his recommendation on the treatment of a juvenile. He is neither empowered to participate in the hearing of the Family Court. It is said that the main object of the draft in 1976 was to restore the power of a Public Prosecutor.

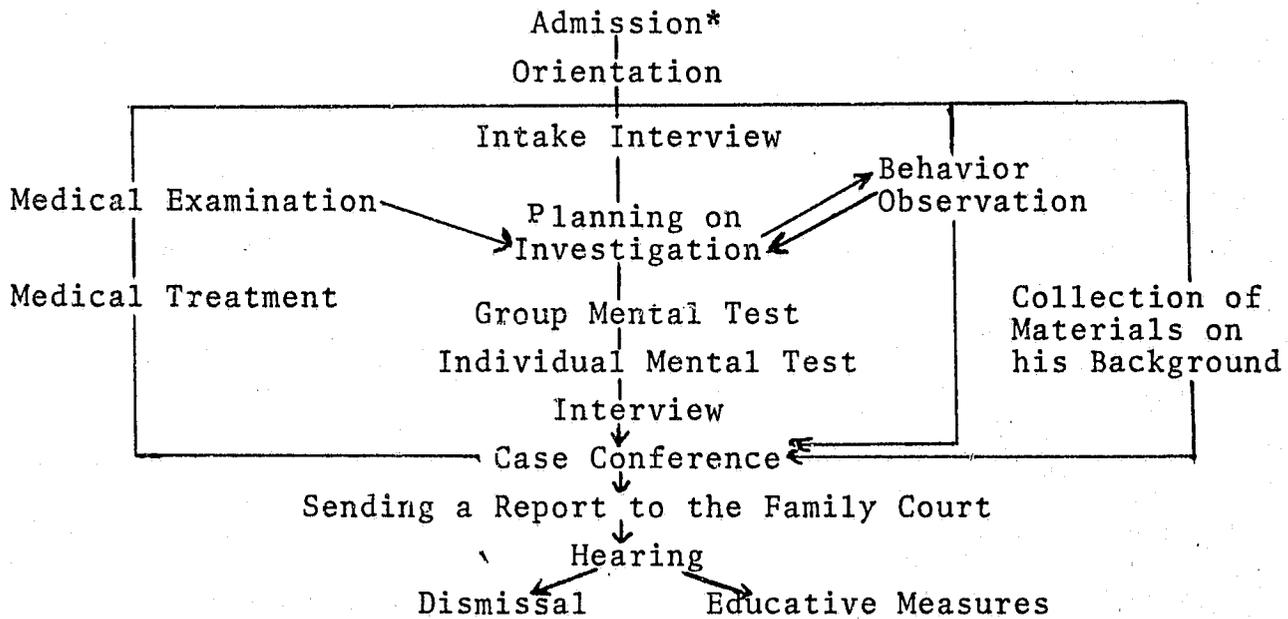
5. Referral to the Family Court

From viewpoint of the constitutional due process rights, even the educative measures for a juvenile delinquent must be decided by the court, if they restrict the freedom of his conduct. Therefore, the Family Court was founded with the enactment of a new Juvenile Law. It is required for the Family Court to impose any educative measure on a juvenile delinquent in terms of rearing him soundly. Before the adjudication by a judge, a juvenile referred to the Family Court, is investigated by a probation officer who belongs to the Family Court. Family Court Probation Officers who are specialists in psychology, sociology and education, test a juvenile, and research his background such as his family, his school or his job. In case the more detailed test and research is necessary, the Family Court may place him under Tentative Probation (Art. 25). The juvenile under Tentative Probation may be guided by a Family Court Probation Officer, or committed to a privately operated house. In 1977 the total number of juvenile delinquents under Tentative Probation amounted to 18,169, of whom 2,476 were committed to privately operated houses. Tentative Probation seems to work well, because the Family Court imposed any educative measures on only 8% of dismissals.

6. Juvenile Detention & Classification Home

Before the hearing the Family Court may commit a juvenile to the Juvenile Detention & Classification Home administrated by the Ministry of Justice(Art. 17). The Home has staff specialists in medicine, psychology, sociology and education. They investigate a juvenile

Figure 2. The Flowchart in the Juvenile Detention & Classification Home



*The total number of admission were 35,634 in 1977.

Source: The Pamphlet of the Ministry of Justice

Table 2. Final Dispositions of Non-traffic Offenders by the Family Court in 1967 and 1977

Source: The White Paper on Crime, 1968 & 1978

<u>Disposition</u>	1967		1977	
	<u>Number</u>	<u>Percentage</u>	<u>Number</u>	<u>Percentage</u>
A. Dismissal without Hearing	92,377	43.8	89,066	51.5
B. Dismissal after Hearing	62,266	29.6	56,808	32.8
C. Referral to Child Guidance Center	504	0.2	226	0.1
D. Probation	21,415	10.2	15,290	8.8
E. Commitment to Child Education & Training Home	241	0.1	206	0.1
F. Commitment to Juvenile Training School	6,677	3.2	3,186	1.8
G. Referral to the Public Prosecutor	27,057	12.9	8,238	4.8
Total	210,537	100.0	173,020	100.0

within 4 weeks. The flowchart in the Home is shown in Figure 2. After investigation a staff specialist sends a report with his recommendation on treatment to the Family Court. It never exceeds 4 weeks in terms of the regard for freedom of a juvenile. The test in the Juvenile Classification Home is available to a juvenile out-patient, in case his parents or his teacher request.

7. Adjudication by the Family Court

Receiving a report from a Family Court Probation Officer or a specialist of the Juvenile Classification Home, a Family Court Judge decides whether or not to hear from a juvenile. The hearing is carried out in a closed court, lest the public should stigmatize a juvenile suspect. It is an exception from the constitutional right to open trial. A juvenile and his guardians may select an attorney as an attendant in the hearing (Para. 1 of Art. 10). The cases with an attorney only comprised 0.3% of the total non-traffic offenders' cases, referred to the Family Court in 1977. In our country the great majority of juveniles do not plead before a judge with the help of an attorney. I think that it is not caused by their ignorance or economic condition, but by their obedient and shamefaced characters, which are shared with most of Japanese in according to the analysis by Dr. Ruth Benedict, an anthropologist. After a judge hears from a juvenile and his parents informally, he decides the issue of guilt first. And he determines whether or not to impose any educative measure on a juvenile delinquent not in terms of retribution, but of protection for him. On the occasion of determination he respects the recommendation by a Family Court Probation Officer and a specialist of the Juvenile Classification Home. However, he has the final discretion in dispositional decisions.

Although the old Juvenile Law prescribed nine educative and protective measures, the present Law only provides for three measures, that is, placement under probationary supervision, commitment to either a Juvenile Training

School or a Child Education & Training School (Para. 1 of Art. 24). It only provides for three compulsory measures, because they must be decided by a court from viewpoint of the due process right.

Under the present Juvenile Law a juvenile has the right to appeal against the decision of any compulsory measure (Art. 32), although he did not have under the old Law. However, he does not frequently use it as well as the right to an attorney. Only 192 juveniles appealed to the Court of Appeal in 1977.

Table 2 shows the final dispositions of non-traffic offenders by the Family Court in 1967 and 1977. It shows that the non-intervention into juvenile delinquents has advanced for these 10 years. For example, the total number of commitment to Juvenile Training Schools in 1977 was 47.7% of one in 1967. I think that this non-intervention has fared well. Because the rate of non-traffic offenders between 20 and 24 years of age per 1,000 population, which was the highest rate of adult offenders, decreased from 9.1 in 1967 to 5.7 in 1977.

8. Criminal Trial

If a Family Court Judge finds it proper to punish a juvenile, he may send back the case to a Public Prosecutor (Art. 20). Then the Public Prosecutor is given the power to institute prosecution. As a rule a juvenile suspect has the same rights as an adult in a criminal court, although he is subject to some special protective procedures (Art. 40). The penalty imposed on him, is a little different from one on an adult. In case a juvenile under 18 years of age is to be punished with death penalty, he shall be sentenced to penalty for life (Art. 51). And in case a juvenile is to be punished with imprisonment of which maximum period is more than three years, he shall be given a relative indeterminate sentence (Art. 52). Because we think that it is fit for the educative treatment in the Juvenile Prison.

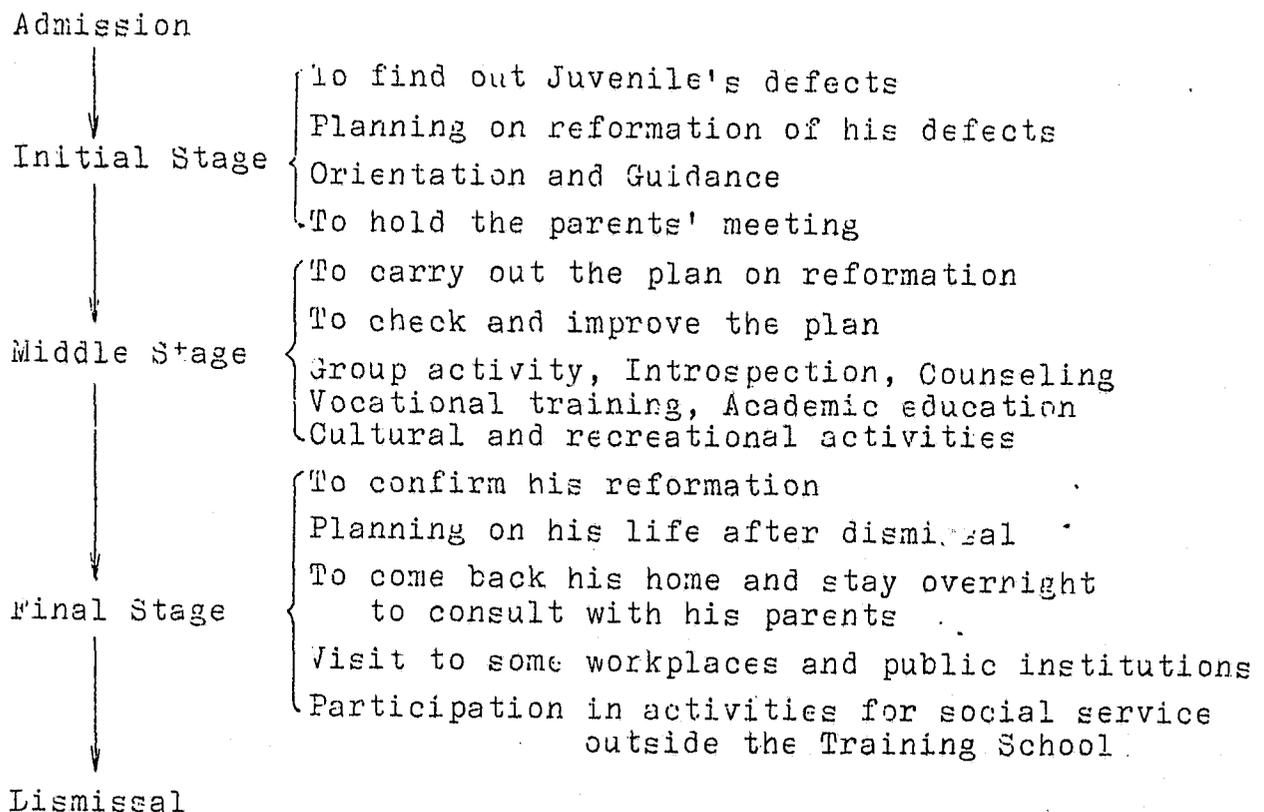
Table 3 shows the number of juveniles convicted in

Table 3. The Number of Juveniles Convicted
in Courts of First Instance in 1967 and 1977

	<u>Imprisonment</u>		<u>Fine</u>	<u>Total</u>
	<u>Actual Imprisonment</u>	<u>With Suspended Sentences</u>		
1967	1,389	1,598	135,676	138,663
1977	131	380	35,123	35,634

Source: The White Paper on Crime, 1968 and 1978

Figure 3. The Programme at the Tama Juvenile Training School



Source: The Pamphlet of the Tama Juvenile Training School

courts of first instance in 1967 and 1977. It also shows the radical non-intervention into juvenile delinquents during these 10 years.

9. Educative and Protective Facilities

The Child Education & Training Home is regulated by the Child Welfare Law. It accommodates delinquent and neglected children under 18 years of age, committed by the decision of the Family Court or by the order of a prefectural governor with their parents' consent. In the typical Home there are 5 or 6 small houses without any fence to prevent inmates from escape. In each house about ten children live together with a teacher's family. The term of their stay is indeterminate. But most of them return to the community, when they graduate from the semi-authorized junior high school in the Home. In the Home delinquent and neglected children are given affection by a teacher's family. It is a great advantage of the Home. On the other hand, it's a disadvantage that the teacher's family is prone to lose their privacy, because their life is exposed to inmates' eyes all the time.

The Ministry of Justice administrates 61 Juvenile Training Schools. The total number of inmates in Training Schools accounted for 1,969 in 1975, which was the fewest in these 30 years. Therefore, the Ministry of Justice recently asked the Family Court to decide more commitment to Training Schools. And it began to improve the system of Training Schools. Under the new rule of the Ministry of Justice in 1977, 29 Training Schools converted to short-term facilities. The maximum term of stay in these Training Schools is fixed at 4 months for traffic offenders and at 6 months for ordinary delinquents. On the other hand the term of stay in other ordinary Training Schools is indeterminate. But as a rule the inmates are dismissed within 2 years.

I wonder if the commitment to short-term Training Schools is much better than one to privately operated houses as Tentative Probation. I think that it is not

necessary to commit more juvenile delinquents to Training Schools, even if short-term and open facilities. Because juveniles dismissed from Training Schools may be stigmatized more severely.

Figure 3 shows the typical programme at a Training School. Many staffs of a Training School devote themselves to training juvenile inmates. Recently they emphasize on group activity, role performance, introspection and counseling, rather than vocational training and academic education. Because they think that it is most important for a juvenile to improve his self image, so that he may live in the community. I think that the treatment in Training Schools fares well. According to the follow-up research for 3 years on juveniles released from Training Schools in 1974, more than 80% were not recommitted to any correctional institution. It is a desirable rate as compared with the rate on juveniles released in 1957, which was a little over 50%.

10. Juvenile Prison

Table 4 shows the number of juveniles under 20 years of age committed to the Juvenile Prison in 1967 and 1977. The total number in 1977 decreased drastically from one in 1967. The maximum term of relative interminate sentences in 1977 was shortened, as compared with one in 1967. It also shows the radical non-intervention into juvenile delinquents in our country.

The treatment in Juvenile Prisons is more educative than in adult prisons. In a Juvenile Prison the forced labour is imposed on prisoners as vocational training. Academic education is not only given to those who didn't complete the compulsory education, but also to those who want to have the education on senior high school level. Although a Juvenile Prison has some fences to prevent prisoners from escape, it is not much different from a Juvenile Training School in terms of educative treatment. According to the follow-up study for 3 years on those who were released from Juvenile Prisons in 1974, about

Table 4. The Number of Juveniles under 20 years of age
Committed to the Juvenile Prison in 1967 & 1977

	Imprisonment with Forced Labour			
	1967		1977	
	Number	%	Number	%
Within 6 months	10	1.2	4	5.2
" 1 year	45	5.5	13	16.9
" 3 years	416	50.8	35	45.4
" 5 years	210	25.6	13	16.9
" 7 years	74	9.0	6	7.8
" 10 years	58	7.1	5	6.5
" 15 years	2	0.2	0	0.0
A life term	5	0.6	1	1.3
Total	820	100.0	77	100.0

The total number of imprisonment without forced labour
was 52 in 1967 and 10 in 1977.

Source: The White Paper on Crime, 1968 & 1978

Table 5. The Age Composition of the Private Probation-Parole
Officers in Tokyo, 1950 & 1979

	1950	1979
Under 49 years old	53.6%	11.8%
" 59 years old	35.1%	29.0%
" 69 years old	10.3%	33.8%
" 79 years old	1.0%	21.1%
Over 80 years old	0.0%	4.3%
Total	100.0%	100.0%
Total number	(880)	(3,764)

Source: The Paper published by the Tokyo Probation-
Parole Supervision Office on March 1, 1979

80% were not recommitted to any correctional institution.

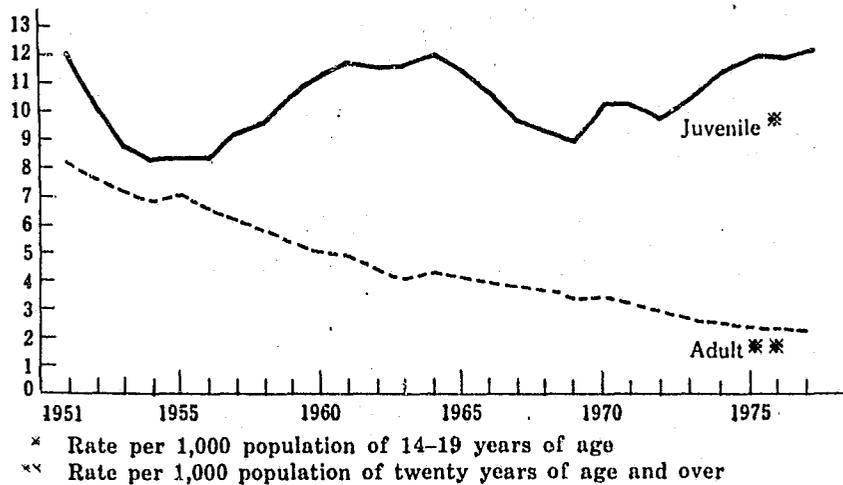
11. Juvenile Probation and Parole

Under the Juvenile Law a court is not empowered to decide whether or not to release a juvenile inmate on parole from a Juvenile Training School or a Juvenile Prison. The Committee on Rehabilitation of Offenders, which belongs to the Ministry of Justice, has this power. 2,761 inmates in Juvenile Training Schools and 162 prisoners in Juvenile Prisons were released on parole during 1977. Of 162 prisoners, 35.2% were released between over a third of the maximum term of their sentences and under the minimum term, and 64.8% were between over the minimum term and under the maximum term. The Committee endeavours to permit the release on parole as early as possible.

In 1977 the Family Court placed 33,735 juveniles under probationary supervision in the community. Both juveniles on probation and on parole are supervised under the Probation-Parole Supervision Office. The total number of Public Probation-Parole Officers is too few to supervise all probationers and parolees. Therefore, some leaders in the community are commissioned as Private Probation-Parole Officers by the Minister of Justice. Private Officers supervise almost all probationers and parolees under the administration of Public Officers. The total number of Private Officers amounted to about 46,000 on January 1, 1979. Private Officers may use resources in the community more effectively than Public Officers. It is an advantage of this system.

Table 5 shows the age composition of Private Officers in Tokyo. Private Officers has become older for these 30 years. In terms of generation the gap between Private Officers and juveniles on probation or parole has widened. I am afraid that old Private Officers might guide juveniles inappropriately because of this gap.

Figure 4. Trends in Non-Traffic Major Penal Code Offenders Investigated by the Police



Source: The Summary of the White Paper on Crime, 1978

Table 6. Economic Classes of Juvenile Delinquents' Guardians in 1955, 1965 & 1977

	1955		1965		1977	
	Number	%	Number	%	Number	%
Upper Class	972	0.8	4,373	2.3	2,875	2.7
Middle Class	34,838	29.8	136,466	71.9	88,375	82.8
Lower Class	69,618	59.5	43,426	22.9	12,061	11.3
Needy Class*	11,548	9.9	5,529	2.9	3,375	3.2
Total**	116,976	100.0	189,794	100.0	106,686	100.0

* The needy-class family is too poor to live without protection under the Livelihood Protection Law.

**The total number of final dispositions of non-traffic offenders by the Family Court, excluded the number of not available cases.

Source: The White Paper on Crime, 1979

12. Discrimination in Dispositional Decisions

Is there any discrimination in dispositional decisions? In our country, 99.3% of the total population in 1977 had the nationality of Japanese, followed by Korean (0.6%) and other nationalities (0.1%). On the other hand, of the final dispositions of Penal Code offenders by the Family Court in 1977, 98.0% were imposed on Japanese juveniles, followed by 1.9% on Korean and 0.1% on those with other nationalities. Juveniles with Korean nationality seem to have a little disproportionately higher rate of dispositions by the Family Court.

Table 6 shows the economic classes of juvenile delinquents' guardians. The percentage of middle class has increased for these 20 years. Discriminative dispositions against lower-class juvenile delinquents seem to have decreased.

13. Non-intervention into Juvenile Delinquents

Figure 4 shows the trends in non-traffic major Penal Code offenders between 1951 and 1977. The rate of juvenile offenders per 1,000 juvenile population has increased for these 10 years. Does it show the failure of non-intervention into juvenile delinquents? I don't think so.

Table 7 shows juvenile offenders by type of crime in 1967 and 1977. For these 10 years only 3 types of crime, that is, embezzlement, arson and larceny, have increased. On the other hand, serious offences such as homicide, rape, intimidation, fraud and robbery, have drastically decreased. According to the White Paper on Crime, of the total non-traffic penal code juvenile offenders in 1978, 59.0% were investigated by policemen on suspicion of shoplifting, larceny of either autocycles or bicycles, and embezzlement of lost or deserted bicycles. All these three are rather minor offences, total number of which depends upon how earnestly policemen investigate. Guidance and investigation by policemen to a juvenile who has committed any minor offence, has been strengthened, lest he should become a habitual criminal. It has caused the increase of rate

per 1,000 population for these 10 years. Non-intervention, except the guidance and investigation by policemen, has radically advanced with decrease of serious offences committed by juveniles. It seems to be desirable for us.

Table 7. Juvenile Offenders* by Type of Crime in 1967 & 1977

	1967	1977	Index
	<u>Number</u>	<u>Number</u>	<u>(1967=100)</u>
Larceny	78,058	89,472	115
Fraud	1,441	406	28
Embezzlement	720	5,031	699
Robbery	1,463	518	35
Extortion	8,259	3,916	47
Intimidation	770	175	23
Violence	11,699	6,017	51
Injury	15,073	7,120	47
Rape	3,838	936	24
Indecency	1,458	562	39
Homicide	344	77	22
Arson	110	135	123
Death or bodily injury through negligence in the conduct of one's occupation	55,861	43,408	78
Others	6,906	5,046	73
Total	186,000	162,819	88

*Juvenile offenders who were investigated by policemen on suspicion of having committed any crime.

Source: The White Paper on Crime, 1968 & 1978

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