



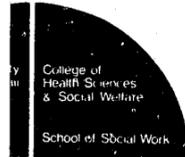
PROCEEDINGS OF THE 28TH ANNUAL
CONFERENCE OF THE HAWAII CORRECTIONAL ASSOCIATION

PAGODA HOTEL
JANUARY 14 & 15, 1982

"THE WAR ON CRIME: 'GETTING TOUGH'"

Co-sponsored by the
Hawaii Correctional Association
and the
Youth Development and Research Center
University of Hawaii

87262



YOUTH DEVELOPMENT
& RESEARCH CENTER

REPORT No. 271
FEBRUARY 1982

Proceedings of the 28th Annual
Conference of the Hawaii Correctional Association

Co-sponsored by the
Youth Development and Research Center

January 14-15, 1982

Pagoda Hotel
Honolulu, Hawaii

U.S. Department of Justice
National Institute of Justice

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this copyrighted material has been granted by

Youth Development and
Research Center

to the National Criminal Justice Reference Service (NCJRS).

Further reproduction outside of the NCJRS system requires permission of the copyright owner.

February 1982

Report No. 271

HAWAII CORRECTIONAL ASSOCIATION

P. O. Box 3498
Honolulu, Hawaii 96811

February 19, 1982

Dear Members and Friends:

The Hawaii Correctional Association is pleased to present the proceedings of its 28th Annual Conference which was held January 14-15, 1982 at the Pagoda Hotel in Honolulu, Hawaii.

Many critical issues confront criminal justice in Hawaii today and because much of what was presented at the Conference has direct application to these problems these proceedings have been compiled. We hope the proceedings will be of some assistance to you.

Thank you for your support in the past and we hope you will continue to work with us toward a more effective criminal justice system.

Sincerely,

/s/ Carolyn Hall
President

TABLE OF CONTENTS

	page
INTRODUCTION: HCA President	i
THE WARS ON CRIME	1
Franklin E. Zimring, Professor and Director, Center for Studies on Criminal Justice, The Law School, University of Chicago	
"GETTING TOUGH" IN HAWAII: PANEL DISCUSSION	2
Francis Keala, Chief, Honolulu Police Department	2
Edith Wilhelm, Assistant Administrator, Corrections Division, Department of Social Services and Housing	3
Harry Kanada, Coordinator, Adult Probation Supervision Branch, Adult Probation Division of the Judiciary	4
Dante Carpenter, Senator and Chairman of the Senate Judiciary Committee	7
"GETTING TOUGH" -- THE ISSUE AND ITS EFFECTS FROM A LEGISLATIVE PERSPECTIVE	13
John Waihee, Representative, State of Hawaii	
A DEFENSE ATTORNEY'S PERSPECTIVE: "GETTING TOUGH" -- WHAT IT REALLY MEANS	15
David Schutter, Attorney at Law	
THE JUVENILE OFFENDER: "BEATING THE SYSTEM?"	20
Barry Rubin, Public Defender, State of Hawaii	
VIEWPOINTS: THE FAMILY COURT -- "A WELL-INTENTIONED FAILURE?"	23
Herbert Lee, Administrator, Children and Youth Services Branch, Family Court, First Circuit	
Wayne Matsuo, Assistant Director, Youth Development and Research Center, School of Social Work, University of Hawaii-Manoa	

	page
"BACK TO BASICS" -- COMMUNITY INVOLVEMENT IN CRIME PREVENTION AND CONTROL	26
Yukio Naito, Chairman, The Mayor's Council on Law and Order	
THE COMMUNITY RESPONSE TO CRIME: PANEL DISCUSSION	28
Vickie Owens, Pohakapu Community Association 28	
Billie Haugi, Waianae Neighborhood Board 29	
Sharon Moriwaki, St. Louis Heights Community Association 31	
Ron Menor, Mililani Community Association 34	
THE JUDGE: THE MOST VISIBLE INSTRUMENT OF JUSTICE	38
Shunichi Kimura, Judge, Third Circuit Court	
ADOLESCENT CRIME AS GROUP BEHAVIOR: SOME RECENT POLICY SURPRISES	42
Professor Franklin E. Zimring	
SUMMARY OF SMALL GROUP DISCUSSION	49
APPENDIX A: Adult Corrections	
APPENDIX B: Juvenile Justice	

THE WARS ON CRIME (STATE AND FEDERAL)

In his opening address Franklin E. Zimring professor at the University of Chicago's law school and director of the Center for Studies on Criminal Justice, made the following points.

1. Future projections on crime cannot be made because we cannot explain the trends. We cannot explain why crime increased in the 1960's, or why crime leveled off in the mid 1970's or why there is a recent uptake in crime.
2. Street crime is a major national issue that may not have any Federal solutions. All the main remedies to the crime problem that were suggested by Chief Justice Berger in a 1981 address to the American Bar Association were local and State remedies such as swift arrest, prompt trial, and certain penalty.
3. There are only 3 options for the Federal Government: 1) "Pep talks" to States; 2) Funding State and local programs that meet Federal standards; and 3) Block grants to local and State governments.
4. The American prison system is in horrifying shape because the typical State war on crime has been the cheapest kind in the 1970's. In 1960 prison population was under 220,000 and declining. Today it's 350,000.
5. The great construction debate is whether or not to build more prisons--a \$40 billion question. Prison population follows capacity, so either you let the system get so bad that a smaller number are in worse shape or expand it so that more people are miserable.
6. The Federal Government's reentry into the war on crime could be a disaster because of the Federal options, support for prison construction is the most likely.
7. There are rational decisions that must be made before you know how much prison space is necessary. 1) What is the purpose of prisons? 2) Who should go? 3) For how long? If incapacitation is the purpose of prison, then shorter sentences and better facilities is an option.
8. Maybe the Federal Government should spend money and NOT expand capacity, but instead spend money on dismantling the American megaprisons some of which hold 14,000 persons in 19th century kinds of institutions.
9. To invest in the system but not expand it is a basic policy decision that should be explored.

"GETTING TOUGH" IN HAWAII - PANEL DISCUSSION

In a panel discussion following Zimring's opening address, the topic was "Getting Tough" in Hawaii.

Francis Keala, Chief of the Honolulu Police Department, made the following remarks as part of his panel presentation.

For many years rehabilitation of the prisoner was the primary objective in the administration of justice. Today the majority of the people in the community are tired of the coddling of criminals and no longer are they accepting the theory that criminals are "sick" and that society is responsible.

Over the past 15 years criminals have been catered to at the expense of the honest victims of crime and the honest citizen. The constitutional rights of defendants must be protected, but on the other hand, we cannot ignore the constitutional rights of the honest citizen. The criminal has already adequate protection under the constitution and by court decisions without the necessity of straining and bending backwards to give him added protection.

Punishment and restitution must be the price to pay for those who violate the property and rights of others. There must be the fear of punishment, for fear is a powerful deterrent. Fear of punishment will not deter those who are determined to violate the law, but consistency and the certainty of punishment will deter the majority.

We have been using the theoretical and idealistic approach in attempting to resolve the problem of crime. We need to take a look at ourselves and get back to reality.

Edith Wilhelm, Assistant Administrator of the Corrections Division and another member of the panel, made the following report.

Public concern over crime: The fear of victimization, the demand for personal and community safety, have resulted in a push for "getting tough" on criminals. "Getting tough" means to most people stiffer penalties: mandatory imprisonment, longer sentences, and mandatory minimum sentences. It is the adoption of a philosophy of punishment implemented by the increased use of imprisonment as the disposition for criminal convictions.

Would a philosophy--or public policy--of punishment reduce the crime rate? Considering that only a portion of the number of crimes committed result in arrest and conviction, would an increase in the rate of imprisonment be an effective general deterrence to crime and make this a safer community? While incapacitation could certainly prevent an offender from committing further crimes against society during the duration of his confinement, are we equally certain that that offender would indeed recidivate if permitted to remain in the community under supervision? Given these uncertainties, is there a method with which to determine the cost-benefits of incarceration?

During the last fiscal year the per capita cost of incarceration ranged from \$12,000 to \$21,000 (average \$14,936) a year or from \$32.00 to \$59.00 (average 40.92) a day depending on the type of facility. Because of the greater use of imprisonment during recent years, the correctional facilities are overcrowded. The DSSH and CD have, therefore, embarked on a program to construct another 500-bed medium security facility. The cost of construction

to accommodate a single inmate has been estimated at \$70,000. At such rates, shouldn't we be more discriminating and incarcerate only those who require isolation from the community?

It is widely held that in order to be effective, punishment must be swift and it must be certain. Many offenders probably commit many crimes before being arrested and convicted or avoid arrest completely. Our system of criminal justice--because of its inherent responsibility to safeguard individual constitutional rights--to the chagrin of the public, sometimes acquit the factually guilty or arrives at a conviction and sentence after a lapse of several months or even years. Thus, punishment is neither swift nor certain, and possibly not very effective in achieving general deterrence.

Is the goal of "getting tough" only to punish wrong doers? Are we really not more concerned with achieving a reduction in crime and a safer community in a cost/beneficial manner? Should we not also concern ourselves with increasing the effectiveness of the justice system by also getting tough by demanding greater efficiency of all agencies of the system as well as those concerned with prevention and with providing adjunctive programs and begin in earnest to integrate and coordinate those services to achieve the real goal of public safety?

Harry Kanada, Coordinator of the Probation Supervision Branch of the Adult Probation Division was the next panelist to speak.

According to statistics from the State Criminal Justice Information Data Center, in 1980 there were nearly 100% more index crimes (the 7 most serious crimes) reported to the police in Hawaii

than in 1972: 37,091 in 1972 and 72,102 in 1980. (1972 was the last year the old criminal laws were in effect and there were many mandatory prison sentences under the old laws. From 1973 to 1980 the new penal code abolished all mandatory sentences except for murder.) However there was hardly any difference in the number of convictions and referrals to the adult probation office for presentence investigations between 1972 and 1980. In 1972 there were 777 convictions in circuit court here and in 1980, 783. So there was a 100% increase in index crimes reported and a difference in only 6 in convictions. That's an interesting statistic and worth looking into. It could be the number of staff or perhaps a difference in prosecution style.

The number committed to State Prison in 1980, however, was 115% more than in 1972: 212 committed to prison on Oahu in 1980 and 94 committed in 1972. This seems to indicate that there is a decisive "get tough" policy on the part of the judges. But on closer analysis, the reason for the more than double rate of commitment in 1980 was actually due to the very high increase in serious crimes. In a handcount of the referrals made to the adult probation office, in 1972 there were only 4 murder convictions as compared to 14 in 1980. That's an increase of 250%. In 1972 there were 3 rape or sodomy convictions as compared to 18 in 1980. That's an increase of 500%. In robbery first degree, there were 8 in 1972 and 45 in 1980.

Although the adult probation office has not adopted a get tough policy as such, public safety is the bottom line and recommendations to the judges are based on the suitability or unsuitability of probation. Basic factors considered in all cases are:

seriousness of immediate crime; prior criminal history; dangerousness of defendant; and tendency to recidivate.

In the total number of serious crimes, Class A and B felonies, the total number of convictions in 1980 was 283 as compared to 161 in 1972.

The recidivism rate of people on probation has also gone up. Although the majority of people given probation do not recidivate, there are increasing numbers who do recidivate seriously. Predicting their behavior is a gamble and as long as these high risk defendants are sentenced to probation, we cannot expect our recidivism rate to go lower.

The key to a successful probation program is selectivity; pre-sentence investigations should be good enough to diagnose a case and to help the judge select those who have a reasonably good chance of succeeding under probation.

No one really knows what the answer is. The solution, which I do not advocate, to this dilemma is a more stringent sentencing structure. For example, since 1980 Class A felonies call for mandatory prison sentences. In 1981 there was a bill which did not pass to make Class B felonies mandatory.

If we are talking about selectivity and keeping the dangerous and those who recidivate out of the community, the only solution would be to have laws that would commit all Class A and B felons and perhaps all repeaters of Class C felonies. But you can imagine what kind of prison system we would have and the cost would be astronomical to the taxpayers. Perhaps Chief Keala is right and a return to the tough old days is the only way to cut down on crime.

The last panelist was Senator Dante Carpenter, Chairperson of the Senate Judiciary Committee. The text of his speech follows.

When I was a kid growing up in Damon Tract in the 40's and early 50's - I had a mental image of a person in authority. What I envisioned was literally, a tough, mean looking, hard talking, cigar smoking, ass-kicking S.O.B.!

A lot of time has passed since I was that kid and somehow people in authority don't really look like that - at least now a days.

Bearing this in mind, I've entitled my discussion "If people in authority aren't going to smoke cigars, then they ought to at least give the appearance of chewing tobacco!"

Getting tough on crime and criminals has now become household rhetoric and is the most important issue in Hawaii today. I don't think the State of Hawaii should be "getting tough" - I think we should already be tough and we ought to stay tough!

Barring pagan brutality and "unnecessary roughness" - I don't have any hangups with shakedowns at our prisons at anytime, when the safety of our personnel or citizens is threatened!

During this past legislative session, we tried to accommodate the problems of staffing and the increase in prison population statewide. One of the problems of staffing is high turnover or "shortage" of ACO's at OCCC and Halawa. We appropriated over \$300,000 for each fiscal year to raise the salaries of these people. But I know there are many more problems contributing to the shortage which must be resolved.

In addition, thousands of dollars were appropriated for new positions at the youth correctional facilities, Kulani, OCCC, Halawa and other facilities.

In response to the increase in prison population, DSSH received a CIP appropriation of \$3.5 million for plans, design and construction of a new medium security facility at Halawa.

As for tightening of laws, the Legislature passed laws on:

Prostitution - increased fines and installed a mandatory jail sentence after the first offense.

Repeat Offenders - amended obsolete and erroneous references.

Pornography - coincide with supreme court decision.

Guns and Firearms - amended penalties, attached qualifications for possession and ownership of firearms, and requirements for registration.

Murder - removed court's discretion of choosing 20 years alternative for the offense of murder - leaving sentence of life imprisonment with possibility or without possibility of parole.

Attempted Murder - added new section which mandates life imprisonment without possibility of parole if victim was (1) a peace officer in performance of his duties, (2) witness, (3) victim of a hired killer and (4) victim while defendant was imprisoned. Mandates life with possibility of parole for all other cases.

The Senate also passed a bill using similar criteria calling for the reinstatement of capital punishment. It is now reposed in the House. I agonized for weeks over this bill because I felt that perhaps the poorer defendants were not being adequately represented by competent attorneys. But I finally came to the conclusion that this was not the case, and they do receive the same competence like everyone else. With this in mind, I pushed for the reinstatement of the death penalty because I felt it is a deterrent for murder.

The question is did we get tougher? I think so! Are we going to get tougher? I think so!

I have a number of concerns this session, but will only dwell on a few.

Besides disagreeing with an obvious misnomer of the word "corrections" because this word implies correction - and I don't know of anyone who's been "corrected". But if we are to correct, then we must do it at the front end of the criminal justice system - after that its prisons, and sometimes rehabilitation for those few who want to be rehabilitated. The others will have to be dealt with by penalties and not coddled like children.

Now to the step-child of our Criminal Justice System. ..Nearly 9 years ago, we enacted a law that established a correctional master plan for the State of Hawaii. Part of this law was the establishment of the Intake Service Centers. The statutes spelled out their functions, duties and responsibilities that would virtually implement our master plan and by overseeing and tracking offenders beginning with (1) apprehension, (2) pre-trial, (3) pre-sentencing, (4) post-sentencing, (5) incarceration, (6) furlough or community programs, (7) parole and (8) after the person has fulfilled his sentencing and returned to live in the community. Since its operation, the ISC has never been fully understood, never been funded properly, and never been fully implemented. Stubbornness, jealousies and down right ignorance on the part of the Administration, Judiciary and the Legislature has kept the ISC from being the valuable tool it was meant to be. During the legislative session, I intend to work to correct this and implement the ISC in the way it should work, as a separate and whole division incorporating the present probation division of the Judiciary. If others don't share these same sentiments, then we might as well throw out the correctional master plan and remain in the hodge-podge, chaotic and disorganized criminal "in-justice" system we have today.

If we are to stick with the title of "Corrections", let's not delude our citizens anymore. If we are sincere in keeping tabs on the criminals and crime, then let's reorganize the structure of our state government to include a "Department of Corrections". This will show our State that we are taking the cost containing prisoners seriously and no longer burying it with all the other social problems in the Department of Social Services and Housing. It is not a social service; we are not serving the socially underprivileged in the Corrections Department, we are dealing with criminals from whom society needs protection, and for whom punishment has been awarded. I will be introducing legislation creating a new Department of Corrections to include the division of (1) probation - it is a form of "corrections", isn't it?; (2) both adult and youth correctional facilities; (3) the parole authority - an extension of sentencing; (4) the ISC; (5) the Criminal Injuries Compensation Commission; and (6) Detention Home excluding "status offenders".

These are just a few concerns which are of major importance.

One of my biggest disappointments during the last three sessions is the "mass silence" of both appointed and civil service employees of this State and its several counties. It is these people who know what the problems are in our State today, but they are unwilling to make them known. I have to conclude that either they don't give a damn, don't want to make waves for fear of reprisals, or are satisfied with the status quo, i.e., "waiting for their pension". You should know by now that "I'm not exactly in favor of the status quo." So if you see any problems please feel free to call me or see me and let me know what they are.

During this past year, I've had meetings with the Governor, Lt. Governor, Councilmen, Department Heads, Division Heads, the Chief Justice, Associate Justices, Attorneys, Attorney General, Commissioners, parole authorities, prison authorities, prisoners, prosecutors, police chiefs, politicians, sociologists, behavioral scientists, psychologists, statisticians, computer experts, students, interns, staff, philosophers, professors and just ordinary citizens. "Getting Tough" is only one half of what's needed. "Getting Together" is the other half!

I'm not here to criticize for the sake of criticism. But I ask in conclusion, if everybody here is doing what they think is right and right in what they are doing - and everyone here is part of the criminal justice system, then why do we have a growing crime problem? Maybe we're so close to the forest that we can't see the trees! Maybe in fact we're all part of that problem! Well I'm certainly willing to listen and learn, and act to help resolve some of them! I'll do my part, but I and the system and people of this State need your help to do it better!

In the discussion that followed the panel presentations, Harry Kanada expressed concern about mandatory sentences, saying, "you build a small eyed net to catch everyone." Kanada gave an example of recent legislation which makes possession of dynamite caps a 10 year mandatory sentence. Without judicial discretion, Kanada felt such a sentence could be a gross miscarriage of justice.

Senator Carpenter responded that some judges such as Judge Huddy have exercised discretion in denying that kind of sentence and that was a proper response from the bench if the judge feels

that it is an improper sentence. Senator Carpenter said that such decisions were a signal to legislators that they may have been overzealous. Senator Carpenter also said that when asked, the Judiciary did not advise legislators on how they might be hampering the system and that legislators' constituents were highly desirous of politicians taking the discretion away from the judges.

Asked to comment on Senator Carpenter's recommendation that all corrections related services such as the probation division be put under one corrections department, Kanada disagreed, saying that probation is a tentative sentence which is subject to the review of the judge and can best be administered under the courts.

Senator Carpenter said that probation was in the "correctional mode" and really fits within the Intake Service Center and to have both was a duplication of services aimed at the same persons and that duplication of services was a miscarriage of justice.

Edith Wilhelm agreed that probation is a correctional function. She also said that having all corrections services under one roof would be cost/beneficial.

Chief Keala said that when probation and parole officers went with the police on their beats, when there were violations of terms and conditions they were retaken and the program was then meaningful. Chief Keala also commented that in one Japanese prison inmates work both to be productive and to sustain the prisons. He said last year the prison took in \$3.6 million in manufacturing toys and furniture for export. He also described the prison as 9 people to a 17' by 17' cell and mentioned other conditions which were different from American prisons.

"GETTING TOUGH" - THE ISSUE AND ITS EFFECTS FROM A LEGISLATIVE PERSPECTIVE

After the panel discussion, Representative John Waihee, Member of the House Judiciary Committee, reported on criminal justice issues that this session of the legislature may focus on.

1. The career criminal and how best to identify, apprehend, prosecute and take out of circulation.
2. A witness protection support system. Last session increased the penalty for intimidating witnesses. One problem in this area is the prosecutor never really gets to work with the witnesses.
3. A review of the penal code. The present code was developed on the philosophy of rehabilitation. Mandatory sentences and removal of discretion from judges often increases the importance of discretion in other areas such as the prosecutor's office.
4. Insanity defense. There is a bill which establishes a new category of verdict, guilty but mentally ill. The bill would also create a forensic center.
5. A review of definitions of what constitutes a crime such as rape.
6. A review of the criminal justice system and upgrading the whole system. Getting more support and resources to the police and prosecutor's office and increasing the collaboration between agencies such as the police and prosecutor's office.
7. Policy questions of how to allocate resources especially when they are scarce. Mandatory sentencing requires increased facilities and our facilities are already overcrowded.
8. In terms of long range solutions to crime and resolving the problem, often the solutions we propose are the problems of the future and any long range solutions are keyed into how to restore a sense of community to our city.

Following Representative Waihee's talk there was a discussion on the necessity and merits of the guilty but mentally ill bill. One comment by Franklin Zimring was that both the insanity and death penalty issues would have no measurable impact on the rate

of street crimes in Hawaii and to be preoccupied with these two issues was a waste of legislative time. Representative Waihee responded that as part of the democratic process legislators had to deal with problems that might be statistically insignificant but morally important.

A DEFENSE ATTORNEY'S PERSPECTIVE:
"GETTING TOUGH" -- WHAT IT REALLY MEANS

Attorney David Schutter spoke on "getting tough" from a defense attorney's perspective.

Getting tough on crime cannot mean a cutting off of the lines of communication between the facets of the criminal justice system. For example the prosecutor's office could take advantage of educational seminars to learn how better to defeat defense attorneys.

The war on crime has as half of its battle "getting together" more than "getting tough". There is no enemy within the criminal justice system. In twelve years of practicing law in Honolulu, I have yet to meet within the official bureaucracy of the criminal justice system any evil people. I have seen a fair degree of incompetence, a fair degree of bureaucratic malaise and a tremendous degree of lack of cooperation, but no one who is basically evil.

And yet we are presently embarked, at least through the prosecutor's office, on a campaign to prove that they can get tough by calling everyone names. By attacking the Judiciary, the prosecutor's office has created a climate in which in a recent Advertiser poll, only 17% expressed confidence in the Judiciary.

A criminal justice system works only as well as people think it works. Ninety-eight percent of us pay our taxes because we believe the Internal Revenue Service works and we'll get caught.

The message that needs to get out to the public, from adults to elementary schools, is that the belief that the court system does not work is based on the media's inability--and again no

evilness--to accurately cover any judicial result in two and one-half minutes or less on television or in one column.

So what we have is a whole system being judged on only its most controversial cases, based upon the public statements and attacks of one side or another. You do not determine the size of an iceberg by looking at the tip. You have to go to a systems analysis approach--to the statistics, to the computers--to determine whether your system is working or not.

One of the problems within the criminal justice system is we don't have enough speaking out by those who are within the criminal justice community. The legislature in making its decisions, the public in formulating its opinions, deserve to hear.

One of the biggest mistakes is that for years the judiciary has felt that it occupies an august position, that it is unassailable and unattackable, and all of a sudden they have been viciously attacked individually and as a group.

Only in the last couple of months have we seen judges actually appearing before the Senate Judiciary Committee and explaining what they think of various issues. If you're going to have a problem with something, you better tell the legislature about it beforehand rather than after.

Until recently no one has bothered to go to the legislature at all on criminal justice problems. Now all of a sudden they are being besieged by special interest groups and community associations. The legislature and the judiciary are getting tremendous pressure and demands for mandatory sentences, long sentences and to imprison everyone.

We have to change the public image of the court system so that people believe that the entire criminal justice system works and you do that by making structural changes.

There are areas where the judiciary is being criticized where something can be done and there are areas where I would be terrified to do anything. I don't want to have mandatory sentences and sentencing commissions. You get the best judges you can find and you trust them to make the decisions which the legislature gives the outside perimeters for.

But there are areas where significant and substantial changes can be made in the judiciary's image which will then result in confidence in the judiciary which gives confidence to the entire criminal justice system which then acts as a deterrent. Because if you believe that the system isn't going to work then you aren't going to be scared of the system.

But how do we reach people to make them scared of the system? You don't make them scared of the system by imposing artificially long sentences and by mandatory sentences. It's swift and certain apprehension and conviction and sentencing--that's where the whole answer is. If the word gets out that from the day you are caught it isn't going to take more than 3 months to have your trial over and the appeal is going to take 6 months or less and you're going to be behind bars during the time you're appealing--that will make a difference.

Is the system as slow as it is because anyone is evil? No. However, most of it occurs because of the fact that the system is run and staffed by prosecutor's, defense lawyers and judges who

happen to be lawyers. That is the biggest problem we have--it's called "excessive fraternal cooperation".

No one wants to be a bad guy to his brothers in the bar. When a lawyer asks a fellow lawyer for a continuance, a delay, a favor, it's "you scratch my back, I'll scratch yours". No judge wants to have a reputation for being tough on lawyers because lawyers are part of the club. Therefore you do your judges a favor and put these time limits into rules.

The effect of delay is not just that the prosecutor's chances of winning go down massively, it is not just that witnesses die, disappear or forget, and it's not just that you go through 5 prosecutors. It is also the effect on the public. Presently we are averaging 8 months and 2 weeks to dispose of a circuit court case, but people think it's taking 14 months and they don't want to get involved as witnesses, they don't want to cooperate.

I don't think we have to make major changes in the Constitution or the Bill of Rights. We have to make major changes in our procedures. Things are being done now because "that's the way we always did it". No one has logically evaluated all of the gaps from the day of arrest to the day of final incarceration.

Getting tough--what does it mean to a defense lawyer? If it means mandatory sentences, we're making serious mistakes which simply play into the hands of defense lawyers.

There is a drastic reduction in the conviction rate the more serious people think the crime is and the higher they know the penalty to be, because if you've been instructed to acquit if there is a "reasonable doubt" and you know that the penalty is high, the conviction rate goes down.

If you want to get tough on crime you go to swift apprehension, conviction and incarceration and your conviction rate goes up if people think the sentence is 5 to 7 years rather than 20 to life.

You get tough on crime by getting effective, by getting together and bluntly questioning every single one of the basic tenants of the judicial and criminal justice system.

The fact that Representative Waihee and Senator Carpenter were here today and that they are holding interim hearings and they want to make changes in the law as necessary tells you changes can be made.

I am crazy enough to think that the fact that the criminal justice system is rapidly going downhill is not inevitable, that changes can be made by people like you and like me and the only thing that has stopped us from making the changes is that we have all taken the attitude that it doesn't make any difference. The changes can be made and the system can be made to work.

THE JUVENILE OFFENDER: "BEATING THE SYSTEM?"

Barry Rubin, Public Defender, spoke on the juvenile offender. This is a paraphrased text of his speech.

Are juveniles, as a class, "beating" the system? They can't be beating the system because there is no system.

Act 303 of the 1980 session indicated there would be, no later than July 1, 1981, a juvenile intake agency which would operate as part of the Family Court. We do not have an operating juvenile intake agency. The judiciary has used the excuse that the legislature did not appropriate money for the intake centers. I think that's inexcusable.

At least in the First Circuit, there were enough people in place in what was called the Intake Section of Children and Youth Services Branch and the Family Counseling Section and the Juvenile Detention Branch that if they had been welded together, a juvenile intake agency could have been in place by July 1, 1981.

The failure to have an intake agency in place and operating collides with another feature called "calendar call". The calendar call system of this Circuit has all but eliminated what used to be called "intake". Intake used to consider whether or not a child even ought to come to court or not. All children should not come to court. In a Family Court study called "Project '75", diversion on a random basis worked slightly better than court involvement. Enlightened diversion might winnow out youngsters who would not recidivate and allow resources to be applied to those who need it.

There are people who believe that more children should be locked up in the youth facility. But the system isn't working

there either. Act 303 also mandated that there be segregation by age, maturity, attitude, behavior, offense committed, commitment period and rehabilitation status. Obviously, if there is only one cottage for girls and only two cottages for boys, there is not a whole lot of segregation going on. So it shouldn't be terribly surprising to anybody that there is a complainant in a number of sodomy cases against other inmates in a cottage. So in that regard the system is also not working.

The section on parole release in H.R.S. Chapter 352 says that when a child is proposed for parole retake, the child's parents and counsel be notified. But we find that when a child is taken on parole retake, no notification is made to his counsel of record whatsoever. So the child may go through an entire parole revocation proceeding without parents or counsel being present. Those children are not beating the system because the system is not operating.

There were Family Court rules which mandated that every seven days a child in detention would have a rehearing before a judge, in person. For years the Family Court ignored the rules and did a paper review. When the Public Defender's office insisted on the seven day rehearing before the judge, the population of the detention home decreased markedly because officials began to look for alternatives. The Family Court asked for an amendment to the rules to eliminate that requirement which the Supreme Court has now done. So in that regard the system isn't working.

Judges used to order the Department of Education to make evaluations. Now the judge makes a request to the DOE rather

than a court order. The court has backed away from its responsibility to see that the other parts of the mechanism which deal with juveniles operate as they should. When we have difficult children who are referred to mental health clinics and they don't go, the clinics close the cases and call the juveniles "involuntary patients". So the Department of Health system is also not working.

As far as treating juveniles as adults, juveniles who cannot even attend school are unlikely to have employable skills and could not meet the "terms and conditions" of adult probation which require employment.

Let's get tougher, but let's not get tougher on these juvenile persons. Let's get tougher on the components of the system that are not working. Let's get tougher with the Department of Education, the Department of Health, the Department of Social Services and Housing, Corrections Division, Welfare and D.V.R. And let's insist that the court which is supposed to enforce the standards set by the legislature enforce the standards set up for the court itself. And then maybe there will be a system and then we can determine and measure whether these juveniles are indeed, "beating the system".

VIEWPOINTS: THE FAMILY COURT --
"A WELL INTENTIONED FAILURE?"

Also on the subject of juvenile offenders, Herbert Lee, administrator of the Children and Youth Services Branch of Family Court, First Circuit, and Wayne Matsuo, assistant director of the Youth Development and Research Center at the University of Hawaii, participated in a mock debate in which Matsuo took the devil's advocate role in order to raise issues discussed in the community.

First, Lee responded to Barry Rubin's comments on the calendar call system. He said Act 303 does present a "master plan" for the Family Courts in terms of how cases should be processed. Unfortunately what was going on at the legislature and what was happening in the courts were on a collision course. Two things were happening in the court--there was a tremendous backlog of cases and because of the backlog, cases were being dismissed. The calendar call system speeds up the process. Today if a child is referred to Family Court in Honolulu, for a law violation, within 2 weeks the child is before a judge.

The "debate" then opened with Lee addressing the issue of whether or not status offenders should be under the jurisdiction of Family Court. Lee contended that to remove the status offender means we in effect allow children to run loose in the community with no means to try and identify what their problems are and Family Court provides a forum to address both the needs of the child and the parents. Matsuo countered that there is no empirical evidence that courts' intervention helps parents to handle

their kids. The courts may instead remove from those parents the responsibility to act as parents and further encourage the surrendering of the parental role. The courts also may be discouraging the private sector from trying to do something about status offenders.

"Should there be an automatic waiver provision for juvenile felons?" was the next issue. In his "debator" role, Matsuo said that the waiver should be automatic because the Family Court could not be trusted to put the public safety before the interests of a child since the Family Court identifies itself as an advocate of the child. Lee answered that it was not enough to decide whether to waive a child based only on the offense itself. There are other elements to consider.

On the question of whether the Family Court should retain jurisdiction over persons past the age of 18, Lee said the present jurisdiction until age 19 was made to 1) allow juveniles who were already in treatment programs to complete the programs and 2) to resolve the problem that occurred when a juvenile who went through the waiver procedure and was not waived, turned 19.

Lee pointed to the problem that under Act 303 juveniles who are waived to adult courts can be sentenced to the Youth Facility although one of the conditions of the waiver is that he is not treatable in the juvenile system.

Matsuo said the extension of jurisdiction until age 19 has led to inequities, including the Family Court extending the commitment time of one juvenile up to 4 years. In such cases of extended commitment, laws might be changes so that such a juvenile

be sent to an adult facility rather than have the youth facility become a reform school.

As a devil's advocate, Matsuo recommended the abolishment of Family Court and criticized the secrecy of Family Court proceedings. Lee answered that the confidentiality gives juveniles an opportunity to change and insures that the juvenile can enter adulthood without a stigma. In closing, Lee said that the Family Court system had "failed" because it could not treat all the children, and because it failed to keep statistics of those who had gone through the system and made it (were successful).

Matsuo's final comment was that all the arguments he had raised he could make only because the agency had no empirical evidence to counter him. His advice was to "count". He also advised that criminal justice agencies go into the community and explain what the problems are because the community does not and cannot understand unless the agencies speak out.

"BACK TO BASICS" - COMMUNITY INVOLVEMENT
IN CRIME PREVENTION AND CONTROL

Attorney Yukio Naito, chairperson of the Mayor's Council on Law and Order, spoke on community involvement in the prevention and control of crime. Naito first explained that the Council is part of the Mayor's program to maximize the contributions of the City and County toward crime prevention and control. Other elements of the program include the existing agencies, such as the police and the Department of Parks and Recreation whose programs relate to the problems of crime, and how to maximize those existing programs.

The next element is the Intergovernmental Council on the Criminal Justice system which is set up to facilitate communication between the different components of the criminal justice system so that the day to day operational problems and the problems between components can be discussed and cooperatively resolved. The third part of the Mayor's program is the Council which is advisory to the Mayor and will recommend programs that the City can sponsor or undertake.

Naito said that community involvement is basic to crime prevention and control. When "community" is defined in a broad manner, to include the neighborhoods, schools, chamber of commerce and any and every business and civic organization, the potential force that can be brought to bear in preventing and controlling crime is staggering. The need for community involvement should be obvious, the professional police force and other institutions whose official duties are to deal with crime cannot alone prevent

and control crime, because their number is limited and because they cannot be everywhere at the same time.

Community involvement can take many forms. Neighborhood groups can have education programs in ways to take precautions to secure homes from break ins and can form block watch programs. PTA groups could concentrate on the school's role in delinquency prevention and the reintegration of offenders. Volunteer parents could lead field trips and other activities, tutor in remedial work and act as teacher's aids. Hospitals could join together to institute drug programs and treatment centers. Business groups could conduct employment programs. Civic groups could help school drop outs return to school, secure jobs for young people and involve adolescents in social, educational, and other worthwhile work. The possibilities are endless.

But why community apathy? Why is the attitude of "don't get me involved", so prevalent today? Commentators have called our society a "me first", "selfish" society. This attitude spills over into how we bring up our children. Parents place their children under extraordinary pressure to achieve, to succeed, to please. They hurry their children to grow up. The children become "burn outs" at an early age and drift into a life of indolence, drugs and crime.

If crime in America and in Hawaii is to be prevented and controlled, we must begin to slow down our quest for self-gratification. We must begin to give of ourselves for the benefit of others and be willing to respect and cooperate with the law and its official representatives.

THE COMMUNITY RESPONSE TO CRIME - PANEL DISCUSSION

The next presentation was a panel made up of representatives, from four different communities, who spoke on their community's response to crime.

Vickie Owens of the Pohakapu Community Association described her community and its response to crime. Pohakapu is in Kailua, residential with 400 homes, and includes several churches, the Windward YMCA, a 7-11 business complex, Kailua High School, the Hawaii Youth Correctional Facility, the Kamehameha Conditional Release Center and Castle Hospital.

The Pohakapu Community Association's approach to preventing crime has been to build basic community awareness and to foster a sense of community by promoting communication within the community about the community with: 1) a monthly newsletter; 2) monthly meetings; 3) social and service projects; 4) annual elections for president and board of directors; and 5) maintaining liaison with businesses and institutions in the neighborhood.

The newsletter, "The Pohakapu View", includes news about the high school, the youth facility, the conditional release center and also reports crimes committed in the area.

From board meetings to hikes, the activities of the association are free and open to the public. Teens are encouraged to get involved and this year two are on the board. The Haunted Castle last year was the work product of teens and children of the neighborhood and the residents and staff of the Kamehameha Conditional Release Center.

The Kamehameha Conditional Release Center has been our longest and strongest liaison. Every month the residents prepare our newsletter for mailing, often with deadlines of less than 24 hours. They've supported us in the clean up along Kailua Road and in the preparation of refreshments for the kid's Christmas Parade and party.

We have a relationship with Kailua High School and each newsletter carries an article about the school with the school getting extra copies of the newsletter. Our meetings are held at the school, our volunteers work in the school office, and last year we awarded a scholarship to a graduating senior. We have also been successful in requesting that the 7-11 store near the high school not sell alcohol.

Through exposure to one another, in social functions, meetings, community projects and the newsletter, we learn who lives with us. We learn who the community is and conversely we learn who the community isn't. This frequent contact and communication instills a sense of community and a community awareness that has basically been our approach to crime.

Billie Haugi spoke about the Waianae community's response to crime which has been to attack the root causes of crime. Of Waianae's residents, more than half are Hawaiians and more than half are 19 or younger. They are alienated from schools--out of one senior class of 111, 34 were reading below the 4th grade level. So when kids are at that kind of level, they're going to be very frustrated, very alienated and they're going to act out in different ways. So the community response is largely: How can we

atack some of the root problems? What kinds of alternatives, what other kinds of experiences can we offer to kids so that they are not as tempted to get involved in criminal activity.

One of the basic things that we've done is form a School's Concern Coalition which has 200 active members and includes agency people, parents, teachers and all kinds of people, who have come to the recognition that if something doesn't change in the school system, we'll continue to turn out kids who are unemployable, angry, frustrated and who are going to activities like crime. They can't get a job and they look around and the only model in town living the life they want, like big cars, are people involved in criminal activity and it becomes an incentive to get into that kind of life. The coalition has looked at the school system and is now beginning to propose rule changes, remedies and programs to the Board of Education.

An organization sponsored largely by the Hawaiian Civic Club started two years ago with kids to restore a heiau at Pokai Bay. In addition they got a national maritime grant to build a double hulled canoe. They have one in the water and are planning to build another. The Waianae Rap Center, with the help of other agencies, has the Camp Kaala Farm Project. They have restored loi and are planting taro, generating some income and giving kids a positive work experience. Not only are they learning to work, but there is a strong component of positive ethnic identity in all of these programs.

The Waianae Heritage Center has several programs and plans to start canoe paddling at Waianae High School. There is a strong identity with that sport in Waianae. There is also a small grant

to institute surfing at Waianae High School with an emphasis on team surfing and with a requirement that a standard of school work be met so that kids are learning because there is some value to them. With a donation of a 70-foot Tahitian canoe, plans are being made to use that to give kids some experiences on the ocean. We have hula halaus in which kids are not only taught to dance but are taught all of the cultural values and given some understanding of how you live your life in relation to the land, to the ocean and to the people around you. The Liliuokalani Children's Center has an agricultural program for kids who are alienated from school and many of those kids eventually get back into school and graduate.

This shopping list is not inclusive but represents largely the approach of Waianae to crime which is to pull together the community agencies, the community service organizations and individuals to try to give kids other kinds of experiences as well as looking at the institutions that are supposed to be providing kids with the skills that will enable them to lead productive lives. To a great extent, in Waianae, these institutions are not meeting those obligations and we are seeing what we can do to bring about institutional changes so that the kids have a chance.

Sharon Moriwaki, president of the St. Louis Heights Community Association, reported on her association's work.

Last year the association did a community survey of the 1200 households in the area, with the help of Hokulani School students who went house to house. The survey asked what the issues and

problems the association should be involved in. The result was 74% said crime. The association's board met with police and were helped to set up a neighborhood crime watch program. The association's crime program is three pronged:

- 1) Get the community together to get their homes in shape so they wouldn't be burglarized.
- 2) Get people together to watch each other's homes and to know each other and know when people were in and out.
- 3) To involve the community in understanding the judicial system, the laws, and what makes for crime prevention.

What we found in our experience in the courts was that you can have the most glorious crime prevention program and all you need is one or two crimes where you take the victim to court and nothing happens. We found that everyone pointed fingers at everyone else.

There was a violent robbery in our area about a month after we started our crime watch program. The neighbor saw a kid and called the home owner at work and asked if the kid was supposed to be in the house. The owner of the house rushed home with her two friends. The kid panicked and started beating up on these women and that got us very much into the case because it was a violent crime. We followed the case and the victims and it was really very difficult for the women. The Witness Kokua Program helped but not enough. They had a pretrial hearing in which the witness and victims were to give all information on the crime. They were given a couple of sheets of paper to tell them what the hearing was going to be about and what they were supposed to do. But they went into the courtroom and one of the witnesses was

sitting right next to the family of the defendant. Because they had gone through so much already, to go into that kind of situation, not being briefed, not being counseled, left them even more fearful and feeling more powerless.

So we decided that we should find a way in which that information of the violence of that crime could get into the courts and could help in the sentencing of these defendants. So the association requested to be an amicus curiae, a friend of the court, that we would provide information that the witnesses and the victims were not able to get into court and that we would help insure that these kids involved in a violent crime would get justly sentenced. We were told that this was never done before and probably would not be possible, but we did go to court.

Now in the court hearing on our request, we started out with 30 people and it dwindled down to five or six over the four months of delays because everytime we'd go to court we were told that it was delayed and we weren't told prior to going so we would ask everyone, we would go down and then they'd tell us it was delayed and give us another date. So that was another problem we had with the courts.

In our request to provide information, the judge told us that we should go to the Prosecutor's Office. Within the same hearing, the judge also told us that the Prosecutor's Office has decided to remain silent, that they had plea bargained the case. We had little information about the plea bargaining which would have been that if the defendant had good behavior during a certain period of time then the whole case would have been dismissed. We went to the Prosecutor's Office and found that it's not the

Prosecutor's Office, it's the judge, and the judge should know that in a violent crime you cannot have a deferred acceptance of guilty plea and through that we found that the judge should not have allowed the dismissal.

What we found is that the judicial system, for the community, is very difficult to try to channel through. When you talk about community associations and various groups feeling apathetic and powerless, a lot of that comes with not seeing any responsiveness by the system. I would like to propose that there be some kind of workshop, in the community, in which this is exposed. What is the judicial system? What is the relationship between the police department and the Prosecutor's Office and the courts and even the legislature? How can we change the law, if it is the law, to make it more effective so that these different agencies really do work together and we can really see some changes. I think this way the community would become more involved because they see that in fact what they're doing is not just spinning wheels.

Ron Menor of the Mililani Community Association described his association's crime prevention work.

In the last six months this community association has organized a block watch program that so far has 52 groups, on different streets, of 10 to 15 homes each, in order to respond to the community's needs. Mililani, like any growing community, is suffering from rising crime rates, especially burglaries. It is a community of 20,000 residents who share limited police resources as the Wahiawa Police Station serves an area from Mililani to Kahuku. In addition, the association's members recognized that

there was community outrage and frustration toward the crime problem. Homeowners and victims who are robbed or whose homes are vandalized bear the ultimate costs in paying for the loss and are not reimbursed or compensated.

So to meet those needs, the association worked with the police department to see what the community could do to assist the police department in the area of crime prevention. The police department has been helpful and cooperative in encouraging community programs.

There are several parts to the crime prevention program which is designed to try to channel the frustrations of people in a positive direction.

The first area is the Neighborhood Block Watch program. Neighbors are asked to get to know each other a little better, exchanging telephone numbers in case there is an emergency, knowing when a neighbor is going on vacation and residents are told to call the police if they see anything suspicious and that's hard because many are hesitant.

There is a problem in that there is a distance that has been growing between the police department and the community. The association is trying to bridge that gap, build creative cooperation, get residents to report the crimes they see and to keep a look out for their neighbor. The leader of each block watch group works with the association to try to determine if there are crime problems and if the police have information about burglaries the association relays that back to the people in the block watch who can then keep a look out for the police department.

In addition to the block watch program, association members have passed out brochures on home security and makes available,

free of charge, engraving equipment for Operation Identification so that if property is stolen the police will have an easier time tracing it and returning it.

The association holds monthly seminars. Past speakers have been City Prosecutor Charles Marsland, Judge Betty Vitousek and plans for other speakers include David Schutter and a speaker from the probation office. Also, in the monthly newsletter, there is a news column about home security, criminal laws, and other issues.

The basic feeling that we are working against is, although there is also this feeling of outrage, there is also a feeling of powerlessness, a feeling that our system really cannot do anything. It's going to take increasing public confidence in the overall law enforcement system. It's really a cooperation of citizens and the law enforcement system that we at Mililani feel is going to remedy the problem. We hope the program will expand to other communities and we're happy about how it's going so far.

In the discussion that followed the panel presentations it was pointed out that each of the four communities, each in its own way, was leaning on the system--on the school system, on the court system.

Asked about the differences in their approaches to crime prevention, the panelists each answered.

Billie Haugi explained that no block watch programs were needed in Waianae because Waianae is a community of neighbors who know each other and so the system already exists informally. Burglaries do take place in Waianae but they tend to get handled by more informal systems and things get solved. Sharon Moriwaki's

area has residents who are older and there is not the same need for youth programs. Ron Menor said that Mililani's association has an Education Committee that works with the high school and elementary school to see what their needs are and make recommendations and suggestions. He said emphasis should be put on both long range programs and the immediate crime prevention programs. Vickie Owens said the general meeting of her association will soon vote on whether to begin a block watch program and that they request that anyone who has been burglarized to report it to the newsletter editor so the statistic can go into the newsletter and people can see if there is a trend in a certain area.

Menor said the Mililani block watch program already seems to be having an effect in that the increase in the crime rate in the area seems to have slowed.

In answer to a question about programs in Waianae that failed to be effective, Billie Haugi said that some of the smaller amounts of money are now achieving far more in terms of progress with kids than programs such as Model Cities. That community based organizations such as the Hawaiian Civic were having a lot of impact with not much money.

Ray Belnap, former head of the corrections division, said the Black Point association has had a successful block watch program for twelve years and they have worked with the police to successfully prevent and solve crimes on their street.

THE JUDGE: THE MOST VISIBLE
INSTRUMENT OF JUSTICE

The Honorable Shunichi Kimura, Judge - Third Circuit Court, began his talk by noting that most professional conferences seem to provide a forum for professionals to perform self-flagellation of a sort in that we criticize ourselves and concentrate on the faults within our system of justice. What is most visible to the community is the 5% of failure we face because not much media coverage is going to be given to our overall success in carrying out the mandate of our agencies. He wanted the conferees to remember that they were doing good work with the 95% that the public did not see.

Judge Kimura suggested that the HCA Conference was misnamed (Getting Tough) because Hawaii's criminal justice system is already tough, "We are not getting tough, we have already arrived there! We are tough!" By whatever measure one uses, he said, we are tough and the future shows an extension of this toughness. There are, however, serious consequences.

While he appreciated the public cry for toughness the consequences included:

- Mandatory prison sentences: with corresponding overcrowding. Building cells at \$70,000 per cell and millions later to operate them.
- Automatic waiver provisions and a push to remove confidentiality from the family court system.
- Proposed Diction of Judges: A threat to the required neutrality of judges.

Judge Kimura stated that the proper body to respond to changing public norms and mores was the legislature. The judicial

branch of government is not to respond to public clamor and changing values. Judges are not advocates. They are to interpret laws enacted by the legislature as impartial arbiters. They then apply the law to the facts of a given situation. For those that urge that the judiciary stray from this role he suggested that it would be well to look again at the constitutions of Hawaii and the United States, and the common law. The public looks to the judiciary not only for safety but a just system.

In dealing with the issues confronting criminal justice Judge Kimura pressed for a rational perspective. He questioned whether or not there was a significant problem with the exclusionary rule or whether the small number of instances in which we have had problems with this rule gave us the impression that it creates major problems.

Deal honestly with the issues he exhorted, and in the issue of insanity state clearly that a guilty but mentally ill statute does nothing to change the processes of what is known as an insanity defense other than to provide the jurors with a fourth choice besides guilty, not guilty, and not guilty by reason of 704 (Motion 704). It is, he said, really a comment on treatment.

Before we turn to costly prisons, do we not have the responsibility, he asked, to go forth and search out the problems inherent in this solution. The simple truth that all have to face is that men imprisoned will one day return to the community, and how will they return? Where is the cry, he asked, for alternative programs like the Liliha House program of the John Howard Association? These are not futuristic concerns, these problems exist today.

With regard to bail Judge Kimura stated that what people really seem to want is preventive detention. Be honest about it he said, face squarely the problem of dealing with what is required by the constitution, namely a presumption of innocence. Supervised release is actually safer than bail because the probation officer supervises the person and the court gains some insight into a releasees ability to follow conditions.

The Judge made one final plea to all concerned with criminal justice issues. Before we commit ourselves to a plan of action we must research the problem and gather what empirical evidence we have. We must gather people together to make the soundest possible analysis. If then we want to get tough then let us get tough, not only on imprisonment but levels of imprisonment and a variety of programs.

Judge Kimura concluded by saying "...and as we clamor and as we urge and as we debate and demand that people get tough, please also urge and demand that all of us get effective in our administration of our programs. For getting tough may not mean sending an individual who committed negligent homicide and who was a perfect citizen otherwise to prison. Getting tough may mean to be effective, so that that individual can go to a house of restitution, and work and support himself and his family, and carry on his business, and yet pay the thousands of dollars to the widow or widower and the children that may have been left behind. Is not that a tough kind of sentence? Is it not tough for a judge to say that this individual is not physically violent to the community to witnesses or to other people but indeed he needs a high

degree of probation supervision so that we can demand of probation officials that the probation be very strict and very severe, so that there is accountability, so that when the judge says 'get a job', that is exactly what it means? That if you are not employable, go be employable, and get a job and support yourself, and pay restitution. I have no problems with that kind of toughness. For that really in my mind is that we should be effective in whatever we do. But I suggest for those of us that cry and demand for toughness that we recognize that what we are really saying is 'Let us all be effective in the job that we do!'"

ADOLESCENT CRIME AS GROUP BEHAVIOR:
SOME RECENT POLICY SURPRISES

In the final session of the conference, Franklin Zimring spoke on adolescent crime and recommended examining empirical data before voting on gut reactions to mainland "cures" such as prison construction, preventative detention, career criminal programs, incapacitation, punishment as a purpose for policy and discretion shifts that include abolishing parole, determinant sentencing and sentencing commissions.

The most vulnerable part of the system is the juvenile court and no institution is more under attack than the juvenile court. But beware of experts with pet solutions. Since a 1924 Chicago study, social scientists have known that 8 out of 10 kids accused of stealing, steal with other kids. We also know that two-thirds of the robbers over 21 rob alone and two-thirds of the robbers under 21 rob in groups. In New York 80% of juveniles involved in homicide are in a group. Adult patterns are different, there is far more solo criminality. Adolescent offenders, especially boys, when they commit crimes, do so in groups.

Beware of experts with pet solutions to crime problems because that obvious fact that kids commit crimes in groups was unknown to a substantial part of the expert community on which legislatures draw for advice, for a long period of time. That obvious point of adolescent group criminality has been importantly missed.

In 1974 in the Juvenile Justice Delinquency Act, 43% of all crime was attributable to adolescents. However, we systematically overestimate because when we keep score, we forget the group phenomenon. In city "A" four kids are arrested for burglary #1 and

one adult is arrested for burglary #2. The statistics would then read that 80% of all burglaries is committed by kids. That's a serious problem. Arrest statistics double, triple, and sometimes quadruple count the kids as though each was responsible for a separate crime.

In New York, to crack down on this hoard of youth violence, two pieces of legislation were passed regarding automatic waiver and designated felons. The number of homicides committed by juveniles under 16 in New York is a maximum of 4% and a minimum of 2%, but there was no way the legislature, the courts or the police department could know that because the arrest statistics did not take in the group phenomenon.

In Harvard and Rand Corp. research, adult offenders say they have a higher exposure to crimes when they're in middle adolescence. So theoretically, if we want to maximize the incapacitative bite of the criminal justice system, it's "get them while they're young." But factoring in the group phenomenon turns a set of statistics on optimal incapacitation on its head.

There is no guarantee that any net preventative consequences will come from imprisoning part of an adolescent group. How many crimes are we going to stop by locking up two of the four kids who commit a robbery? Maybe none, unless we lock up all four kids. Some research suggests that the two on the outside will get two other friends. But if you lock up the solo adult, you are sure of some incapacitation. By factoring in the group insight, you go from a policy that suggests "lock up the 16 year olds" to a policy of "locking up the 22-23 age group is 'a much effective' way of preventing crime."

By ignoring the group phenomenon we've also missed a marvelous opportunity to study the career criminal. The vast majority of juvenile delinquents stop committing crimes. Our failure to understand the distinctive group phenomenon means we haven't looked for what the signs are of criminal maturation.

My special pet peeve is what do you do with the kid who is a follower? If five kids agree to commit a crime and it's a 6-block walk by the time they're in the 5th block, if there was a secret ballot all five would vote to forget it. But the kids would rather go to jail than be "chicken" to their friends. My complaint is that the Institute for Judicial Administration's and ABA's 24 volumes of standards on juvenile justice, the group problem is never mentioned.

In response to questions from the audience, Zimring made the following points.

1. Don't believe that only a tiny fraction of serious criminals is seen by the corrections division because only a tiny fraction of all criminal acts are cleared. The average take in a robbery is \$10. Take how many robberies it would take to make a living and calculate the chances of getting caught. Once there is a victim, the chances of getting caught are high. The exception to this rule is victimless crimes.

2. 90% of the serious violence in America makes no sense. I think if just at the point when an argument is at its peak, if you could get there, more than one-half of the people who are going to kill would take \$25 to forget it.

3. There are 2 theories on the two track system. One theory is to get the really "bad" kids out of Family Court and into the Criminal Justice System quickly. For me, the two track system is a coordination between courts, not automatic waiver but waiver by individual case, and a coherent set of principles in both the juvenile and criminal courts toward the special policy problems of sentencing young offenders.

4. Time conditional sealing is a system that delivers better information. If a juvenile is adjudicated and if he is arrested within 3 years, the prosecutor gets the information. If the offender is acquitted, then the record is resealed and if the offender has 3 years clean, the record is permanently sealed.

5. The problems we worry about in using adult criminal courts have solutions that can be made in criminal court. We worry about harsh sentences, penal facilities, and courts not taking into account special mitigation. The California Youth Authority does not take into account whether, you came from the juvenile court or the criminal court, they keep facilities in which the majority of prisoners under 21 are in institutions which are age appropriate.

6. Don't believe people who say don't use homicide as an indicator. Homicide is related to two other crimes, aggravated assault and robbery, and one out of 100 robberies becomes a homicide. Compared to other countries which measure their homicide rates in the small numbers per million, our base homicide rate is 4.3 per 100,000. In 1974 and 1981, the homicide rate was 10 per 100,000. That's a real increase.

7. Honolulu may have increasing problems with violent crime. Manhattan Island is the nation's capitol for crime hysteria because the very poor live very close to the rest of that social order. You can't build walls around the problem. Honolulu is a densely populated city. There is no convenient way to segregate risks in a community like this, which means serious violence can be much more wide spread. So far the crime problem is mostly the burglary problem, but Honolulu is like Manhattan in many ways.

On the mainland, black men as both offenders and victims are 13 times more likely to be homicide offenders and 10 times likely to be homicide victims. In Hawaii, the ethnic Hawaiian male is of higher risk both as offender and victim.

8. Legislators need to be told, you can't do everything, pick your priority. What you have to say is: How many prison beds are we going to have next year? Would you rather send a "B" felon for first offense or would you rather send a "C" felon, second offense? Because you can't do both without more prison system than you are going to have.

One ludicrous example has to do with sentence lengths. We know that incapacitation, to some extent, works, that at least one-third of the time, when you lock up a 21 year old offender there are burglaries that are not committed because you do that. But the trade off is this - when you give a burglar a 10 year sentence, in the tenth year the probability that you are preventing any burglaries is diminished enormously. Crime is a young people's game. People get sensitive.

A sense of resource limits should immediately lead legislators to understand that offender A's tenth year is competing for scarce

public resources with offender B's first year and to the extent that we have to use prison, to use it efficiently suggests that we understand that competition and our own limited capacity to predict.

Judge Shunichi Kimura commented on mandatory sentencing and determinant sentencing: The carte blanche taking away of judicial discretion creates enormous problems and inequities where the severity of prison should not be, particularly when you have mandatory imprisonment for all Class A offenses.

At least leave to the judges a limited amount of discretion with as detailed a guideline as possible, so that a judge can make an exception, with the right to appeal on both sides, because otherwise we're going to have inequitable sentencing in situations that just should not be.

Determinant sentencing resolves the one problem of disparity, but I'm not sure we need determinant sentencing, or presumptive sentencing, or sentencing commissions to resolve that.

I also have a reservation about determinant sentencing because our penal code is disjointed and needs review. The Illinois Correctional Master Plan for Hawaii ran straight into "getting tough" and died. We have modules but programs were never developed. The penal code provides for a wide range of discretion and I would advise the legislature to provide a much more detailed guideline for us to follow. As a judge, I would want a reasonable amount of discretion so that we can individualize the sentence. I think we can attack disparity in different ways, by having detailed guidelines.

The problem with mandatory sentencing is that defendants come in all shapes and sizes, attitudes and disciplines. If we don't have discretion, we're going to have extremely inequitable sentencing that creates a cruelty situation. Police officers on the beat have discretion - we expect that. Eliminating the discretion of the police officer would be very unfortunate.

We aren't communicating to the legislators beforehand and we have to.

SUMMARY OF SMALL GROUP DISCUSSION

The 28th Annual Conference of the Hawaii Correctional Association (HCA) held two small group discussions on January 14, 1982 to address current issues in adult corrections and juvenile justice. A set of questions were posed to each group and a summary of their responses follows below. The questions and a complete text of notes and responses to the questions are found in Appendices A and B.

ADULT CORRECTIONS

Question: Should the State of Hawaii continue to increase the number of commitments to prison?

The majority of responses favored continued incarceration if the crimes were serious. However, the groups also felt that sentences should be shorter and basic issues such as what the purpose of incarceration is should be dealt with. Segregation of hard-core criminals from less sophisticated inmates and alternative types of prisons were other suggestions made by the groups.

Question: Should there be an increase in prison construction?

Opinion was divided on this issue. While the groups recognized the overcrowded conditions of facilities in this state there was concern expressed about the tendency to fill all prisons that we build. As in the preceding question, the groups felt that alternatives to traditional incarceration must be explored before

wholesale commitment to new prison construction. The groups also expressed a need to monitor and evaluate more systematically the types of persons requiring commitment.

Question: Should there be a continued emphasis on mandatory commitment sentences?

The consensus of group responses answered no to this question. Concerns were raised about the impact of such sentences on increasing the prison population and on the need to continue to focus on individual needs of offender (for punishment as well as rehabilitation).

Question: What alternatives can be suggested to deal with adult crime in Hawaii?

Several group responses to this question recommended more efforts at prevention rather than dealing with crime and criminals after-the-fact. Community based alternative programs and a separate department of corrections were also suggested. Two groups noted that the Intake Service Center, which was to be the hub of the Correctional Master Plan, is still not functional. A belief that the system works and the certainty of detection and punishment were seen as essential ingredients in crime control.

JUVENILE JUSTICE

Question: Should the Family Courts surrender authority over Status Offenders?

Opinions were divided on this issue. While the consensus of the groups was that status offenders should be treated different from law violators many people felt that the authority of the court was necessary as a last resort when other efforts at intervention had failed. An unanswered question in discussion was what would happen to status offenders if the court simply surrendered all jurisdiction over them.

Question: Should there be an automatic waiver provision for juvenile felons?

The groups were unanimously opposed to an automatic waiver provision for juveniles, recommending a case-by-case method instead. Some groups commented that while it (the automatic waiver provision) was never necessary there is no real problem with it except in terms of time.

Question: Should there be a mandatory commitment sentence incorporated into the juvenile system?

The consensus of the groups felt that no mandatory sentence provision was necessary for the juvenile system.

The following questions were not responded to by a majority of the groups because of time constraints but those groups that did respond answered no to each.

- Should the Family Court retain jurisdiction over persons past the age of 18?
- Should all juvenile felony cases be handled by the adult criminal justice process and the Family Court be abolished?
- Should Family Court proceedings be made public record?

ADULT CORRECTIONS

1. Should the State of Hawaii continue to increase the number of commitments to prison?

Yes if crimes are serious. And there appears to be more serious crimes these days.

Yes if crimes serious. This must be defined better.

- What happens to the inmates when they are incarcerated? What is the purpose of incarcerating people? What function does a prison serve?
- Segregate "hard core" criminals from first time offenders and "light offenders" who need rehabilitation.

Increase incarceration (but) for shorter terms.

- Questions go hand in hand
- Punishment for crimes will lead to prison, because of this there will be a need to increase the building of prison
- Should look into the feasibility of alternative type prison such as mentioned by Chief Keala
- Increase in commitment is a given. Reality is that we must build.

2. Should there be an increase in prison construction?

- Yes. Present prison overcrowded.
- No. Money should be used for more rehabilitative

programs - intervention, foster homes for juveniles, halfway houses, Kulani Honor Camp. There must be a better way to assess which people must be incarcerated and which people can be better serviced elsewhere?

Are we gonna punish or rehabilitate?

Will probably be necessary but much work needs to be done in defining how prisons should be used because - the more prisons the more prisoners.

A need does exist, there are a lot of serious crimes that are being committed that are not being detected. Need to monitor more.

The more prisons that are built the more that option will be used.

Make terms more certain but short. Make rehabilitation programs after release.

How do we use prisons? How should prisons be used? Individual needs must be the focus of sentencing.

How do we make inmates work and or otherwise become productive citizens upon release.

Separate facilities for different types of persons

* Need to increase expenditures to build alternative types of facilities to prisons (pretrial, medium security, high security), programs, farm, productive environment

3. Should there be a continued emphasis on mandatory commitment sentences?

Fixing terms may help increase certainty of punishment, however, individual needs are not met in this type of process.

Fixing more and more sentencing in mandatory terms will result in larger populations in prison.

No. Look to alternatives. Lock-up not a solution for everyone.

4. What alternatives can be suggested to deal with adult crime in Hawaii?

Department of Corrections to become self sufficient.

Develop ISC - do what they (are) supposed to do.

Streamline bureaucracy - separate Department of Corrections.

Have legislators hold department and agencies accountable.

- More staffing. Early intervention/prevention. Help children cope with stress through workshops in DOE.

- More community support based programs that advertise people that got into trouble who are now "making it" - the "successes."

Community services as an alternative can serve as a significant and effective response to some crimes?

Provides some deterrent effect. This should be extended into prison programs. Olinda should be reopened.

Cultural biases are also influencing criminal justice problems. These cannot be forgotten in any reform effort.

Efforts need to come from the community on prevention.

This is known to have helped others before.

The general social system does work, fear works in controlling behavior. Certainty in punishment needed or otherwise inmate values must be changed.

People need to believe the system works or otherwise no fear will be felt.

State is doing little in preventing crime, more is needed.

Community service restitution.

Crime prevention must be emphasized in the school and the community.

How can we decrease the prison population/what kinds of alternatives do we have?

- early intervention - start at early age, look at schools
- functional ISC's
- perhaps there are no alternatives left - just getting the job done with what we have.

JUVENILE JUSTICE

1. Should the Family Courts surrender authority over Status Offenders?

- Private agencies lack authority (legal) to assure compliance by status offenders.

- Ditto - DOE.

- Therefore, no enforcement; no forum. Court needed to enforce compliance by parents, juveniles and agencies.

Yes philosophically. However, when actually dealing with chronic status offender, there is nothing one can do with them when they exhaust resources. Also, they behave similarly as law violators. Most status offenders are also involved in other law violations.

Different types of status offenders - chronic

Yes. Should be turned over to DSSH (law should be changed).

No. Status offenders should be separated from law violators.

Where would they go? They may ultimately break the law anyway.

Runaways are hard to work with.

Some must keep track of runaways.

Family court might operate as referral center. Perhaps another agency could handle this service.

Take them away from the court is a preference with Judiciary.

Most of current efforts of the court is to make sure the child does not have to be managed by the court.

Often there are significant problems underlying a runaway case and thus attention is important.

Yes with regard to solving all problems related to running away - give to DSSH.

2. Should there be an automatic waiver provision for juvenile felons?

Automatic waiver provisions was not necessary in the first place. No big problem with it now however.

Comments:

- Not automatic waiver. Should be taken case by case.
- What about rights of person in community
- Depends on age and offense

Proposal: Family Court to handle all law violators.
Status offenders should be separate.

No. Each case must be weighed individually - social factors, family ties, etc.

No real problem with it or without it, not necessary.

3. Should there be a mandatory commitment sentence incorporated into the juvenile system?

Comments:

- Standardization of sentencing by Judges against individual

No

No!

4. Should the Family Court retain jurisdiction over persons past the age of 18?

Consensus: No

5. Should all juvenile felony cases be handled by the adult criminal justice process and the Family Court be abolished?

Comments: NO

No - if treated as adults - no parental liability

6. Should Family Court proceedings be made public record?

NO

┌
└

END