maintain the distance between them, they can carry their passengers to their destination. In the case of the State, it is to enable them to be good citizens in the Here and Now; in the case of the Church, it is to make them good citizens also in the Here and Now but with a view to the attainment of everlasting life in the Hereafter.

If you put the two tracks together, as would happen in a theocracy, the train would be derailed. If you put them too far apart, as certain members of the Batasan Pambansa seem to want to do, it would stop the train dead.

Separation of Church and State is a fact of political life that I accept. But I maintain that separation should not mean isolation. There are instances when they must support one another. For instance, when the Pope came, it was the State that furnished him security. And quite rightly so. For it is the State that has the expertise on such matters - - and never mind what happened in the case of Ninoy Aquino.

For her part, the Church can give valuable assistance to the State. For instance, during the recent natural calamities which hit the country, the Church was highly visible in the disaster areas, working hand in hand with the State in distributing relief.

Thank you, my friends, for your kind indulgence in hearing me out. May the good Lord bless you, and may He continue showering you with His choicest graces as you strive to be the Christian lawyers that the country needs so sorely.

CONTEMPORARY PROBLEMS IN SECURING AN EFFECTIVE, EFFICIENT AND FAIR ADMINISTRATION OF CRIMINAL JUSTICE AND THEIR SOLUTIONS

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Greek mythology tells us of a monstrous serpent (Hydra) having nine heads, each of which, when severed, was replaced by two.

The world today seems to find itself grappling with a new and reincarnated Hydra – with monstrous heads of all kinds of crime and criminality. Faced with what seems to be an accelerating rate of lawlessness, the community of nations struggles to prevent the disintegration of the social fabric amid the pervasive atmosphere of apprehension and anxiety. From the most advanced cities to the most isolated isles, crime and criminality pose most serious problems.

In the year just past, attempts have been made against the lives of well known world leaders – Pope John Paul II, American President Ronald Reagan, and Egyptian President Anwar Sadat. An American NATO officer Brigadier General James Dozier was kidnapped. Countless criminal activities, ranging from thieveries to murders, perpetrated either by professional felons or amateur lawbreakers, singly or collectively, have crowded the pages of news bulletins of almost every country in the world.

Criminal Justice – Its Problems

All countries deal with felonious activities and those responsible for them through their own respective criminal justice systems. Every system which operates in each country would typically work through interlocking, interrelated, interdependent and interacting component agencies. The sum total of the functions, duties and activities of the police, the prosecutors, the defense attorneys, the judges, the prison wardens, and the correctional personnel, in their dealings and relationships with the violators of the law, makes up the criminal justice process.

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The effective, efficient and fair administration of criminal justice constitutes one of the most meaningful goals of any society. But problems diverse in nature and diverse in dimension continue to beset the system and its integral components.

Crimes in new and different categories continue to be spawned by changes and permutations in society brought about by industrialization, urbanization, scientific and technical advancement, poverty and affluence, and population convergence and dispersal.

It has been said that crime "not only works within the fabric of the established community but also keeps pace with the outer fringes of technological development. As the nation pushes farther into the frontiers of a new computer world, for example, crime follows relentlessly to corrupt that world for illicit gain and advantage. It erupts violently by taking new forms, such as air piracy or hostage taking, plaguing the everyday lives of citizens and confronting law enforcement agencies, often unexpectedly, with new and aggravating challenges."[1]

These problems may also be traced to the variations in the respective criminal justice systems and processes of each country. For, although the countries of the world pursue the same fundamental criminal justice goals – the prevention and control of crime within the framework of law – their respective criminal justice systems and processes vary. These variations proceed from the confluence of the governmental, legal and court systems peculiar to each country.

Certainly, the system of criminal justice in the United States of America – functioning under a governmental form of federalism, following the common law tradition, involving a dual court system, and employing the adversary system in penal procedure – operates quite differently from that in England, France, Italy and Germany. By the same token, the system of criminal justice in the Philippines – developed within a unitary form of government, influenced by its civil law origins, operated through a unified court machinery with a hierarchical structure, and sustained by the adversary system in criminal proceedings - works divergently from that of Japan, Indonesia and Malaysia.

Any criminal justice system requires a high degree of interdependence and interaction among its components. Corrections personnel take charge only of individuals convicted by the courts. Courts in turn take cognizance only of cases and law violators brought before them by the prosecutors. Prosecutors can deal only with persons arrested and taken custody of by the police. However, these components, although intertwined in most processes of the system, "for the most part, represent a kind of uneasy alliance. Objectives and missions of the components often conflict; intermittently, the 'sand in the intermeshing gears' sparks out mutual recriminations."[2] Thus, the criminal justice system has its own problems in attempting to function as a system.

As a keen observer of the American scene states:

> "In fact, there is an unfortunate tendency for each part to blame its problems on the others. The police tend to blame the courts; the police are critical of Supreme Court decisions; judges frequently find fault with the police for their repeated failure to bring good cases to court, cases for which they have the proper amount of evidence. Judges also critize police failure to testify well enough to support a conviction."[3]

Fragmentation or the lack of centralized framework providing for communication and cohesion among the components and the coordination of their functions poses an obstacle to the effective, efficient and fair administration of criminal justice in most countries of the world. This fragmentation may result from the discrepancies and even inconsistencies in the perception by the personal elements of the system of their respective roles, functions and activities in the criminal justice process. Their interpretation of the laws for enforcement and application, and their implementation of the policies of the component to which they appertain may differ in concept.

The police may see their role merely as "catchers of criminals," taking action only after the violation of the law. The prosecutors may view their role solely either as " 'trial counsel for the police,' reflecting departmental views in the courtroom and taking a crimefighter stance in public,"[4] or as " 'house counsel for the police,' giving legal advice so that arrests will stand up in court,"[5] or as "representatives(s) of the court, (with) primary responsibilities to (enforce) the rules of due process, (to insure) that the police act according to the law, and (to uphold) the rights of defendants."[6]

These narrow self-conceptions of their respective roles in the criminal justice process by the police and the prosecutors may be defensible, but "there should be substantial broadening of the police role to include not only control of crime but control of disruptive influences in the changing community as well"[7] and there should be improved understanding of the prosecution's dual role: as leaders of law enforcement, with the duty to see to the faithful execution of the laws, and as members of the legal profession, with the duty to seek justice, not merely to win convictions.

Fragmentation demands integration. How integration can be achieved and maintained effectively remain questions for the different countries to answer, considering the variations in their criminal justice systems and processes. However, every approach towards integration should basically instill in the personal elements of every component the proper critical awareness, the appreciation and understanding of the goals, functions, activities, resources and limitations of the other related criminal justice components. Breadth and depth in perspectives must enrich the conclusions on how those who make up a component must interface with those of the other components and how the decisions of those of one component affect the decisions of those of the others and cause mutual activity throughout the entire criminal justice system.

Budget restrictions and imbalances in the allotments of financial resources affect the efficacy and efficiency of the overall operation of the criminal justice system. Appropriations must be in proportion to the component's needs, in terms of personnel, programs and projects and facilities, dictated by the intricacies of its functions and the services it renders. The rising costs of preventing and reducing crime, as well as processing and rehabilitating criminals, demand the infusion of funds in adequate amounts by the government – whether at the national or local level – to the different components of the system.

The Police

As stated earlier, multifarious problems plaque not only the criminal justice system itself but also the components involved in setting into motion its processes.

The police stand at the forefront of the criminal justice system. The police exist for twin objectives, 1) the prevention of crime and disorder and the preservation of the peace, and 2) the protection of life and property and personal li-

berty.[8] The police seek to achieve these objectives through crime prevention, crime repression, regulation of non-criminal conduct, provision of services, and protection of personal liberty.[9]

Unfortunately, most often the other criminal justice system components seem not to understand at all the variety, the range and the complexity of functions assumed by members of the police and how these various functions interrelate with each other in the pursuit of the twin-police objectives. The other components – and the public as well – at times view the police almost exclusively in terms only of apprehensions, arrests, identifications, investigations and interrogations. Many still do not in the least consider police work to be a profession.

It is interesting to note that "(w)hen a policeman interrogates a suspected offender, he is in a superior position andis able to use tactics that assert his uathority in the situation. However, in contacts with the prosecutors and courts, the policeman is below the formal and social status of the officials with whom he must deal. Under trial conditions the officer may ven be placed in the position. where he himself is interrogated by a member of the bar. In addition, court officers such as probation and juvenile personnel whose social status may not be as high that of attorneys or judges are nonetheless formally superior to the police."[10]

By failing to accord the members of law enforcement agencies with professional deference, prosecutors, judges and corrections personnel demean their status. The police then feels burdened not only with his complex functions but also with doubts about his professional status and worth in the criminal justice process.[11] These strong feelings or uncertainty compel the police, when confronted with matters relating to the administration of criminal justice, to turn to the other members of the law enforcement fraternity rather than to interact with the members of the other components.

To professionalize the police, therefore, contitutes a categorial imperative. "Certainly, there is no reason why (police work) should not be considered a profession or why the police should not be thought of as equal partners in the administration of justice system. However, before true professional status is achieved in law enforcement, certain criteria must be met. These at least include: 1) a common body of knowledge in police science and administration, 2) a viable professional police organization or association, 3) public status and esteem, 4) professionally established selection requirements, and 7) a public service orientation."[12]

In the Philippines, the Police Act of 1966,[13] as amended, sparked national efforts to place the local police services on a professional level. This law provides for, *inter alia*, the qualification, appointment, promotion and administrative discipline of members of local police forces. In this connection, the 1976 First National Conference on a Strategy to Control Crime participated in by members of the five components or pillars of the Philippine criminal justice system – police, prosecution, courts, corrections and community – in the report submitted to the President, recommended the following, with the end in view of upgrading and professionalizing law enforcement:

> "Selection and recruitment policies should be keyed towards professionalization. Educational requirements should be raised to college level and promotion policies (should be) revitalized with emphasis on education, potentiality, performance, and personality. Lateral entry of professionally and technically trained and experienced individuals to the officer's ranks should be encouraged. Training programs at all echelons should be improved. New courses should be developed and introduced to cope with international crimes such as hijacking, kidnapping for extortion, bombing, drugs traffic and other activities."[14]

Law enforcers play an important role in initiating the machinery of the criminal justice system. They exercise a great amount of discretion in determining in a given situation whether or not to invoke the criminal justice system, either through investigating and subsequently arresting a suspected offender or through outright apprehension of a law violator *in flagranti delictu.* "Discretion may lead to beneficence as well as to tyranny to justice as well as injustice."[15]

How the police exercise discretion in the initial phase of the criminal justice process determines to a large extent the offender's evaluation of, and reaction to, the system and its other components. If the police exercise fairly and properly this discretion, they can instill in the offenders respect for the law and obedience to authority. If the police abuse or misuse this discretion, they can urge on the offenders distaste for the law and hatred of authority. On the one hand, offenders will regain their self-confidence and return to the fold of law-abiding citizenry. On the other hand, they will become habitual law violators.

The variation in the exercise by the police of discretion depends generally but largely upon their personal experience, sense of values, education, training, personal biases and prejudgments and their own perceptions of their primary roles and responsibilities. Herbert Jacob points out what he deems as the specific factors which affect the exercise of discretion by the police:

> "1) **Characteristics of the crime.** Some crimes are considered trivial by the public, so, contrarily, when the police become aware of a serious crime they have less freedom to ignore it. 2) **Relationship between the alleged criminal and the victim.** The closer the personal relationship, the more variable the use of discretion. Family squabbles may not be as grave as they appear, and the police are wary of making arrests since a spouse may on cool reflection refuse to press charges. 3) **Relationship between the police and the criminal or victim.** A deferrential alleged wrongdoer is less likely to be arrested. 4) **Departmental policies.** The preferences of the chief and the city administration as reflected in the policy style will influence discretion."[16]

The wide variations in the exercise by the police of their broad discretionary power presents an area of major concern in any criminal justice system. Actual or potential abuse or misuse of discretion needs specific attention.

The formulation of a set of standards in the form of either broad guidelines or detailed instructions against which the police could check their performance in the exercise of discretion has been advocated. These standards may "include procedures which 1) interpret the Supreme Court decisions, as well as statutes and ordinances, for the patrolman in many of his actions, or 2) limit his discretion in order to keep departments away from serious trouble."[17] However, the proposal that detailed instructions for the police imposing limitations on their exercise of discretion be established and developed has been criticized as "probably . . . fruitless,"[18] considering that, "(n)o matter how detailed the formal instructions, the patrolman will still have to fit rules to cases."[19] Thus, the *onus* lies with the police administrator "decide what measures he will take to affect the ways his officers use discretion. Given the variety of functions the police are asked to perform and the influences of such factors as the nature of crime and citizen response, the administrator must develop a policy that can serve to guide his officers."[20]

The Prosecution

Discretion undergirds the functions not only of the police but also the prosecution. Prosecutors, among the personal elements of the components of the criminal justice system, wield the most extensive discretionary power – "a power that has ramifications throughout the criminal justice process if not used wisely."[21]

The prosecution procedure requires the prosecutor to exercise his broad discretion in screening cases, deciding which would be instituted before the courts and which would be dropped, and in determining the legal modality and degree of the crime which a law violator should be charged. "With few exceptions," say authorities on criminal justice, "it is at this point that control of the prosecution falls entirely into his hands. It is here that cases recommended for prosecution by the police departments are screened, and the processes of criminal justice with reference to any particular case or class of cases may be halted. In the exercise of this discretion, innumerable influences may be brought to bear."[22]

Considerations that influence and modify the prosecutor's discretion include (1) the presence or absence and the strength or weakness of evidence proving existence of the elements of the crime charged and connecting the alleged offender to the criminal act; (2) the nature of the complaint and attitude of the offended party; (3) the character of the accused, his status in the community, and the impact of prosecution on his family; (4) the seriousness of the offense; (5) the exchange relationships among the components of the criminal justice system as well as congestion within the resource demands placed upon the system; and (6) public opinion and pressure.[23]

In participating in the other phases of the criminal justice process, aside from the initial disposition of cases, the prosecutor likewise uses his discretionary power. This discretion permeates the bail setting and plea bargaining phases in jurisdictions which allow the latter practice.

The bail system in general requires the defendant to furnish the court some form of monetary security to ensure his appearance thereat on a future date when when needed. Judges often set the amount of bail at a level reasonably necessary to guarantee the subsequent appearance of the defendant. In determining and setting formally the level of bail, judges rely in the main on the recommendation of the prosecutor. The prosecutor, in turn, in making his recommendation may either support a higher amount of bail in the belief that this would prevent the defendant from committing other crimes while awaiting trial or may suggest bail at the normal rate in accordance with prescribed standards or existing practices.

In the Philippines, to limit the prosecutor's discretion in bail setting, thereby precluding inequities in bail rates, I issued, as Minister of Justice, Ministry Circular No. 36 in September of last year. This circular prescribes rules for fixing the amount of bail to be recommended by prosecutors for each type of crime and sets forth a graduated schedule of bail. The circular establishes uniformity in the amount of bail to be recommended and obviates situations wherein prosecutors, unwisely and improperly using their discretion, recommend excessive bail rates, giving scant consideration to the financial ability, character, reputation and state of health of the defendant.

The plea bargaining system involves discussions between the prosecutor and the defendant or his counsel, sometimes with the participation of the judge, with the end in view of negotiating and reaching a satisfactory settlement whereby the defendant agrees to enter a plea of guilty in exchange for an alternative.[24] The alternative may refer to: (1) sentence recommendation; (2) reduction of the charge; or (3) dismissal of other charges relating to the same incident. In plea negotiation, the prosecutor may, in inducing the defendant to enter a plea of guilty, (1) threaten to file multiple charges against him; or (2) imply that a charge less serious than that warranted by the facts will be submitted, or (3) suggest that leniency in sentencing will not be recommended; or (4) propose that the bail rate will be set high so that he could be kept in confinement.[25]

The initial disposition of cases, the recommendation of bail and the negotiations regarding the defendant's plea all fall within the ambit of the prosecutor's discretion. And, like police discretion, prosecutorial discretion may be abused or misused. Abused or misused discretion results in injustice; the "professional, habitual criminal who generally have expert legal advice and are best able to take full advantage of the bargaining opportunity" may be dealt with excessive leniency and the "marginal offenders" or neophytes may be dealt with harshly.[26]

To guide prosecutors in their decision making, the formulation of explicit standards has been advocated but subjecting these standards and their application in individual cases to judicial review. These standards will serve to aid prosecutors in using the broad discretion they exercise in certain phases of the court process of the criminal justice system. Bringing plea arrangements under more direct judicial supervision has also been proposed.[27]

We in the Philippines acknowledge the problem brought to bear by prosecutorial discretion upon the court process. As an initial step to remedy the faults of discretion, I issued Ministry Order No. 194 last October 1981 constituting a study committee and charging it with the reponsibility to formulate prosecutorial performance standards and to prepare a handbook or manual for government prosecutors relative to the conduct of the preliminary investigation, the duties and functions of a trial fiscal, proper courtroom decorum, and the relations of government prosecutors *vis-a-vis* their superiors as well as subordinates, the courts, the litigants, and the public. With the handbook or manual, we hope to achieve in the Philippines a more speedy, fair, inexpensive, uniform and systematic procedure in the administration of criminal justice, although only with particular reference to the participation of the prosecutors therein.

The criminal justice systems in some European jurisdictions operate without involving prosecutorial discretion or with the same discretion carefully controlled and minimized. In England, the police, rather than a prosecutor, plays the significant role in the prosecution. As a rule, upon the police rests the decision to prosecute for criminal offenses – offenses ranging from minor traffic violations to the most serious crime of dishonesty and violence – except in certain cases requiring the approval of a non-police official, like the Attorney-General or the Director of Public Prosecutions before proceedings could be commenced.[28] Nearly all police forces maintain prosecuting departments, referred to as prosecuting solicitors' departments, staffed by qualified civilian lawyers. In some areas, these departments form part of the police organization; in others, they constitute departments of the local authority and handle local authority legal work as well as police prosecutions. The prosecuting solicitor simply acts as legal adviser to the police officer who wishes to commence criminal proceedings and takes instructions from the police officer, doing what the latter wants him to do by initiating the necessary legal procedures, appearing in magistrates courts (the inferior cri-

minal courts) and briefing the prosecuting counsel to appear to prosecute in the Crown Court (the main criminal court) in jury cases.[29]

Thus, in England, in the management of prosecutions, no independent prosecuting authority intercedes between the police and the courts, except the Attorney-General or the Director of Public Prosecutions in certain criminal matters. This arrangement has, as its main weakness, difficulty for the police "to disengage gracefully from a prosecution which turns out to be misconceived."[30] Also, "too many weak cases get through to the Crown Court with the result that the prosecution founders, often as a result of the trial judge directing the jury to acquit."[31] As its main strength, the arrangement "leads to fairly responsible police work"[32] and "militates against charges being laid maliciously."[33] To solidify the fragmented prosecution system in England, there had been suggestions that "the various prosecuting solicitors. departments throughout the country should be welded together to form an independent national prosecution service working according to proclaimed procedures and wielding wide discretionary powers."[34] These suggestions, however, have remained as mere proposals, for authorities consider the recommended consolidation as controversial and great differences of opinion exist as to the desirability of such an arrangement and as to the form such an institution might take.[35]

In the matter of prosecutions in the Crown Court, the prosecuting solicitor retains a prosecuting counsel – an independent barrister – to appear in court. This has been deemed as a desirable arrangement, for it "enables prosecuting counsel to remain a prosecutor and not become a persecutor; he prosecutes according to his own notions of fairness and in the light of the ethics of his branch of the profession."[36] Indeed, "prosecuting counsels are often vigorous but invariably fair. Since they are beholden to no one, they conduct their cases according to their own sense of justice."[37] This arrangement has, as one of its major strength the circumstance that the prosecuting counsel – as a barrister who belongs to the independent Bar – "who appears to prosecute one day may well appear to defend in another case on the next. By representing both police and accused persons they are able to appreciate both sides and to function objectively in presenting the cases they handle."[38] Under the arrangement, however, "certain barristers are more favoured by the police and prosecuting solicitors than others, some are blacklisted and are never briefed for the prosecution."[39] Specialization arises and barristers who regularly appear in criminal prosecutions specialize as either prosecution or defense advocates.[40] However, considering that prosecuting counsel have no screening function in the English criminal justice process, "given the inadequacies of the solicitors and their clerks when it comes to evidence, too many cases get through to the Crown Court which must ultimately be dismissed for evidentiary shortcomings."[41]

In France, law mandates the judicial examination by the examining magistrate – the *juge d' instruction* – of *crimes* – offenses punishable by imprisonment for five or more years and triable in the Courts of Assize. For *delits* - offenses punishable by imprisonment for two months to five years and triable in the Correctional Court – discretion rests with the prosecutor to order or not a judicial examination.[42] In general, a judicial examination relates merely to a limited superintendence by either the examining magistrate or the prosecutor of a police investigation the details of which as compiled appear in a dossier. The contents of the dossier largely determine the nature of the charge, the course of the trial and the sentence. The examining magistrate or the prosecutor seldom

makes an important contribution to the dossier.[43]

Even in cases of *crimes*, in order to avoid a judicial examination and the consequent prolonged trial, the prosecutor may, through the process of correctionalization – an extra legal device for purposes of expediency – treat the offense as a *delit* necessarily included in the crime, thereby reducing the grade of the offense.[44] By correctionalization, the prosecutor in effect offers the accused "a lesser sentence for *a delit* in exchange for a waiver by the accused of the full process that he would have if he were charged with a crime."[45] However, practical limitations circumscribe prosecutorial discretion to correctionalize a case.

> "If a respondent wishes to risk a higher sentence in the Court of Assize, because the acquittal rate there is higher or because there are more pre-trial screens from which he may emerge uncharged, he may keep the Correctional Court (**Tribunal Correctionel)** from taking the case. If the victim seeks a greater penalty than the Correctional Court can impose, he may press his own criminal complaint, thereby forcing examination before a *juge.* And the Correctional Court may itself decide that it would be inappropriate to try the case as a *delit* because of the aggravating circumstances that the prosecutor has chosen to ignore – provided, of course, that the police and prosecutor have not omitted such circumstances from the dossier."[46]

Those imposed by the nature of the particular case constitute the most important limitations on prosecutorial discretion to correctionalize. Where the case has been widely publicized or political considerations are involved, judicial examination becomes appropriate. The same becomes necessary also where "police and prosecutors have only limited powers to arrest, search, summon witnesses and interrogate the accused. When more thorough investigation is needed, the prosecutor may not simply seek a subpoena or a warrant from the *juge;* the entire investigation must be turned over to him.[47]

Italy follows France in relation to the practice of a prior judicial examination. In cases of minor offenses, the *pretore* – likened to an inquisitorial judge with both prosecutorial and adjudicative functions – tries them entirely on the police report. In cases of serious or more serious offenses, the prosecutor has authority to decide whether he should retain them for examination or pass them on to an examining judge. If the prosecutor retains them, he must, in preparing their dossiers, comply with the same rules of examination as the magistrate. The prosecutor also has the same powers to arrest, search, and interrogate.[48] "Though statutes purport to confine the prosecutor's examining role to cases in which the accused is caught in the act or confesses, or in which 'the research of the evidence is expected to be simple and rapid', and 'there is no need for complex inquiries and difficult verifications', these categories are broad enough to give prosecutor and examining judge substantially concurrent investigative power."[49]

A prosecutor may keep cases from examination by the magistrate. Certain limitations, however, impinge upon or collide against this prosecutorial discretion. Thus, "(t)he accused may ask that his case be sent to an examining magistrate and may petition the magistrate for review if the prosecutor is unwilling to give way . . . Moreover, the prosecutor has forty days in which he can conduct his investigation free of judicial intervention. It is only when the accused is detained for a longer period that the file must be sent to an examining judge to decide whether further investigation and detention are justified. But if the accused is not

in custody, the prosecutor may allow the investigation to grow stale and eventually send the file to the archives after attaining token and belated judicial approval of the decision to terminate the investigation."[50]

Italian law mandates prosecution whenever evidence sufficient to support a charge exists. In this phase of the court process, "(d)iscretion can be exercised, therefore, only by prosecutors hiding nonevidentiary considerations behind evidentiary rubrics and by examining judges dealing in token fashion with the decision not to prosecute."[51] To circumvent the requirement of mandatory prosecution the prosecutor may adopt different manners in appraising the credibility of witnesses, weighing the evidence and assigning burdens of proof, or he "may conclude sooner than necessary that the evidence against a cooperative accused is incomplete, or he may decide to bring only one charge against a multiple offender or to charge a lesser offense rather than an aggravated one."[52]

In Germany, responsibility for pre-trial investigation of both *verbrechen* – offenses punishable by imprisonment for one year or more - and *vergehen* - offenses punishable by imprisonment for less than one year - lodges entirely with the prosecutor. German laws provide for the compulsory prosecution of *verbrechen* while the lesser *vergehen* may be treated more flexibly, in accordance with statutory criteria for the exercise of discretion.

> "The prosecutor may drop a case where the guilt of an accused is 'minor' and there is no 'public interest' in prosecuting. He may dismiss on condition that the offender contribute money to the victim of the crime or to charity. 'Insignificant matters' that are part of a 'single act' may be ignored if they are likely to have little effect on the eventual sentence for the principal offense, for example, cashing several checks with insufficient funds, fewer than all offenses may be charged. Prosecution may be declined if the judge would not impose sentence upon conviction - if, for example, the accused has already suffered enough to make further punishment unnecesary. Finally prosecution is not mandatory for those offenses (involving minor property damage or bodily harm) that are subject to private prosecution."[53]

Where the prosecutor decides not to prosecute, he must submit such decision for approval by the court. In cases of *verbrechen* the prosecution of which the law requires, special considerations, like a confession, cooperation, and personal circumstances of the accused, "are the treated as relevant only to sentencing and are passed on to the court in the dossier."[54]

In all these three countries – France, Italy and Germany – the law places control for the crucial phases of the criminal justice process which require the exercise of broad discretionary power – the examination or the pre-trial investigation as well as the charging – in the hands of the prosecutors. However, practical limitations and statutory standards check the exercise of and regulate and discretion of the prosecutors in these phases.

The Courts

Of all the components involved in securing the efficacy, efficiency and fairness of the administration of criminal justice, the courts stand in the position of vital importance. These judicial bodies, manned by judges or magistrates and their personnel, handle the most sensitive phase in the criminal justice process – the determination of the innocence or guilt of the accused. Many persistent problems

bother the courts but overwhelming case congestion looms large as the most severe. Case congestion results in delay and delays in the court process "not only diminish the deterrent effect of the entire criminal justice system in the eyes of the potential offender but also undermine public confidence in the system's effectiveness."[55] Case congestion confronts almost every judicial system in the world and it has been attributed invariably to several factors:

> "(T)he burgeoning of (the) ever – fecund populace; the influx of people, lured by all manner of glitter and glamour, from rural nooks to urban centers; the increasing incidence of criminality and of juvenile and domestic relations problems in densely populated areas; the rapid advances in science and technology, the worrisome annoyances of environmental pollution; the tremendous increase in the number of motor vehicles attended by (an) ever-increasing number of vehicular accidents and traffic violations; the novelty and complexity of cases; constantly multiplying legislation; antiquated and ineffectual court methods and inefficient personnel; vastly complex and attenuated rules of procedure; unfilled vacancies in judge positions; (and) incompetent judges."[56]

The factors may be grouped into those which require substantial legislative action; and those which demand extensive court reform.

Major and comprehensive revision of substantive and procedural criminal laws must be undertaken to meet law overkill and the governance of penal proceedings by complex and at times anachronistic rules of technicality. In most jurisdictions, criminal laws intent on covering all conceivable as well as imagined penal problems and situations, passed by legislatures with reckless abandon, proliferate. As aptly observed, "experience has demonstrated that criminal law is not the tool its proponents thought it would be. With only slight cynicism one can speculate that many laws have been passed by legislators who fully realized their inadequacy as solutions, but who also realized the political expediency of appearing on the side of virtue, motherhood, and the flag."[57] Furthermore, "(o)ver-criminalization – the misuse of the criminal sanction – may contribute to disrespect for the law and can damage the ends law is supposed to serve by labeling as criminal conduct much of society regards as legitimate."[58]

The prosecution of offenses that realistically should be decriminalized, legalized, or disposed of by administrative rather than judicial action aggravates the already worsening docket congestion of courts. Prostitution, pornography, sexual deviation, public drunkenness, vagrancy, gambling, and marijuana use count among the so-called "victimless crimes" or "crimes without victims." It has been stated that "(t)hese types of cases place heavy demands not only on the police and the prosecutors but on judicial personnel as well. Moreover, the sanctions and remedies that the criminal justice system provides are frequently inappropriate, ineffective, and, to some degree, counter-productive, thus contributing to the overbearing volume of cases necessitating court appearances."[59] Also,

> " '(C)rimes without victims' are known to be those where discriminatory enforcement can lead to corruption of both the offender and criminal justice officials. Because there are persons who desire to obtain these illegal products, organized crime has recognized that profits are to be gained in this particular market place. Finally, 'crimes without victims' drain resources from the effort to control more serious types of misconduct."[60]

Overcrowding, want of the adequate number or uneven scattering of courts in a given area as well as the duplicity and overlapping of judicial functions obtain in some jurisdictions. Reorganization and redistribution of courts and the redefinition and reallocation of their jurisdiction can be accomplished by necessary legislation. Aside from relieving some of the caseload in courts with congested dockets sitting in urban centers and densely populated areas, the implementing legislation would provide greater accessibility and responsiveness of the judiciary to the public.

In the Philippines, *Batas Pambansa* No. 129 enacted and approved by our Parliament (the *Batasang Pambansa)* and signed into law by His Excellency, President Ferdinand E. Marcos, seeks to meet the pressing demands for the institutional and structural reorganization of the judciary. The law reorganizes the Philippine judiciary, with the exception of the two constitutional courts – the Supreme Court and the Sandiganbayan – replacing the Court of Appeals, Courts of First Instance, Circuit Criminal Court, Juvenile and Domestic Relations Courts, Courts of Agrarian Relations, City Courts, Municipal Courts and Municipal Circuit Courts with the Intermediate Appellate Court, Regional Trial Courts, Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts. The law likewise redefines their respective jurisdictions and provides for their physical redistribution.

Complex rules of court procedure must be simplified and streamlined. Anachronistic and antiquated court practices must be refashioned and updated. It has been said that "(p)rocedural complexities make lawyers consumer oriented, delaying the disposition of cases or jockeying case against case with the end in view of satisfaction in pecuniary terms. Streamlined court procedures and practices in conformity with due process and fair trial reduce the over-all time for litigation. Consequently, the logjam in the courts would be minimized (and) the disposition of cases would become smoother and speedier."[61] Measures which strike at court procedures and practices may come through either legislative action or court reform in jurisdictions which invest the highest ranking court of its judiciary with power and authority, concurrent with the legislature, to promulgate rules concerning pleading, practice and procedure in the courts.

Within the area of court reform fall the following imperatives: (1) improvements in court management and administration; (2) improvements in the quality of judges; and (3) improvements in the competence of judiciary personnel. Many of the operating problems of the courts may be traced to their mismanagement and weak administration. As pointed out, courts "have been directed by . . . judges who are law school graduates. It is unlikely that their training and experience have prepared them to be effective managers of sizeable organizations, or familiarized them with modern administrative principles. Like the physicians who long resisted yielding the authority to administer hospitals to people specifically trained and much more qualified to do so, lawyers have been slow to introduce modern management to . . . courts."[62]

The effective management of courts requires judges able in administration. Those already seated on the Bench must, therefore, undergo continuing managerial education by way of seminars, conferences and research programs while those aspiring to judicial positions must be possessed of managerial proficiency.

The criticism that the criminal justice system "has failed to furnish the mechanisms for preventing incompetents from finding their way into the process, accumulating important responsibilities, and surviving inspite of glaring

injustices they perpetuate" strikes more at the judges than at the police, prosecutors, or corrections personnel.

The mechanisms of selecting, retaining and promoting or transferring judges basically affect the quality of those who dispense justice. Appointment by the executive, selection by the legislature, appointment of inferior by superior judges, merit selection, and popular election are among the usual modes of selection of judges. Arguments and criticism have been advanced for and against the different selection methods – for instance, that some methods result in the abundance of judicial officials beholden to those who wield political power and that others result in the dominance of the judicial philosophy practiced by the electorate on the court functions and processes. Each selection system has its advantages and disadvantages. Each merhod must be judged on its own merits and weaknesses and must be appraised in the light of the temperament and values of the citizens, the political atmosphere, and the court system.

Mechanisms insuring that only capable men would be assuming judicial positions must be provided. "A winnowing process may operate so that only certain types of persons who have had certain kinds of experiences are available for selection in each judicial system."[63] Thus, rigid pre-selection training programs may be conducted to determine who among the aspirants have, to quote the American jurist Benjamin Cardozo, "the personality of the judge."

Measures must also be undertaken to maintain and improve the quality of judges while already in service. Continuing legal and judicial education programs may be carried out for purposes of acquainting them with current legal and jurisprudential trends. Indeed, judges must not only be schooled in the conventional and traditional wisdom and mechanics of the law, but must also be constantly apace with modern legislation and the development of law as well as the latest directions in jurisprudence.

Court reform includes manpower. Incompetent and inefficient personnel staffing courts frustrate whatever efforts judges exert to put judicial business in order. The creation of and adherence to qualification standards for personnel positions, the holding of orientation programs for incoming staff, the adoption of an evaluation system to measure performance of incumbents, the maintainance of in-service training courses, and the observance of criteria for promotional movement - all these would serve to improve the quality of judicial manpower.

Aside from case congestion, problems in the area of sentencing of convicted offenders also confront the courts as a component in the criminal justice system. These problems may refer to sentencing inequality, legislative direction, and review of sentences. Commentators point out, in relation to disparity of sentences, that:

> "It is only fair to say that most judges are familiar with the ambivalent philosophies reflected in sentencing practices, which present a quandary to every judge. It is not so much the fault of the judge as the confusion and ambivalence of society itself reflected in law. The statutes call upon the judge to offer deterrence, retribution, rehabilitation, and incapacitation – all in the same sentence. The judge attempts this by individualizing the sentence. The result is an unevenness of sentences reflecting uneven consideration of cases. The problem is more complicated than meets the eye. Not only are the sentences imposed by judges unequal, but they are arrived at by measures which are incompatible and not uniform."[63]

To render consistent sentencing practices as well as to promote more rational sentencing policies, the following proposals have been adduced: "the establish-

ment of sentencing councils where judges discuss planned sentencing with each other prior to imposition, sentencing institutes to provide a forum for the exchange of new ideas and the development of criteria for the imposition of sentences, orientation sessions for new judges, and regular visitation of custodial and non-custodial facilities by judges."[64]

In the area of sentencing, legislatures assume the important initial responsibility, for they establish the legal parameters under which sentencing may occur. In most jurisdiction, legislatures have provided for a system of fixed sanctions for each type of offense, without regard to the basic purposes of correctional programs as well as the needs of the offender and the welfare of society. To illustrate,

> "The system where the determinate sentence is used and maximum sentences are structured has the advantage of working beneficially in a true punishment sense where time served is the objective of the system.On the other hand, where rehabilitation is the objective, maximum sentences are generally too long and counterproductive to rehabilitation. In the case of mandatory minimum sentences, . . . the advantage is that it removes such offenders from society. But, where rehabilitation is the goal, mandatory minimum sentences are unrelated to treatment programs and flexibility is lost."[65]

Judges must therefore have the discretion to impose the criminal sanction that fits the rehabilitative goal of the corrections component. To effect this change, it has been urged that "legislatures legislate, to some degree, the exercise of discretion in the imposition of (sentences)."[66]

The matter of review of sentences also poses a problem in the corrections area. In most jurisdictions, appellate practice and procedure "provide little opportunity for either the defendant or the state to appeal a decision solely based on the appropriateness of the sentence to the offense and the offender."[67] The grant of opportunities for review only of sentences has been suggested to meet the problem.

Correction

The function of corrections serves "to rehabilitate and neutralize the deviant behavior of adult criminals and juvenile delinquents."[68] This component of the criminal justice system faces a three-sided task in carrying out the punishment imposed on the convicted offender by the court: to deter, to inflict retribution, and to rehabilitate. The components of correction effectuate their functions through different programs: probation, commitment to an institution, and parole.

Fragmentation within the components of correction arises when each correctional agency responsible for a particular program works with a sense of purpose and adopts an operational philosophy different and in isolation from, and without coordination with, the other agencies. Thus, some agencies may pursue the punitive or retributive goals of punishment; others may gear their activities and services toward the rehabilitation of the convicted offender. Fragmentation due to variances in purposes and philosophies of operation renders correction less effective and less efficient in their particular mission in the administration of criminal justice.[69]

Positive steps must be taken to reappraise and redefine correctional policies within the jurisdiction so that all correctional programs and services of the components agencies could be oriented toward the same goal. Should rehabilitation be

the priority goal? Should weight not also be given to the goals of deterrence and retribution? Should focus of corrections not be directed toward all three goals of punishment? Commentators state that any approach to correctional policies must of necessity consider these three goals.

> "(R)etribution, deterrence and reformation should not be considered entirely separate and independently of one another. They must be seen in their interrelationship, for each affects and strengthens the others. Reformation must be conducted and deterrence exerted in terms of values – the values of organized society, whatever they may be – but these very values, which the offender must accept and for which he must develop a loyalty, are flouted and thereby weakened and perhaps destroyed if due recognition is not given to the importance of retribution, whose function is to support values."[70]

Correctional goals must then be clearly defined so that there would be no difficulties in developing and implementing programs aimed at facilitating the achievement of the component's functions.

The components of correction likewise face the problems: firstly, of inadequacy of financial outlay for its institutions, programs and services; and, secondly, of lack of competent and qualified personnel. It should be remembered that incompetent and unqualified correctional staffs can easily undo the most constructive efforts of the other personal elements of the other components in the criminal justice system. The first problem must be met with a vast increase in funding for correctional agencies. The second problem must be remedied by appropriate steps to upgrade corrections personnel.

The Community

The administration of criminal justice is not the exclusive responsibility of the police, the prosecutors, the judges, and the corrections personnel. "Out of necessity," it has been said, "the criminal justice system relies on citizen participation."[71]

Without the active participation of the members of the community, the processes of the criminal justice system cannot operate. The police rely on citizens to report crimes and to assist them in the conduct of investigations. The prosecutors and the judges depend upon citizens as witnesses in the prosecution of the offender. The corrections staff trust them to support community based corrections programs. These notwithstanding, citizens, often lack the proper conception of their role in the criminal justice system, underestimating their potentials in serving the ends of justice.

Critics charge that "in the past, the (criminal justice system) has been too autonomous, too secretive, and too remote and exclusive, as though it had a separate life of its own beyond the corporate body of the community."[72] This criticism becomes palpable when it is considered that none of the criminal justice components seems to have so far defined more succinctly the role of the members of the community in the criminal justice setting. Through information dissemination activities, therefore, the criminal justice system components must explain their role to ordinary citizens on one hand and the role of the citizens in the administration of criminal justice on the other hand.

Extradition

The success by which any criminal justice system achieves repression of criminal conduct may be measured by the efficacy of its processes operating to arrest and apprehend suspects, to determine innocence or guilt, and to secure the appropriate sanctions for the convict. Where the accused flees, initial steps toward prosecution cannot be undertaken. Where the convicted offender escapes, criminal sanctions cannot be imposed. At times, the accused or the convicted offender removes himself from the physical territory as well as jurisdiction of the State where he committed the offense.

Extradition seeks the return of a fugitive by the State to which he flees, to the State from which he fled. The apprehension and delivery of a fugitive for the purpose of extradition may be said to be extensions of the criminal justice process, for the requested State effects these acts to assist the requesting State enforce its criminal law.

The duty of a requested State to apprehend and surrender a fugitive cannot arise except under a treaty. In view of this constraint, States have entered into agreements providing for extradition purposely to help each other curb criminality. The Philippines has an extradition treaty with Indonesia. This treaty has been in force since October 25, 1976 upon the exchange of the respective instruments of ratification. The extradition treaty of the Philippines with Thailand still awaits action by the Thai National Assembly, although on its part, the Philippine legislature has already given its concurrence. The extradition treaty between the Philippines and the United States of America is pending consummation. It is awaiting the concurrence of the Philippine Parliament (the *Batasang Pambansa)* and the advice and consent of the United States Senate before its transmittal to the American President for his ratification. The Philippines has no extradition treaty with Japan. Because these countries belong to the same regional community and because criminals recognize no geographical boundaries, it might be appropriate and timely to suggest that negotiations be started for an extradition treaty between these two countries.

Conclusion

The problem in securing the effective, efficient and fair administration of criminal justice pose a challenge to all who believe in the rule of law. New perspectives must be conceived, new approaches to the problems must be tried and new solutions must be explored. Each country can learn much from the experiences of the other. Parallel problems of one nation may find their parallel solutions in remedies already tried and tested, and proven effective in other nations.

In fine, this is the very reason why we are all here sharing our thoughts and our experiences together – in the spirit of universal brotherhood, in the ambience of true internationalism, in the United Nations Asia and Far East Institute.

FOOTNOTES

[1] Neil C. Chamelin, Vernon B. Fox and Paul M. Whisenand, *Introduction to Criminal Justice* Second Edition, U.S.A., 1979, p. 2.

[2] Alan R. Coffey and Edward Eldefonso, *Process and Impact of Justice,* U.S.A., 1975 p. 32.

[3] "The Criminal Justice Ssytem," Patrick V. Murphy, *Vital Speeches of the Day,* August 15, 1972, Vol. XXXVIII, No. 21, p. 666.

[4] George F. Cole, *The American System of Criminal Justice* U.S.A., 1975, p. 230.

[5] *Ibid.*

[6] *Ibid.*

[7] *Process and Impact of Justice,* supra, p. 69.

[8] A.C. Germann, Frank D. Day and Robert J. Gallati, *Introduction to Law Enforcement and Criminal Justice,* U.S.A. 1968, p. 28.

[9] *Ibid.* pp. 28-29

[10] *The American System of Criminal Justice,* supra, p. 202.

[11] *Ibid.,* p. 193.

[12] Robert G. Caldwell and William Nardini, *Foundations of Law Enforcement and Criminal Justice,* U.S.A., 1977. p. 74.

[13] Philippine Republic Act No. 4864 effective upon its approval on September 8, 1966.

[14] Report of the 1976 First National Conference on a Strategy to Control Crime, Philippines, p. 22.

[15] *The American System of Criminal Justice,* supra, p. 52

[16] *Ibid.,* p. 176

[17] *Introduction to Criminal, Justice, supra,* p. 463.

[18] *The American System of Criminal Justice,* supra, p. 177.

[19] *Ibid.*

[20] *Ibid.*

[21] *Process and Impact of Justice,* supra, p. 100.

[22] *Ibid.*

[23] *The American System of Criminal Justice,* supra, pp. 237-240.

[24] *Ibid.,* pp. 295-296.

[25] *Ibid,* p. 298.

[26] *Introduction to Criminal Justice, supra,* p. 315.

[27] "The Myth of Judicial Supervision in Three 'Inquisitorial' Systems: France, Italy and Germany," The Yale Law Journal, Vol. 86:240, 1977, p. 242.

[28] This does not however preclude an individual citizen from commencing criminal proceedings but powerful practical and legal restrictions are imposed upon him.

[29] E.C. Friesen and I.R. Scott, *English Criminal Justice,* England, 1976, p. 109.

[30] *Ibid.* p. 110.

[31] *Ibid.*

[32] *Ibid.*

[33] *Ibid.*

[34] *Ibid.*

[35] *Ibid.*

[36] *Ibid,* p. 137.

[37] *Ibid,* p. 70

[38] *Ibid,* p. 112.

[39] *Ibid,* pp. 112-113.

[40] *Ibid.*

[41] *Ibid.,* p. 136.

[42] "The Myth of Judicial Supervision in Three 'Inquisitorial' Systems: France, Italy and Germany," *supra* p. 250.

[43] *Ibid.,* pp. 280-281.