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RESEARCH IN CRIMINAL JUSTICE

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Herausgegeben von edited by

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Research in Criminal Justice

Stock-Taking of Criminological Research at the Max-Planck-Institute for Foreign and International Penal Law after a Decade

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FOREWORD

This report is concerned with the first decade of criminological research at the Max-Planck-Institute for Foreign and International Penal Law Freiburg. It summarizes 27 studies on the following main criminological topics: "Crime and Private Crime Control", "Police", "Criminal Justice, especially the judicial system", "Criminal Sanctioning and the Prison System" as well as "Treatment Evaluation".

Considering the enormeous influence of Anglo-American criminology on European and especially German criminology we believe that it is an important issue to publish our results in English language in order to join the actual discussion in criminology, to provide some information that may be a further step towards an intercultural comparative science and help integrating criminology.

However, we should not forget, that the Criminological Research Unit at the Max-Planck-Institute for Foreign and International Penal Law was implemented in 1970 with two scientists and fully established in 1975 with the actual number of 8 full-time criminologists. Following the principle of interdisciplinarity the members of the Criminological Research Unit have different professional backgrounds: law, psychology, sociology and political sciences. The integration of these disciplines helped creating an organizational setting including different approaches to the core problems of criminology. The research results presented here would not have been obtained without the financial support of the German Research Society (Deutsche Forschungsgemeinschaft) which has been throughout the seventies until now the most important funding agency in the area of criminology.

One of the obstacles on the way to a criminology without borders is the problem of language. We are well aware of the fact that we had to face difficulties regarding translation in this publication. But we feel that in spite of those difficulties which result partially out of differences in the judicial and penal system and thus differences in the semantic frame work of the object studied we are obliged to present our research in a way that provides the opportunity to take notice of the results

beyond the boundaries of German speaking countries.

We wish to acknowledge the work of Mrs. L. Rose and Mrs. S. Byrde who translated main parts of this reader. We are also indepted to Mrs. T. Wissler who took care of the clerical work for this volume and conducted with great care the technical revision of the manuscript until printing.

Freiburg, September 1982 Professor Dr. Günther Kaiser

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I. STRATEGY, TASK AND ACTIVITY OF THE CRIMINOLOGICAL RESEARCH UNIT IN THE 1970'S

STRATEGY, TASK AND ACTIVITY OF THE CRIMINOLOGICAL RESEARCH GROUP IN THE 1970'S

Günther Kaiser

1. Task of criminological research

Criminal law, as well as criminology, is concerned with the investigation of crime. However, the criminological discipline, in contrast to the criminal law discipline, is devoted primarily to the empirical analysis of crime and crime control, as well as to the explanation of law breaking behavior. In addition to the investigation of crime and criminal actors, criminology is also concerned with victim analysis, crime prevention and empirical examination of the consequences of criminal law sanctioning and the alternatives thereto.

Through supplementary research, the essence of criminal law, which is sometimes disputed to be an appropriate object of scientific investigation, can be examined empirically without sacrificing sound criminal legal principles and methods. The questions relevant hereto may be organized under the concept of the complete science of criminal law. This concept has found expression in the United States recently under the term "criminal justice". This union does not indicate a trend toward non-scientific harmonization, but rather a recognition of the mutual association and interaction of problems in this academic area. Such a concept, moreover, has won significance and integrative strength since modern criminology no longer views official crime and sanctioning data as simply given truths. Modern criminology integrates the development, dynamics, and social consequences of these data within the thesis under investigation. In this sense, comparative criminal law, comparative criminology and world wide criminal policy become more closely related.

Although the tendencies and multiple ramifications of criminological research are difficult to grasp completely, their gaps, difficulties and undesired side-effects can not be overlooked. Research on prison sy-

stems, for example, has experienced extreme critical and empirical intensification. Although at the beginning of the 1970's, the prison system as an establishment was over examined, the simplest data, such as that concerning the composition of pre-trial detainees, prisoners and confined persons, as well as prison staff, is not available.

Other institutions of social and criminal law control have never been the center of interest. These institutions, e.g. industry, police, public prosecutor, admittedly do not lend themselves as readily to empirical investigation as others. Although knowledge about their proceedings and decisional behavior in regard to crime control is not totally lacking, it is deficient in its reliability and empirical validity. Information on personnel strength within organs of social control and the effect thereof on the structure of criminality and the recording of criminal statistics is totally unknown.

Research concerning the police and courts reveal that criminal law norms often are implemented incongruously and that legal developments, which are reserved for the future are anticipated and incorporated under existing law. One example of this problem is presented in shoplifting cases. Legal policy considerations, which are directed toward a partial decriminalization of theft in self-service stores, have been anticipated and undertaken by the existing criminal law enforcement authorities. Exactly how these organs of administration, viz., police, prosecutor, public administrator, proceed, however, is unknown. Sporadic information on procedures, motives, content and mode of dismissal orders is all that is available. Criticism directed toward self-enforcement of public law often overlooks the fact that legal protection possibly has been weakened long ago by the very administrative organs set up to protect and enforce it.

2. Work program of the criminological research group

The work of the criminological research group is based on the above stated problems. We obviously also see our primary role as contributing to a firm basis of criminological knowledge. This goal is revealed in the effort modern criminology undertakes to integrate research on individual, social and administrative processes in analyzing criminality.

We also realize that the extent of research required here is significant. Therefore, we have not disregarded practice related studies. In addition, a secondary analysis of "Empirical Recognition of the Causes of Criminality" (Villmow et al. 1973) by order of the senate and mayor's planning office in Berlin, a study regarding the "Analysis of Police Investigatorial Activity from the View of Later Criminal Procedure" (Steffen 1976) by order of the Federal Office of Criminal Investigation, as well as the central recording and evaluation of the "Federal Register of Economic Crimes according to Classification" (1975 ff.) by order of the Department of Justice take into account the relevance of offense related research. A multi-dimensional, multi-disciplinary and comparative criminology must include a wide range of research goals. A new willingness on the part of legal practitioners and legislators to consider and adopt empirical findings has stimulated a rapidly growing demand for valid and reliable data. This demand exists even though planning and decisions generally occur on the basis of incomplete information.

If we consider the role of our program within the total range of criminological research, the setting of objectives and the practice of empirical research at the Freiburg Max Planck Institute essentially can be devided into four distinct fields of interest: international, national, institutional and economical.

The following publications were completed by the criminological research group:

Kaiser, G.: Probleme, Aufgaben und Strategie kriminologischer Forschung heute. ZStW 83 (1971), S. 881-910 (spanische Übersetzung von C.M. Landecho: Problemas, misión y estrategia de la investigación criminológica contemporánea. Annuario de derecho penal y ciencias penales 1972, S.32; Kaiser, G.: Kriminologische Forschung in Deutschland und empirische Untersuchungen am Max-Planck-Institut. ZStW 83 (1971), S. 1093-1130; Kaiser, G.: Tasks and Activities of the Criminological Research Unit at the Max Planck Institute. Acta Criminologica Japonica 41 (1975), S. 221-227, as well as the publications on program and activities of the criminological research group by Marchal, A.: Revues. Revue de droit pénal et de criminologie 52 (1971), S. 907-909; Hess, A.G.: National Survey: Crime and Delinquency Research Comes down from Ivory Tower. Criminal Justice Newsletter 3 (1971), S. 17, 20 f.; Mannheim, H.: Vergleichende Kriminologie. Stuttgart 1974, S. 869, 922; Irk, F.: Kutatások a freiburgi MPI-ben. In: Országos Kriminológiai és Kriminalisztikai Intézet (Kriminologische und kriminalistische Studien). Budapest 1978, S. 320-326, 387 f.; Holyst, B.: Kryminologia na świecie (Kriminologie der Welt). Warszawa 1979, S. 14, 248 f.; Johnson, E.H.: Comparative and Applied Crimi-

nology at the Max Planck Institute in Freiburg. International Journal of Comparative and Applied Criminal Justice 1979, S. 131-141; Wilson, G.: Socio-Legal Research in Germany. A Report to the SSRC Committee on Social Science and the Law of the Social Science Research Council. London 1980, S. 9, 25 f., 74, 91.

In this connection, international implies an academic interest, which reaches beyond the national borders of the Federal Republic of Germany, necessitating intense contact with questions of world wide relevance and a multitude of developmental directions. In concrete terms, the question here is if, and under what conditions, criminal law and the alternatives thereto contribute within the total system of social control to individual, social and administrative developments, and what kind of effect results therefrom.

The national aspect of our research concerns criminology in the Federal Republic of Germany and in particular, the research gaps that cannot be closed, or cannot be closed sufficiently, by other institutions and research endeavours.

The institutional aspect, on the other hand, indicates the joint research tasks of the Max Planck Institute with particular emphasis on the integration of comparative criminal law and comparative criminology.

The economics of research, finally, dictates that one can initiate and practice no more research than the staff and financial resources of the Max Planck Institute, as well as the capacity and structure of the criminological research group, permit.

Since we perceive ourselves as part of a research system, we must inquire into the problems considered by other institutions to be of primary importance. If we consider the research intentions of the DFG-emphasis on "Empirical criminology including criminal sociology", of the VW-emphasis on "Legal facts research" or of the available sociological research analyses, then a multitude of research problems, as expected, appear. Since our staff, which first reached its final stage of development in 1975 with eight full time researchers, is limited in composition and size, we cannot hope to undertake complexly constructed multidisciplinary single case studies successfully. Therefore institutional conditions dictate the necessity of determining another initial orien-

tation. This determination can be made more readily when the relevant, but for us currently distant, undertakings of other research groups, e. g. in Hamburg, Heidelberg, Köln, Münster, Saarbrücken and Tübingen, are recognized. We also recognize that these groups are better equipped to fulfill certain tasks. The diversity of criminological problems and the economics of research, therefore necessitate division of labor.

In addition, we are of the opinion that another approach is reasonable since extensive empirical research on the interaction between criminal deviance and criminal legal social control, in fact, is lacking. In this respect, our field studies, e.g. concerning the execution of punishment, are more far reaching than purely institutional analyses.

Therefore, as a result of these conditions, and in orientation toward internationally relevant problems, we are attempting to research the entire spectrum of crime and crime control. We have begun with the system of justice practiced within an individual business concern as representative of the attempt toward private crime control. Further, we have examined the police department and public prosecutor's office. In particular, we have oriented our research to the analysis of procedures.

We assume that the impression we gain of crime and of the criminal's personality essentially is affected by the activity and decisional patterns of the police and judiciary. Since we suspect that this formative and determinative power exists, we have turned our attention primarily toward the analysis of institutions of social-control. Our research encompasses, on the one hand, "informal" control, as exhibited in the terms and conditions for filing a private complaint, and private control, as practiced within the individual business firm. On the other hand, it concerns formal control, as practiced through the prosecutor's office in its institutional role as a filtering and decision making organ, and as exercised within the institutions of criminal law enforcement and punishment execution.

Conceptually, we have been guided by questions raised and theories considered in the labelling approach, the differential socialization and control theory, as well as the anomie concept, but have not adopted any one of these approaches without critical evaluation. The decision to

consider these theoretical concepts was based partially on the international reorientation in the later 1960's, which involved an increased concentration on the mechanisms and processes of social control through criminal law. These concepts were integrated in the planning and implementation of individual field research in each of the projects undertaken by the criminological research group. Therefore, we have proceeded according to a multi-disciplinary approach since, depending upon what specific questions and methods are involved, lawyers, psychologists, sociologists and statisticians work together.

We hoped to contribute to the administration of private and public crime control through our research on the general fear of crime and public attitudes toward criminal law, as well as on unreported crimes, willingness to report crimes and actual filing of criminal complaints. Furthermore, we wanted to be able to make more exact statements about the empirical aspects of equal and individualized influence on the individual and the general population through criminal law concerning crime structure and criminal statistics, as well as on deviant groups within the population. With respect to these deviant groups, it was important to determine the extent of unreported crime.

Since the first third of the 19th century, the academic literature has speculated on the number of unreported crimes. This inquiry received new stimulation through experiences with Black Market crimes during the post-war period and traffic offenses. The evidentiary strength of criminal statistics, therefore has been questioned, considerably. The increasing reception and attention toward empirical social research in the last decade, further stimulated this line of inquiry. Opinion poll research can be used to establish, and possibly examine the assumptions concerning the normality and ubiquity of crime. This type of research tool has been utilized in our research program.

3. Criminological research group activity

Unreported crime, particularly its extent, structure and significance, was considered in numerous single projects. We attempted to gain knowledge thereof through inquiries in southwest German factories (Kaiser/Metzger-Pregizer 1976), throug a study of youth within a community frame-

work (Villmow/Stephan 1980), and finally, through a victimization study in Stuttgart (Stephan 1976). The victimization study also considered attitudes toward criminal law, fears of criminality and willingness to report crimes.

Although common assumptions about the normality and ubiquity of criminality, with respect to adults, and particularly female adults were not confirmed, it was nevertheless important to discover which members of the observable group of unreported criminals eventually were exposed i. e., detected, reported, prosecuted, sentenced, and, finally, punished through fines or imprisonment. Herein lies the justification for such an inquiry even though its relevance is questioned through the argument that the number of reported crimes alone is too high and the crimes reported too serious. In addition to a general interest for knowledge, a practical legal policy necessity exists for filtering in the preliminary and trail phases of criminal proceedings. This aspect leads us to the next research project.

With the exception of traffic offences and property crimes, about 90 percent of all other conventional crimes, though this percentage varies according to type of offense, are reported to the police by private individuals. Therefore, we have inquired into the general willingness to report crimes (Rosellen 1980) and into the relationship between the filing of private complaints and resulting police reaction (Kürzinger 1978). An analysis of police investigative activities in relation to resulting criminal proceedings (Steffen 1976), extended our investigational spectrum to further inquiries regarding police activities in crime control and lead to a project concerning the "Prosecutor's Office as a part of the Process of Social Control" (Blankenburg/Sessar/Steffen 1978).

The problems of filtering in criminal law have been recognized since the introduction of the prosecutor's office in the last century. More than one-hundred fifty years ago, the general criminal statistical relevance of the police, and judicial activities, and criminal trail procedure as well as the official record of crime development were acknowledged. This acknowledgement is noteworthy in light of historic, academic development. At that time a connection between comparative law and empirical analysis was particularly unusual since criminology as a specific acade-

mic discipline did not exist. This early insight, however, was lost later. This loss can be explained partially by the extended limitation on criminological investigation to the personality of the offender. As we, however, now know and increasingly more clearly recognize, criminal statistics are not only important in the recording of crime but also in the specification of police and judicial activity and thereby in the so-called selection processes. We are now at an important intersection in criminology. On the one hand, it is important in the analysis of the extent and structure of unreported crime and thereby in the determination of the value and predictability of official crime statistics. At the same time, it is important in the study of the transition from unknown to officially recorded criminality, and further from recorded criminal statistics to statistics on sentencing. Both aspects of criminological importance unite into one central question as to who will be selected from the group of unknown criminals and at the end of this process labelled "criminal". The social consequences for the individual, which follow such a process, on the one hand, and the question regarding the equality and efficiency of criminal law social control, on the other, unite both of these aspects and make their investigation necessary. This research field extends to an analysis of the legal and social processes involved in the definitions of premeditated murder (Sessar 1980) and serious crimes against property (Berckhauer 1977 and 1980). The investigation of the prosecutory and decisional structures of the police and judicial systems are particularly important, as well as the study of the efficient control of legal reforms, e.g., subsidy fraud and credit deceit according to the first law against business crime in the year 1976.

Another piece of research, dealing with the effects of sanctions and involving a comparative law project of the entire institute, concerns fines. The legal introduction of the day fine system in the year 1975, the extension of the applicability of the fine through criminal law reform, the prolonged failure to explain empirically the collection of fines, and the uncertainty regarding the development of the alternative prison term all resulted in the necessity to do research in this field. The research concentrates not only on the description of new penal legislation and the transformation of reformed decision-programs into practice, but also incorporates the empirical guarantee of special and

general preventive effects (Albrecht 1980).

A similar interest led to the initiation of one study that analyzes the status of punishment execution after the adoption of the 1977 law on corrections (Dünkel/Rosner 1980). This study, which complements an international comparative project of the criminal law research group on imprisonment, presents an inventory of corrections in the Federal Republic of Germany, as well as a deeper analysis of some important amendments thereto, with the goal of determining whether punishment execution actually has changed over the last decade and whether this change is directed toward the goal of resocialization. These questions necessitate an analysis of the effects of the newly introduced "court aid" (Renscheler-Delcker 1980).

The combination of theory and practice concerning juvenile corrections in Baden-Württemberg, moreover, has demonstrated the necessity for securing more exact and deeper knowledge about the social profile and personality dimensions of inmates in juvenile detention centers (Kury 1980). From this basis, research has expanded toward the observation and analysis of that which actually has occured in the socializing processes in juvenile detention centers (Brauns-Hermann/Lamp 1980). This study considers whether and under what conditions, the juvenile detention center is capable of achieving the tasks of an educational institution, which responsibility has been assigned to it statutorily.

In this connection, we were also concerned with the conditions for and the effects of pre-trial detention upon juvenile offenders suspected of having committed a criminal act (Busch 1980) as well as their treatment (Kury 1980) and prognosis (Fenn 1980). We also considered the later development of sentenced juvenile offenders on probation (Spieß 1980) or in a juvenile penal institution.

Another research project dealt with therapy, resocialization, and treatment evaluation. In a longitudinal study, the type and effects of social-therapeutic treatment (Ortmann/Dinse 1980), the social integration of prisoners after their release (Blass 1980) and the rate of recidivism of these prisoners (Dünkel 1980) was compared to corresponding control groups from other prisons.

Moreover, because of present relevance and significance, we have included questions concerning the connection between economic crisis, unemployment and crime (Martens 1978), as well as the execution of prison sentences in the case of juvenile immigrants (Chaidou 1980), in our research spectrum.

As we see, the analysis of the entire spectrum of crime and crime control involves many individual research problems. Included herein are unreported crime, complaint filing, police activity, prosecutorial efforts, punishment execution, private social control through business concerns, as well as crimes of violence and crimes against property. We have also considered the relationship between offender personality,prognosis, sanctions and treatment. Empirical endeavours often developed through many different sources, including more than ten projects undertaken with the financial support of the DFG. Multi-disciplinary approaches and reciprocal criticism permit criminological research to be a constant task of the work group. In view of the expected returns, we have consciously entered into this venture. We hope that the result of the individual research endeavours justify our actions.

II. CRIMINALITY AND PRIVATE CONTROL

THE INTERNAL ADMINISTRATION OF JUSTICE AT THE PLACE OF WORK*

Investigations of social control of deviant behavior
at industrial enterprises

Gerhard Metzger-Pregizer

1. Introduction

The aim of the research was to obtain greater and deeper knowledge of Betriebsjustiz (the internal administration of justice at the place of work), particularly with regard to its extent, its systematic structure, and the people handled by such a system. We wished to examine the reactions of industrial firms to violations of norms by their members; what their intentions were, what they did, and what results this had. We expected, by studying these reactions, to obtain results on the norm-structure, nature and extent of norm-violation at the place of work, and on the "dark figure" as it applied to the workplace. Further we wished to examine and analyse the attitude of the employees concerned to the social control system of their company.

We can regard these aims as having been achieved. We have been able to clarify the concept and the reality of Betriebsjustiz. In particular, our research has brought new knowledge of its organization and procedures, the frequency and nature of violations, the "dark figure", sanctioning practices and attitudes of employees.

These results are summarized briefly below, set out by topic. They have implications for legal and criminal policy, which we then describe.

* Original text: Kaiser, G., Metzger-Pregizer, G. (Hrsg.): Betriebsjustiz: Untersuchungen über die soziale Kontrolle abweichenden Verhaltens in Industriebetrieben. Berlin, Duncker und Humblot 1976, S. 286-310, published with the kind permission of author and publisher.

2. Summary of Results

2.1 Organization and Procedures

1. The organization within a company that deals with violations is clearly related to the size of the company. One cannot speak of Betriebsjustiz in the singular, but must make distinctions along a continuum ranging from relatively undeveloped to relatively developed forms of organization.

   While the literature mainly refers to regularly established systems within the company which parallel the state's justice system (factory courts, factory police etc.) in reality these are exceptions. The same is true for the collaboration of workers' representatives (Betriebsrat) in the "prosecution" and sanctioning of violators. Parallel to the development of distinct and specialized controlling and sanctioning organs we can point to a formalization of the company's reaction (work regulations, rules of procedure, maintenance of records). The establishment and formalization of the company's reaction is accompanied by increased official registration of violations.

2. In the great majority of firms control organs are only set up to deal with crime as a secondary duty. Special organs primarily concerned with this are as a rule only to be found in very large firms. 69 % of the companies studied employ staff for security duties, 38 % employ gate-keepers with no control-authority, while only 15 % had special gate-controllers.

3. Betriebsjustiz has a wide range of possible methods of control at its disposal, which are used with varying frequencies. Patrolling the building is the commonest, followed by gate-control, control of cars and lorries, and checking of store-cupboards. These forms of control are supplemented by routine examinations and a large number of other measures.

4. The most frequently used measures is patrolling the building ("going the rounds"), followed by vehicle and gate control. Checking of store-cupboards was very rarely found.

5. The so-called preventive measures can be categorized as follows: technical preventive measures, appeals, deterrence, reduction of stimuli and preventive measures related to the structure of the company.

6. Betriebsjustiz has no single style of control. Rather can we distinguish three types: repressive, preventive, and informal. Nor can any single type of control system be identified, for there are differences between companies resulting from their different sizes, levels of organization and nature of the work. The aim of the control system can generally be described as to maintain or restore order within the company.

7. For the discovery of violations the company management named the offender's immediate superiors and the head of the department as the most important sources of information. On the other hand wor-

kers' representatives saw the management and the worker's own colleagues as the most important sources of information. The control organs mentioned above only possess a part of the information about deviant behavior. For the management the employee's own colleagues do not rate as an important source of information. Yet it was later established that they possess considerably more information on violations. It can thus be taken as established that even at the level of the discovery of violations a quantitatively important selection-process occurs, which determines which and how many violations shall become known to the management.

8. We are able to establish the further point that in roughly nine firms out of ten a certain room for discretion, which varied in extent, was given to employees in subordinate positions, so that inevitably the phenomenon of a "dark figure" arises.

9. As a rule, both the management and the workers' representatives are involved (the latter with extremely variable levels of power of decisions) in the investigation of an incident and in decisions over a culprit. Discrepancies could be seen between the estimates made by management and the workers' representatives of their relative involvement in sanctioning: the workers' representatives estimated their participation higher than the management. However, in most firms the decision was jointly made as a rule.

10. Granting a hearing to a suspected offender is an accepted procedure both in principle and in practice.

11. No generally valid principle appears to govern the provision of "defence counsel". The workers' representatives take over this task in two thirds of the companies.

12. The possibility of challenging the accusation within the company was not always given. However, here the workers' representatives play an important role. The labour courts, as a natural possibility of challenge outside the company, were only mentioned in one company out of two, and the ordinary courts only in approximately 7 % of the companies. However, it seems that the suspected employee seldom makes use of the possibilities of appeal that exist.

13. In 9 out of 10 companies sanctions are recorded in the personnel files. The removal of such a record is handled in various ways.

14. Regularly established organs of Betriebsjustiz were rarely found in the firms we examined. This is for economic reasons.For these firms it is cheaper to let the personnel department handle internal violations, or else to play them down of pay no regard to them, rather than to set up and maintain moneyconsuming regular organs for prevention, discovery, investigation and punishment. In our enquiry into the firms it appeared that the size of company is an important variable here: the larger the company, the more likely it is to have such regularly established organs.

15. The following hypothesis was set up concerning formalization: the more highly developed the Betriebsjustiz-system (the higher its level of organization), the more will be found formal work-regulations, recording of violations in the personnel files and the for-

mal removal of such records, and the more will there be written codes of Betriebsjustiz. In the case of work-regulations this hypothesis was statistically supported, but not in the case of records in the personnel files.

16. Our data indicated a tendency for the workers' representatives to be more fully involved in the sanctioning process in firms with a high level of organization than in less organized ones. In spite of the generally limited involvement of the employees, we must emphasize the possibilities for the protection of justice that the workers' representatives constitute for the accused employee.

2.2 Frequency of Norm-violations within the Company and the "Dark Figure"

1. Both absolutely and relatively a considerable quantity of norm-violations come to the knowledge of the company's control-organs. According to our data for the province of Baden-Württemberg, roughly 700 violations per 1,000 employees per year became known. Admittedly this includes only 19 violations of the criminal law, but in comparison with state-recorded crime event this is a considerable figure.

2. 84 % of these violations were property-offences, 10 % were insults, 5 % were causing bodily injury, and about 1 % were sexual offences. This indicates, for crime within the company, just as elsewhere, the preponderating importance of property-offences.

3. Among the 19 criminal offences per 1,000 employees only approximately one in six was reported to the state prosecuting authorities"; this makes a contribution to the "dark figure", especially of property offences.

4. The average rate of laying charges, weighted for the frequency of offence, is roughly 30 % in the case of unknown offenders. When the offender is known, especially in the case of property offences, this rate sinks even lower. The tendency could be discerned for the charge-laying rate to be lower in forms with a higher level of organization. We could also establish a relationship, although this was somewhat weaker, between rate of laying charges and charge-laying behavior. Companies with a high tendency of lay charges obviously charge more offences, but not nearly to the extent that they estimate that they do.

5. The "dark figure" suggested by the management tends to follow the same outlines as statements of employees; the higher the "dark figure" proposed by the management, the lower the readiness of employees to inform on a colleague.

6. Employees from firms said by the management to have a high number of offences in general make statements about property-offences. This effect could not be established for level of organization.

7. 240 employees that we questionned mentioned 121 thefts which they themselves had observed or experienced within one year. Taken together with the average of 19 offences per 1,000 employees per year

even though the employees statement only referred to property-offences.

8. We find a "dark figure" of one recorded theft from a colleague to 74 not recorded.

9. Employees' readiness to report offences rises with the damage or loss involved; there is a tendency for women, foreigners, unskilled workers and trainees to be reported more often. Thus employees share the responsibilities for the selective perception and/or recording of offenders by the management.

10. If to our material we join the sentencing-rate of 50 % found in a new study of the follow-up practice of state prosecutors' office in the case of "theft from employer" we find the following selection process: from more than 460 thefts known to colleagues roughly 13 thieves come to the knowledge of the management; the management notify the police and lay charges in 2 cases, of which one is finally sentenced.

2.3 Profile of Offenders

1. Women in firms are proportionately under-represented as offenders in comparison with men, although their offences are relatively more often reported by other employees. This underrepresentation is not as strong as in the case of the state's criminal justice system.

2. The peak rate of violations, both for offences and for breaches of internal rules, is for the 20-40 year old agegroup, while the proportion of recorded offenders falls with increasing age from this point onwards. In comparison with indices which express the relationship between the size of the relevant section of the population we find the same tendency for Betriebsjustiz (in terms of numbers of offences) as for the state's justice-system: the number of offenders (per thousand population) sinks with increasing age. However, the indicee for the two lowest age-groupe (up to 20 years, and 20-25 years) are distinctly higher for the state system than for Betriebsjustiz. In the field of violations of internal orders young employees (up to 20 years) and older ones (40 years and over) were under-represented, while employees between 20 and 40 years old were more often recorded than their proportion in the employee population would suggest.

   There is a tendency for recorded property-offences to decline with increasing age; for offences against the person this tendency is reserved. A further tendency is for offences by older employees to involve greater damage or loss.

   Older employees (over 50 years) who are recorded as offenders are much more frequently found already to have negative records, and aleo include a higher proportion previously sanctioned. We take it that in the case of these employees, workmates and the company react more to their average behavior and less to single deviant acts.

3. While management and workers' representatives predominantly agreed

in their estimate that crime by foreign workers was not disproportionately high in comparison with that by German workers, recorded violations showed a difference: foreign workers were significantly more often recorded, both for offences and for violations of orders, than their numbers would warrant. However, employees contribute to this over-representation by their greater readiness to report foreign workers. The higher levels of offences against the person for foreign workers confirms the results of recent research in the area of prosecutions. This higher level for offences against the person has the result that the recorded offences of these foreign workers predominantly involved low damage or loss (up to DM 100.-).

4. In the case of the variable "length of time already with company" the results justified the following hypothesis: the longer a worker has been with a firm, the less often will he be recorded as an offender.

There was no difference in length of time already with the company between violators of works-orders and those who committed offences. Further, the number of employees who had been with the company for a year or less and who were recorded as having committed offences corresponds exactly to the proportion that they form of the total work force. For violations of works orders the number of offenders in this group is slightly larger than we should expect.

An analysis of this variable with respect to damage or loss involved gave the following result: offenders who had already been with the company a long time (more than five years) were recorded for offences with a higher level of damage or loss than other workers.

5. For the variable "Work-status of employee" we obtained the following different distribution for offences and violations of works-orders:
Trainees were recorded more often for violations of works-orders than for offences, salaried staff (including senior salaried staff) more often for offences than for violating works-orders. For apprentices, unskilled and skilled workers the distribution is roughly the same for both types of violation.

If we compare the distributions of work-status for the two types of violation (breaches of works-orders and offences) with its distribution over the firm's whole work-force, the results obtained may be summarized as follows:

For offences, unskilled workers, specialists and senior salaried staff are over-represented. For violations of works-orders, wage-paid workers are generally more frequently recorded than their numbers would lead us to expect; for salaried staff this tendency is reversed.

While separate analyses of property offences and offences against the person showed no specific differences in the distribution of work-status, such a difference was revealed on examining the variable "extent of damage or loss" which increases as the work-status of the offender rises. We hold the influence of variable opportunities for certain types of offence to be partly responsible for this

effect. Furthermore we take it that in the process of defining an action as a violation, either by work-colleagues or by the management, similar actions will be differently evaluated in ways specifically related to work-status.

6. In spite of methodological limitations we can state important results for the variable "Replaceability of the employee": employees recorded as offenders by the Betriebsjustiz-system tend to be estimated as easily replaceable. Our data also show that youths under 18 years, employees aged from 18 to 20 years, foreigners and women are more often estimated as easily replaceable than their numbers in the offender population would warrant.

7. Among those recorded as having committed offences we find fewer Trades Union members than among violators of works-orders. Altogether trades union members are less often recorded as violators than their numbers would lead us to expect.

8. Previous court sentences were known to the firm in the case of 6 % of the recorded offenders and 3 % of the recorded violators. If one compares these figures with those for the criminal justice system, where one third of the total male population have been prosecuted at least once by the end of their 24th year, we can establish that previous criminal prosecution does not appear to be a selection-criterion for Betriebsjustiz.

9. On the other hand, a previously existing bad reputation with the management seems to be an important variable: one third of all offenders and two thirds of all violators of regulations had already acquired such reputations before their recorded violation.

10. An analysis by type of bad reputation gave the following results: for 34 % of all offenders this was for the same offence on a previous occasion, for 44 % it was for personal qualities and for 16 % for bad work. In the case of violators of work-rules, 73 % had reputations for having already done this on a previous occasion, 14 % for personal qualities and only 8 % for bad work. Within offences a clear distinction exists between property offences and offences against the person: property offenders are less often recidivist than offenders against the person, but much oftener have a reputation for bad work.

    Altogether there is a clear tendency for offenders handled by Betriebsjustiz to be less likely to have previous "sentences" than offenders dealt with by the criminal justice system.

11. In 80 % of all offences and 75 % of violations of regulations, the violator admitted his guilt.

12. "Serious repentance" for the violations was believed by our informants to exist in the cases of 44 % of all registered violators, while they expressly denied believing this in 42 % of the cases. "Active repentance" by paying partial or total compensation was found in 70 % of the cases.

13. The extent of damage or loss showed itself as an important criterion-variable for several of the offender-variables described above.

The analysis of this variable by type of offence showed that material damage or loss was asserted in nearly all (96 %) property offences, but only 12 % of offences against the person.

If we divide property offences into three classes, theft from the firm theft from other employees, and fraud and embezzlement, then the greatest damage or loss is recorded in the case of fraud or embezzlement. In our study all thefts from other employees were recorded as involving damage or loss of between DM 10.- and DM 1.000.-, but predominantly at the lower level (between DM 10.- and DM 100.-). Thefts from the company lay mainly between DM 100.- and DM 1.000.-. The extreme values ranged from less than DM 10.- to more than DM 10.000.-.

Thus property offences with damage or loss of less than DM 10.- were very rarely defined as deviant behavior; as a rule they lie below the threshold-level for toleration by the company and by fellow-workers. In this connection we must not overlook the fact that the level of damage or loss is determined in accordance with very variable criteria.

14. As we have stated, nationality and level of damage or loss operate as selection-criteria. Work-status cannot be so simply established as a criterion. Certainly the variations in the employees' readiness to report offences appear to be offset by the management's tendency to record less often cases involving employees from the over-represented groups. On the other side, our data do not support this conclusion in the case of salaried staff. The selective effect of the offender's sex is clearly modified in this way; although employees more frequently report women, these are strongly underrepresented at the recording stage.

2.4 Sanctioning Within the Company

1. Companies have the following means of internal sanctioning at their disposal:

   Threat of dismissal, verbal reprimand, written reprimand, transfer or requests to resign are to be found in almost all firms. Reducing chances of promotion is found in barely half the firms, demotion and fines in one third, while exclusion from the company's social benefit schemes is only mentioned as a sanction in 4 % of the companies have a wider and more differentiated range of sanctions at their disposal.

2. The two extremes of sanctioning within the company. We did not ask questions about the possibility of applying no sanction, nor about dismissal, nor about the laying of criminal charges when appropriate, since these possibilities exist in all companies.

3. With regard to sanctioning-practice within the company it can be established that sanctions are usually applied for specific instances in the case of offences, while in the case of breaches of work-regulations the reaction is more often to a balance of behaviour (several violations).

4. A survey of the three areas of dismissal, sanctions within the company, and non-sanctioning gave the following distribution: both for offences and violations of regulations about one half of all recorded violators were dismissed. Sanctions within the company were applied to 39 % of offenders and 45 % of violators of regulations no formal sanction was applied.

5. An analysis of offences brought the following results: dismissals followed property-offences significantly oftener than offences against the person, which were more often dealt with by sanctions within the company, and also more often received no official sanction.

6. For sanctions within the company the pattern was established that the three forms of possible sanctions mentioned by nearly all firms (threat of dismissal, written or verbal reprimand) are also the three forms most commonly used. Transfers and fines were mentioned in 69 % and 32 % of the firms respectively, but used only in 14 % and 9 % of cases respectively. The sanctions "reduced chance of promotion" and "demotion" lost even more of their suggested importance in reality. The greatest discrepancy between theory and practice is found for "suggesting the employee's resignation", which was mentioned in 88 % of the firms but used in only 5 % of the cases. When a company sanctions a violation, as a rule they combine several measures.

7. A very rough division of measures taken within the company into "light" and "severe" showed that light sanctions were more often used against violations of work-regulations than against offences. For the latter, light and heavy sanctions were roughly equally common.

8. As all single types of sanction differed strongly in their intended (suggested) and actual level of seriousness, it was not possible to construct a sanctioning index which could show how severely companies sanctioned particular rule-violations of offences.

   For this reason we examined this question mainly with respect to the rate of dismissal, which we interpreted as generally the sharpest reaction by the company to deviant behavior. We can summarize the results of this enquiry as follows:

9. There was a tendency for women to be more often dismissed than men for offences against the person and breaches of work regulations; for property-offences this tendency is reversed.

10. Foreigners were dismissed significantly more often than Germans for offences against the person and breaches of work regulations: for property offences there was no significant difference.

11. Age of violator was a significant variable only in the case of offences against the person; the younger the offender, the more likely was he to be dismissed.

12. Married violators and violators with children tended, in all types of violation, to be less often dismissed than single and childless violators.

13. Employees who had been with the company a long time were significantly less often diemissed than employees who had only been there a shorter time.

14. The effect of the employee's work-statue is equivocal: skilled workers were less often dismissed for property offences than apprentices or unskilled workers. Salaried and senior salaried staff showed here the higheet dismissal-rate. For other types of violation there were no significant differences.

15. Ease of replaceability appears only to play a role in the case of violatore of work-regulations: of these, the easily replaced violators were dismissed significantly more often.

16. Tradee union members were dismissed in cases of property offences only half as often as their unorganized fellow-employees. For offences against the person no significant difference could be found, but the figures tended in the same direction. For violations of work-regulations the trend was reversed, but did not reach significance.

17. The situation-specific offender variables of previous court sentence and negative reputation with the management showed no significant relationship to dismissal. Nevertheless a persistent trend was observable: dismissal-rates are in general higher for all types of violation for the two categories of violator "known previously to have been sentenced" and "already had bad reputation with the management" than for the others. Previous incrimination seems to lead to severe sanctions at the hands of Betriebsjustiz, at least in the case of offences.

18. When property-offenders are known in the company to be in financial difficulties, they are significantly more often dismissed than in cases where this is not known.

2.5 Attitudes of Employees

1. There is a clear disinclination on the part of employees to evaluate behavior contrary to norms as worth sanctioning or as criminal. In their judgement of cases the members of companies that we questioned moved on two levels of norms: the first demanded the strict condemnation of all types of deviation, while the second preeuppoeed the balancing and interpretation of many interlinked circumstances and motives.

2. The second level predominated. For this reason the judgement of individual cases is found exceptionally difficult and presupposes a complex judgement-process from case to case.

   The judgement of undesirable practices is especially avoided, so as not to endanger the mutual confidence on which co-existence and daily life depend.

3. Because of this reporting is limited to serious cases. It comes about mostly through underprivileged members of the firm (e.g. foreign workers, women, etc.).

Since reporting itself represents an undesired procedure, this seems also to contribute to the consolidation of the lower status of these groups.

4. The resistance to reporting cases exists equally on the part of the person or group of workers concerned, and on the part of the control institutions, including the workers' representatives.

5. Among the reasons mentioned by superiors for not reporting were: the burden of additional work and unpleasant circumstances, disturbance of the atmosphere in the firm, uselessness of reporting because of inefficient or no sanctioning, danger of oneself by triggering-off role-insecurity and conflict involving the control-institutions.

6. Among the reasons mentioned for the expected resistance to reporting by fellow-workers were:

   deterioration of the work-atmosphere,

   uncertainty or disunity in judging the legitimacy of particular forms of behavior,

   making oneself ridiculous by representing utopian claims.

7. The unwritten demand to solve one's problems oneself is also aimed at self-regulating reactions by the people affected. Calling in the ruling control-institution to sanction illegitimate behavior will be interpreted as a failure in the part of the group of people immediately affected.

8. Equally, crime within the firm which makes it necessary to call in the police will be interpreted as a weakness on the part of the leadership. The vigorous resistance against reporting crime in one's own firm, or having it reported, cannot be interpreted so much as an identification with the firm as an identification with the working society and free play in carrying out one's work.

9. Employees estimate the seriousness of particular types of violation differently from the management; as a measure of this we have used differences in readiness to report different types of offence.

10. The higher the level of organization in the firm, the lower the readiness of members of the firm to report theft.

11. There is a tendency for the occupants of lower social positions in the firm to show a greater readiness to report theft.

12. The older the employee questioned, the greater his readiness to report cases of theft from the firm and small thefts from fellow-workers.

13. Readiness to report cases of theft from the firm and thefts of less than DM 100.- from fellow-workers increases with the length of time the employee has already been with the firm.

14. Readiness to report is usually highest for thefts of over DM 100.- from fellow-workers. Here there is no relationship between this readiness and the variables just discussed.

15. It was established that employees are relatively well informed about actual sanctioning-decisions of the firm. However, this does not lead them to estimate the general sanctioning policy of the firm correctly. In hypothetical cases we find far more often clear differences between employees and management.

16. However, we found a great confidence among employees that the firm's decisions on sanctions were appropriate to the case in question.

17. The most important point of agreement when we compare the two studies is without doubt the estimation, found in both studies, of theft from a fellow-worker as the relatively most serious offence, and, connected with this, the relatively indulgent judgement of theft from the firm, where both studies emphasize the variables "extent of loss or damage" and "work-status of offender". It follows from this judgement, which is different from that of the management, that in this area of the quantitatively most important criminal offence occurring at the place of work, no unambiguous consensus exists between workers and management. This is easily understood in terms of the different primary interests and functions of the two groups.

18. The qualitatively studies further supported the hypothesis in the quantitative analyses, that workers have little information, and that that little is imprecise, over the management's general policy on sanctions.

19. Both studies confirm that workers act as a strong selective filter for the officially registered quantity of crime at the place of work, so that they share decisively in the determination of the "dark figure" within the company.

20. In this connexion we find a discrepancy between the considerable readiness to report found in the quantitative study and the description of dealing with the matter oneself as the most important means of resolving conflicts, or the statement that reporting violations was undesirable, found in the qualitative study.

21. A further important dimension of the employees' attitudes, on which we only obtained information through the qualitative study, is the consideration of work-atmosphere and the ability of the work group to carry out its job as criteria for evaluating a particular form of behavior as legitimate or otherwise.

22. Finally, the qualitative study furnished us with a number of aids to explaining the data from the main study. As examples we mentioned here the connexion between the length of time a man has been with a company and his amount of room for discretion; the necessity of considering interpretation in judging the legitimacy of behavior;and the strategy of the workers' representatives in "taking no notice" of violations, thus obtaining a conflict-free relationship between management and workers.

2.6 Establishment of Norms by Betriebsjustiz and the Criminal Justice System

1. Betriebsjustiz and the criminal justice system are concerned with different sets of norms. The already discussed norms of the criminal justice system classify situations which belong to the basic set of social events: they can become relevant at any time or place. Most members of society live almost continuously in norm-relevant situations of this sort. Briefly, the norms of the criminal justice system may be described as 24-hour norms, while the norms of Betriebsjustiz can mostly be accurately, described as 8-hour norms. They mainly control situations which only occur in working hours and at the place of work.

2. The "catalogue" of norms of the criminal justice system of interest to us here embraces exclusively general and reciprocal norms. In the various "catalogues" of Betriebsjustiz we find on the contrary within each company particular and non-reciprocal norms.

3. It follows from our analysis of the control of behavior that these norms will be maintained in the Betriebsjustiz-system above all by unspecialized organs of control, and particularly by the leadership. The criminal justice system on the other hand, principally establishes specialized organs, e.g. the police, to control those to whom the norms apply. It is precisely the specialist status of these organs that in most cases limits the social and physical contact between them and those that they supervise. The numerous connections between the controllers and the controlled are less, too, in society as a whole than in the area covered by Betriebsjustiz. This leads to less intense control in society at large than under Betriebsjustiz, even though the latter can vary greatly.

4. The behavior of the organs of control in the two systems is differently regulated. While the police can only carry out many of their control-operations if certain legally specified conditions occur, the control-organs of Betriebsjustiz are less limited by normative regulations. In many companies, for example, searches of the person, car-checks, stock-room inspections etc. can be made at any time. In the area of operation of Betriebsjustiz the legally protected private sphere of the controlled person and his rights with respect to his controllers are thus relatively severely limited.

5. The organs of the company which share in sanctioning can often be motivated by business considerations, which is not the case (in this sense) with the state's organs in a criminal trial. The company's organs will also consider themselves as victims of the deviant act which they are dealing with more often than the state's. Finally, the comparatively high duration and complexity of the relationship between the organs of Betriebsjustiz and the deviant lead on the one hand to a personalizing of their operations, on the other hand to an inclination to extend their reactions to a breach of the norms beyond the literal imposing of sanctions.

6. Proceedings in the realm of Betriebsjustiz are only structured by codified norms to a very limited degree, while in criminal proceedings such norms are often found. Thus the guarantees of justice

are weaker in Betriebsjustiz than under the criminal law.

7. In Betriebsjustiz, just as with the criminal justice system, women and older people are less often found as offenders. Foreign workers, who are underrepresented in the criminal justice system, are over-represented where Betriebsjustiz is concerned. With respect to the profile of offences it is found that property-offences under Betriebsjustiz are recorded as involving greater damage or loss than under the criminal justice system, and that the main business of Betriebsjustiz is dealing with offences against work-rules, which are not known (in this form) to the criminal law.

8. Our data show that sanctions under Betriebsjustiz are influenced by offender-characteristics, while this has not been established for property-offenders before the criminal courts. Further, correlations are found in Betriebsjustiz between the victim's situation and the recorded level of damage or loss in property offences, which have not been established for cases before the criminal courts.

3. Consequences for Criminal Policy

We have shown that in firms and companies a relatively autonomous system for reacting to deviant behavior has been built up.

Under certain conditions this alternative to social control by means of the criminal law can be seen as legitimate and acceptable. Legal discussion will be needed to make it clear whether this system is to be reckoned as competing with criminal law operations, reducing their work-load, or replacing them.

If Betriebsjustiz works more economically (in terms of the means-ends relationship) than ordinary legal provisions, more effectively in terms of a cost-benefit analysis, and more democratically in terms of the participation of workers' representatives in the decision-process, then in our view it should be assured a place, at least in the area of relatively trivial deviant acts, as a duly instituted functional alternative to these ordinary legal measures.

In this way Betriebsjustiz would qualify as a programme of "diversion from the courts". By diversion we mean a strategy which seeks to avoid the possibly harmful consequences of the state's processes of crime-control by "filtering" delinquents out of these processes and directing them into other forms of treatment.

However, it must not be overlooked that selection-processes can be found in Betriebsjustiz as in criminal justice. However, the criteria for selection are not primarily to be found at the level of management or of the workers' representatives, but among the workers themselves. To this extent the suspicion of arbitrariness that occurs in some extreme cases falls not only on the company but on the deviant's workmates.

Showing the existence of selection-processes does not necessarily confirm labelling-theory; in Betriebsjustiz as in criminal justice defini-

tions and behavoir, deviance and criminalization by institutions and/or work-mates combine to procude the reality of "crime at the place of work". This would surely fit integration-theoretic ideas better a pure labelling approach.

The value of Betriebsjustiz as a part of the total system of social control of deviant behavior is certain, because of the importance of the place of work and of work-activities in our society. Social control of deviant behavior in social subsystems (e.g. school, church, industry) may not depart too far from the state's system of social control, and does not wish to endanger the action or the worth of the latter (e. g. the criminal law). This would be endangered, for instance, if Betriebsjustiz defined theft as a non-punishable breach of regulations and only applied very light sanctions against it. The discussion of the implications of Betriebsjustiz for legal policy has been marked for a long time by two extreme positions; some demanded the eradication of this weed, while others defended its legality. Thus both sides argued legalistically, while important criminological arguments ("dark figure", selection-filters, stigmatization, criminal careers) remained shut out. This is not the place to try to take up the specifically legal argument again, nor to make suggestions as to the rules that should govern Betriebsjustiz. But from our study, and bearing in mind the present state of the criminological discussion, we should like to formulate a few criteria which new rules for Betriebsjustiz must meet.

The advantage of handling relatively trivial violations informally should be preserved. (Current consideration of the de-criminalization of trivial offences proclaims or justifies this from the state's point of view).

Protection from arbitrary proceedings and penalties must be strengthened. But automatically importing the state's legal requirements into the work-place would bring the danger of "stigmatization by trial" on the one hand and a loss of efficiency through the over-organization of Betriebsjustiz. This would burden the state's system of justice with a larger number of trivial cases once again.

The norms and penalties of the Betriebsjustiz-system must be known in advance. Here the use of work-regulations is primarily suggested; the company should abide by exact rules in these. One might also consider a model code, to be incorporated in basic industrial law or in labour laws.

Workers' representative must have the right to take part in the proceedings. This implies a fully operative joint decision-making system, which in turn implies that the Betriebsrat (worker-management council) and the trades unions must dedicate more attention to these matters than previously. The education of workers' representatives from the standpoint of legal policy is also in need of reform.

Finally, the responsibility of the firm for "its" delinquents needs to be taken into account more than at present.

If Betriebsjustiz abides by these criteria, it will be better placed to fulfill the conditions justly demanded of all systems of rule and of crime-control:humanity,rationality, appropriateness and efficiency.

4. Summary of Legal Aspects

An examination of the legal basis of Betriebsjustiz leads to the following conclusions:

At this point, there does not exist any safe and solid legal basis for Betriebsjustiz. While the actual existence and typical ways of functioning of Betriebsjustiz have now been established, the legal aspects of that phenomenon remain rather vague.

The legal basis for Betriebsjustiz can be summarized as follows:

1. Betriebsjustiz is part of an existing system of private punishment. It does not have a firm or exclusive basis in law.

2. Betriebsjustiz can be legally justified only by means of a complex and indirect deduction. Crucial elements in the deductive process are general institutions of collective as well as individual labour law. There is no mutual exclusivity between collective and individual labour law.

3. The indirect justification obtained produces several breaches or conflicts in the system of laws.

4. As far as collective labour is concerned, Betriebsjustiz could be founded on the autonomous power of collective bargaining; this possibility has, however, not yet gained much relevance in practice.

5. § 87 Abs. 1 Nr. 1 of the German Business Organization Code (Betriebsverfassungsgesetz) does not in itself provide a sound statutory basis for Betriebsjustiz, nor does the principle of the social autonomy of a business enterprise, which is also guaranteed by the Code; a statutory foundation can be reached only through the idea of an auxiliary rulemaking power stemming from § 87 Abs. 1 Nr. 1 BetrVerfG.

6. As far as individual labour law is concerned, the legitimacy of Betriebsjustiz can be deduced in general from the terms of the contrast of employment, and from general work rules when such rules exist. The appropriate legal construction would be that of a contractual penal obligation; the applicability of that legal instrument upon Betriebsjustiz would be, however, most restricted, as it was devised to cover very different situations.

There is only one conclusion that can be drawn from these findings: there is a strong need for immediate legislative decisions as to legitimation, foundation and limitation of Betriebsjustiz. The contents of such legislation would have to be determined by the limits of Betriebsjustiz from the standpoints of constitutional law, labour, penal law, and criminal procedure.

The limits set to Betriebsjustiz by labour law and constitutional law can be described as follows: the institution of Betriebsjustiz is fully in accord with the implementation and organization of Stage courts in

in Art. 92 GG. Constitutional considerations would, however, prevent Betriebsjustiz from taking over quasijudicial functions with the effect of baring access to the regular courts. A corollary to this notion is the demand for a general possibility of appealing to the courts against any acts of Betriebsjustiz. In this connection, it is essential to note that Art. 92 GG requires judicial control of any acts of Betriebsjustiz insofar as offenses against general penal law are prosecuted and punished. Furthermore, it should be emphasized that factory committees (Betriebsräte) have a right of co-determination in all matters of Betriebsjustiz. An interpretation of the factorys committees' co-determination rights that would unduly restrict their powers in connection with the introduction and exercise of Betriebsjustiz does not seem to be tenable. If Betriebsjustiz is founded on a collective agreement, the factory committees' co-determination rights, or the co-determination rights of the community of employees as a whole, respectively, should also be guarded and preserved to the extent described.

The inquiry into the relationship between Betriebsjustiz and criminal justice can be summarized as follows:

1. Betriebsjustiz is an appropriate topic for consideration from the standpoint of penal law and criminal procedure law only insofar as it provides a system of sanctions beyond that which inheres in the contract of employment; Betriebsjustiz is, according to this definition, used as a means to enforce order and discipline within the company in cases where the company's general power to give directions appears to be insufficient or inappropriate.

2. Principles limiting purely utilitarian considerations are just as indispensable in the domain of Betriebsjustiz as in the sphere of official criminal justice administration.

3. The essential elements of the principles of due process in criminal justice must be guaranteed for Betriebsjustiz, which constitutes a procedure with a penalizing effect. This is true not only with regard to substantive law, but even more for procedure.

4. One of the essential elements of due process which cannot be eliminated from Betriebsjustiz is the principle of the rule of law.

5. Jurisdiction in matters of Betriebsjustiz is limited with regard to its temporal and personal aspect by its special purposes and objectives.

6. Sanctions can be imposed only for particular prohibited acts which are contrary to the order of the factory, and for which the offender can be held responsible. The principal requirements for the imposition of a sanction thus are in accordance with the doctrins of actus reus and mens rea.

7. The relevance of the principles of due process to Betriebsjustiz is not restricted to the preconditions for imposing a sanction but extends to the consequences of an offence.

8. The ideas of retribution and of official condemnation as well as

the discriminating and discrediting effects of punishment play no role at all in Betriebsjustiz. The sanctions of Betriebsjustiz also constitute punishment and are to be imposed and to be felt as such, yet they should primarily be considered as an admonition; even insofar as they express disapproval they are to be seen as sanctions of the company seen as a community, which by their imposition seeks to enforce its order. Thus, the educative function of the sanction definitely plays the main part when punishment is threatened or actually imposed through Betriebsjustiz.

9. The principle that punishment must be definite and foreseeable involves the limitation of sanctions to a few closely defined sentencing options.

10. Because of the predominance of the idea of settlement of disputes in Betriebsjustiz, particular care should be taken over the rehabilitation of the offender; this would imply that questions of access to and deletion of Betriebsjustiz records would have to be dealt with differently from present practice in criminal cases.

11. The borderline between illegal forms of "Betriebsjustiz" and the imposition of an informal but legitimate sanction is to a large extent determined by the organization of Betriebsjustiz procedure. It is however, neither necessary nor feasible to institute tribunals which conform to the organizational principles of state courts; yet it must be guaranteed that private power of punishment is exercised through objective and neutral proceedings.

12. Whether and inhowfar proof is required must, for practical reasons, be left to the discretion of the disciplinary committee; that body is responsible for ascertaining the incriminating as well as exonerating facts and circumstances are sufficiently investigated.

13. It goes without saying that the accused's right to make statements on his own behalf must be preserved. Beyond that, it should be provided that there should be an oral trial. This ought, however, not to be a public trial (publicity in this sense being limited to the factory) since publicity would rather tend to impair the purpose of the proceeding; because of close relations existing among colleagues it could impede a candid discussion of the offence and of its causes.

14. While double jeopardy principles applied with respect to regular court proceedings cannot be applied here, the prohibition against bringing the same charge twice should be fully respected as far as Betriebsjustiz procedure itself is concerned.

15. A right to appeal to a higher tribunal within the Betriebsjustiz-system should not be granted; firstly because a business enterprise must be regarded as an organizational unit, secondly because the right to take appeal to regular state courts would be unduly delayed. Any sanctions imposed through Betriebsjustiz are, however, reviewable by the labour courts.

16. From the point of view of criminal policy, there is no reason to condemn Betriebsjustiz altogether. On the other hand, the pessimistic recommendation to leave the present unregulated "grey zone" as

it is cannot be supported. It is necessary to find an appropriate middle position between those two extremes - a position which does not affect the legitimate interests of official criminal justice, but rather helps to achieve them by taking away the stigma of a criminal conviction from offenders in petty cases, and which, on the other hand, takes into account the interest of the accused by providing a fair trial while at the same time being in accord with the disciplinary objectives of the company. This goal can be more closely approached through a solution that relies on labour law than by the attempt to inflate Betriebsjustiz proceedings to a full-fledged criminal trial. The latter would not even be justified if the employee were accused of having committed a criminal offence. For according to the purpose of Betriebsjustiz, the event is regarded not so much under the aspect of a criminal offence, but rather as a disturbance of the peace and order of the factory. It must be the task and is at the same time the opportunity for well conceived Betriebsjustiz to dispose of that disturbance by means of a fair hearing in which due regard is paid to the procedural rights of the defendent as well as to his rehabilitation, by means of sanctions geared to the goal of educating the offender.

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THE STUTTGART VICTIMIZATION SURVEY*

Egon Stephan

1. Starting Point for the Present Study

According to some daily papers, delinquency is increasing from year to year and constitutes an ever greater threat to the population. The evidence used to support such claims is, on the one hand, individual crimes of a spectacular nature and, on the other, police crime statistics, the latter having exhibited (until last year) a general tendency to increase. Whereas the information-value of individual spectacular offences is obviously low, we cannot say the same indiscriminately about police crime statistics. To say how accurately these statistics reflect the "reality of crime", i.e. the delinquency actually present, is possible only by means of large-scale scientific analysis.

The importance of such analysis derives not only from its scientific interest but also from the fact that a sufficiently accurate system of monitoring the "reality of crime" and its changes is an indispensable prerequisite for putting to use the instruments of anti-crime policy (legislation, therapeutic centres, manpower planning in police departments, prosecutors' offices, courts,etc.) in a reasonable way.

If we consider what degree of accuracy police crime statistics can achieve in reflecting the reality of crime, the most important source of error is found to be the "dark field", or the "dark figure". "Dark figure" means the number of offences that are not reported to police or prosecutors and therefore remain in the "dark field". "Dark figure ratio" or "unreported crime ratio" means the number of offences reported to the police and prosecutors as a proportion of the unreported ones. Dark figures and unreported ratios vary considerably according to offence categories.Rising figures in the police crime statistics do not

* Original text: Stephan, E.: Die Stuttgarter Opferbefragung. BKA-Forschungsreihe. Wiesbaden 1976, pp. 335-351, published with kind permission of the Bundeskriminalamt and author.

necessarily mean that there is really a higher frequency of certain offences; the reason may be that police are concentrating a greater effort on this detection. For example, some years ago it was observed that drug offences, and in particular the abuse of marihuana, were playing a very small part in the police data, although many young persons were consuming this drug. When public interest turned to drug delinqency and the police made a concentrated effort in this field, the figure for known drug cases in police crime statistics rose sharply. Now this numerical change did not mean that drug delinquency had increased all of a sudden, but only that the police had learnt about a larger number of drug offences either because of their own investigative strategies or because of a greater willingness on the part of the public to file complaints.

Since police and prosecutors are never in a position to pay equal attention to all offences, the size of the dark field differs for each offence. Depending on the types of offence to which the law enforcement agencies pay particular attention, the figures in the official crime statistics may change. In this context, however, these agencies of social control are highly dependent on the public, since the police have to rely on the population to lodge complaints (up to 90 % of all complaints originate with the public, i.e. with victims and witnesses, and not with the police).

So if one tries to test the reliability with which the "reality of crime" is being represented, an apparently reasonable thing to do is to base the study on a population survey, thus getting hold of those persons who, although having become victims or witnesses of offences, did not report those incidents.

Starting off with such a population survey will enable the researcher not only to take a closer statistical look at the "reality of crime" but also to take account of the factors influencing the willingness to report offences (on which it largely depends whether a criminal act will be included or not in police crime statistics). Such factors are, for example, the amount of damage caused, the sex, age, and social affiliation of the victim or witness, and also his individual influence on a person's willingness to report may be his view of crime as a social problem, his view of the efficiency of the police and the court system, and finally how often he has been a victim.

Apart from these questions regarding the validity of police crime statistics and the conditions under which they originate, it is also of interest for anti-crime policy to know how heavy the burden of crime on the population of the Federal Republic of Germany is in comparison with other countries. In this field as well, survey results presumably are much more suitable for comparison than official crime statistics, since identical, or largely similar, questionnaires can be used for interviews in different countries, whereas the categories under which official crime statistics are compiled are generally so different from each other that there is hardly any basis for comparison. The population survey, finally, in which by far more victims are included than in the police crime statistics (where only those victims are taken into account who are registered due to the filing of a complaint) lends itself much better to a study of the tendency of specific population groups to become victimized. "Tendency to be victimized" means an individual's higher or lower probability of becoming the victim of a criminal act.

Looking at the subject in detail, the following problem areas emerged in our study:

- How great is the "subjective" burden of crime on the population, i.e. how great is the individual's apprehension of being criminally victimized; what is his opinion on crime as a social problem; how does he view trends in delinquency?

- How great is the "objective" burden of crime on the population, i.e. how often during the past year, or during his life, has the interviewed person become the victim, or witness, of a criminal act, according to his own statement?

- What relationship can there be discovered between "subjective" and "objective" burdens of crime?

- How great are the "subjective" and "objective" burdens of crime on the population in comparison with data from studies made abroad?

- When comparing the survey results with police crime statistics, what quantitative and qualitative differences are there in terms of crime structure, i.e. how accurately do police crime statistics reflect the "reality of crime"?

- How great are the interest and the readiness on the part of the population to take an active part in crime control by reporting offences, and to what extent does the varying readiness of the public to report an offence, or not to report it, depending on its type, determine the picture of officially recorded delinquency?

- What relationships are there between "subjective", and "objective", burdens of crime on the one hand, and the readiness to file complaints on the other?

- What reasons do victims give for not reporting an offence?

- Which status characteristics (sex, age, social class), and which personal characteristics (emotional instability, aggressiveness, etc.), can be found to be in a significant relationship with the readiness to report offences, i.e. which characteristics distinguish the "typical complaint"?

- How important are a person's views on trends in crime and on crime control for his readiness to lodge a complaint?

- Which social or personal characteristics increase an individual's liability to become criminally victimized, i.e. which characteristics distinguish the typical victim of acts of violence or property offences?

2. Methodological Approach

The victimization survey was made in Stuttgart. At the time of the survey the population of Stuttgart was 627,000; of these, a random sample of 1,073 subjects was taken (14.4 % of the persons selected refused to cooperate).

The 1,073 subjects to be interviewed formed two subsamples. Subsample 1 was composed of 440 heads of housholds. They were interviewed about their attitudes towards crime as a social problem and towards the police, their apprehension of crime and their experience of victimization" they were also asked to answer, in the place of other household members over 14 years of age, questions about victimizations which these latter had experienced. The data obtained from this subsample reflect the victimization of 1,012 subjects.

Subsample 2 was composed of 300 more households, of which all members aged over 14 were interviewed about their experience of victimization. This subsample included 633 subjects. Thus the study covered the victimizations of a total of 1,645 individuals.

A check on the representativeness of our samples in comparison with the Stuttgart population had satisfactory results as far as sex distribution and gainful employment are concerned. With regard to marital status, married subjects were overrepresented; and with regard to social class, the upper strata of society were overrepresented. Presumably members of marginal groups of society belonging to the lowest social stratum in particular exhibited a relatively high degree of unwillingness to be interviewed.

Selected and trained interviewers called on the subjects at home and questioned them for an average of one hour by means of:

- a questionnaire on attitudes towards delinquency and on experience of victimization containing such questions as "Have you been attacked with a knife, firearm, or any other weapon during the past 12 months?",

- a questionnaire designed to determine the subject's affiliation to one of 5 social strata (Kleinung and Moore's SSE),

- a questionnaire to reveal the subject's attitude towards the police,

- a psychological personality questionnaire, a "personality inventory" (Fahrenberg, Selg, and Hampel's FPI).

The ability of interviewees to make accurate statements about offences they had fallen victim to was enhanced by giving them precise descriptions of the individual situations (criminal acts). The subjects' readiness to answer frankly was encouraged by guaranteeing them anonymity, and checked by means of a psychological test scale. On this scale, extreme values were registerd for 19.8 % of the subjects, which suggested a lack of readiness of their part to give frank answers to the questions asked. It may therefore be presumed that about 80 % of the interviewees answered openly.

It was also examined to what degree results were substantially influ-

enced by exaggerated statements of individual test subjects. It was shown that 62.2 % of all prejudiced households reported one victimization only; only in 4.5 % of the prejudiced housholds were five to seven victimizations stated to have occurred.

3. Substantive Findings

3.1 Attitudes toward the Importance and the Extent of Crime and the Fear of Becoming a Victim

The large majority of the Stuttgart population (between 60 % and 72 %) is afraid of becoming a victim of offences such as burglary, theft or assault. Most inhabitants (80 %) feel insecure at night in certain quarters of Stuttgart. The reasons stated are first of all fear of "hold-ups, robberies (23 %), "unpleasant characters" (20 %) and "importuniting" (15%).

Many of the respondents believe that crime is on the increase in Stuttgart (64 %) and in the whole Federal Republic of Germany (83 %), whereas the extent of crime in their own neighbourhood is judged much more favourably (only 20 % suppose an increase). The general increase of crime in one's own neighbourhood is attributed primarily to offences such as theft (an increase is supposed by 33 %), burglary and willful destruction (24 % and 23 %). In contrast, to the Federal Republic the respondents suppose that it is mainly offences such as assault (43 %), and sexual and drug offences (19 % and 18 %) which have increased, while theft is mentioned only in the second place (28 %) and burglary only in the fifth place.

This different perception of crime within and without one's own neighbourhood might be due to the multiplying effect of the mass media, particularly in connection with reports of spectacular crimes.

More women voice a personal fear of crimes of violence such as assault (76 %) than men (57 %). Persons under the age of twenty tend much more to express their fear of becoming the victim of offences (assault: 74 %, burglary: 71 %, theft: 77 %) than do the remaining age-groups (63 % to 71 %, 50 % to 67 %, and 44 % to 58 %).

Members of the lowest social classes more often fear becoming victims

of offences (such as assault: 76 %, theft of cars: 88 %) than members of higher social classes (50 % to 69 % and 61 % to 78 %).

Moreover, among the reasons for a feeling of personal insecurity in certain quarters of Stuttgart there are quite a number of class-specific apprehensions. Members of the lowest social class most frequently express fear of "tramps" (30 % - remaining classes: 18 % to 25 %) and of "fights" (19 % - other classes: 8 % to 18 %), whereas members of the upper social classes mention most frequently "drunkards" (14 % - remaining classes: 3 % to 7 %) and "held-ups, robberies" (21 % - remaining classes: 7 % to 18 %).

More women (68 %) than men (55 %) class crime among the most important problems of Stuttgart.

Older respondents are more inclined to consider crime as an important factor than younger respondents (persons under the age of 50: 54 % to 58 %, persons over 50: 70 % to 92 %)

The three lower classes attach more importance to crime (between 58 % and 72 % of the respondents of these classes mentioned it among the 5 most important problems) than the two upper classes (48 % and 54 %).

Apart from social characteristics and status characteristics the perception of crime is also influenced by individual psychological characteristics:

Persons who according to the psychological data of the survey are classified as disposed rather to pessimism, instability, fearfulness, and irritability, claim to have more fear of crime and are more likely to believe in an increase of crime than those persons having opposite psychological characteristics.

On the other hand, the extent of personal victimization, i.e. the frequency of one's own experience of being a victim, seems to have only a limited influence on the perception of crime.

3.2 Victimizations Reported

The average rate of victimization experienced by the population during the past 12 months was 0.42 offences per person (partial random sample II).

17.3 % of the respondents (partial random sample II) told of offences committed against them personally, 24.8 % of offences directed against their households, and 7.9 % of offences directed against themselves and against their households. Damage was caused to 48 % of households through at least one offence, according to the statements of the respondents (partial random sample II).

6.4 % of the respondents (partial random sample II) had become eyewitnesses of offences committed against persons unknown to them. Persons aged fifteen to thirty observed offences against unknown persons particularly frequently. This fact can be considered as an indication of the increased tendency among this population group to be victimized, which bears out the fact that persons of this age group particularly often move in social surroundings in which criminal acts occur.

In both partial random sample I and partial random sample II the proportionally highest share of damaged households is found among the highest social class (45 % and 51 % in the two samples) whereas the second lowest class shows the lowest proportion of victimized households (16 % and 39 %).

3.3 The Propensity to Report Offences and the Factors having an Influence on this Propensity

The study showed that on an average 46 % of the victimizations that the subjects had undergone were reported to the police. This result corresponds with comparable data from Switzerland, USA, Canada, Australia, Finland and the Federal Republic of Germany.

The propensity to report offences differs considerably according to the type of offence (theft in and out of dwelling-place: 84 %, attempted robbery: 11 %) whereas the propensity to report offences committed against a third person of which the respondents had become witnesses shows an average percentage of only 36 %.

The most important reasons for not reporting were "damage to low" (49 %), and "no chance of success" (26 %). The question whether the victim is insured against theft or not seems to be of some importance for the propensity to report thefts, whereas the fear of crime and general perception of criminality seem to be of as little importance as the in-

dividual's social characteristics, however, do seem to influence to a certain extent a person's decision to report an offence.

The typical complainant displays self-confidence and optimism. He tends to an authoritarian and conformist way of thinking and he pursues his own interests in an aggressive - but socially still toreated - manner.

3.4 Dark Figure Ratios

The dark field for separate types of offences were determined by calculating so-called "dark figure ratios".

These range, appart from a particularly extreme figure (attempted robberies: 1:117), between 1:1 and 1:39.

In the field of property offences the ratio found was 1:13 for offences which caused damage to households and 1:2 for those committed against individuals.

The average dark figure ratio found for crimes of violence was 1:14.

Although there is a considerable dark field in all offence categories, police criminal statistics are a good indicator of criminality,to judge by the results obtained. This holds true especially for the quantitative significance of certain property offences.

However, crimes of violence are - according to the similar results obtained from both our partial random samples - quantitatively of much more significance as compared with all other categories of offences than police criminal statistics suggest. In partial random sample I the figures for property offences in relation to crimes of violence were 8:1, and in partial random sample II 7:1, whereas the comparable ratios in the police statistics were 22:1.

According to our data this discrepancy cannot be explained in all offence categories by different propensities on the part of the population to report different offences. In the case of certain crimes of violence it appears more likely that the reasons for the high dark figures may also be found in a decreased propensity of the police to file such charges.

5. Private Attitudes towards Official Crime Control

In all population groups a favourable attitude towards the police and the efficiency of the work of the police is found to prevail. 43 % of the respondents are of the opinion that the police do their job well, while 45 % judge it as "average".

37 % are of the opinion that the slogan "the police, your friend and helper" is completely apt, and 55 % think that this is more or less true. 75 % believe that police officials should have more power in their dealings with offenders, and 52 % believe that the police treat the poor and weak just as well as the rich and powerful. The efficiency of clearing up offences is judged on the whole very critically:

37 % suppose that in more than 50 % of all committed cases of robbery the offender is caught by the police. The percentage of respondents who suppose the same of burglary is 27 % , and of theft 22 %.

Men and women do not display significant differences as to these percentages.

Older persons tend in general to have a more favourable attitude to the police than younger persons do.

Police reputation is judged much more positively by the lower than by the upper social classes. On the other hand, they express more often than upper class members the opinion that the police discriminate against the socially underprivileged.

In general, it may be said that groups whose subjective experience of the threat of crime is comparatively marked, such as women, persons belonging to the lower social classes and elderly persons, have a particularly favourable attitude towards the police.

In contrast to this, the actual extent and frequency of victimization seem not to be of much importance: no significant differences in the attitude of victims and non-victims could be ascertained. Almost the same can be said of the comparison of persons who reported offences and those who abstained from doing so.

The attitude towards the work of the courts in the field of penal pro-

secution is more negative (27 % judge this work to be not so good or even not good at all).

35 % of the respondents think that they could not judge the work of the courts, whereas in the case of the work of the police only 8 % state that they could not give their opinion.

3.6 Disposition and Tendencies of Certain Population Groups and Types of Persons to be Victimized

As far as a person's tendency to be victimized is concerned, individual psychological characteristics are generally more relevant than social and status characteristics. In order to ascertain this tendency reliably, it is necessary to consider both groups of characteristics in combination.

A persons's individual personality structure is of greater importance for his tendency to become the victim of property offences than for his tendency to become the victim of a crime of violence. Persons having certain personality structures are probably more likely to frequent social surroundings where they may become the victim of property offences. Possibly, the personality structure also has some influence on the propensity to talk about victimizations in interviews. Concerning the tendency to become the victim of a crime of violence, a person's individual psychological characteristics apparently have a moderating effect, i.e. if there is a high tendency based on social and status characteristics. Where there is a low tendency based on social and status characteristics, victimizations will not occur unless individual psychological characteristics are present which increase the tendency to be victimized. As can be seen from our data, those persons are especially prone to become the victims of property offences who are "emotionally unstable", "aggressive", "masculine", unmarried and younger than 30 years. Victims of crimes of violence are mainly younger persons, who are unmarried and belong to the two lower social classes. Persons belonging to the upper social classes, who are unmarried and between fifteen and fifty years of age are victimized only if they also show signs of personal aggressiveness. In both offence categories, men are more often victimized.

3.7 The Results of the Stuttgart Study in Comparison with Data from Switzerland and the United States

Besides various investigations in Germany and abroad using different methods of questionning, a study conducted in Zurich by M.B. Clinard and carried out by means of an almost identical questionnaire to ours was drawn upon for comparison with the results of the Stuttgart study. In this Zurich study data had been collected on the perception of crime on the part of the population and on victimizations over a range of comparable types of offences. Moreover, our data were compared with those from a victimization survey carried out by D.E. Santarelli in eight cities in the USA. In the latter study only data on victimizations had been collected.

For the purpose of further control, data from the police criminal statistics of the Federal Republic of Germany were compared with corresponding data from police statistics of Switzerland and the United States. By comparing the figures of the police statistics on the one hand and the results of almost identical questionnaires on the other hand, for the first time in the field of such investigations it was possible to examine the comparability of data of police statistics from different countries.

3.7.1 The Fear of Becoming a Victim and Private Attitudes towards Criminality

Both in Stuttgart and in Zurich, people do not view crime as one of the most important problems of their city. 21 % of the respondents in Stuttgart and 10 % of the respondents in Zurich place crime in one of the first five places.

In both towns people believe that during the past few years crime probably has remained the same or has decreased in their own neighbourhood (81 % in each town), and that it has increased in their own city (Stuttgart: 48 % to 87 % according to the type of offence, Zurich: 58 % to 84 %) and in their own country (Stuttgart: 81 %, Zurich: 70 %).

In both cities, the public has a favourable attitude towards the police - 45 % of the Stuttgart respondents and as many as 60 % of the Zurich respondents have a good opinion of the work of the police, and only

5 % of the Stuttgart respondents and 2 % of the Zurich respondents have no good opinion of the work of the police.

On the other hand,the work of the courts is more often judged negatively (Stuttgart: 26 % and Zurich: 28 %). In both cities more respondents stated that they could not judge the work of the courts (Stuttgart: 30 % and Zurich: 5 %).

More inhabitants of Stuttgart than of Zurich are afraid that they will become the victim of theft (Stuttgart: 55 % and Zurich: 46 %), of burglary (Stuttgart: 61 % and Zurich: 53 %), or of assault (Stuttgart: 67 % and Zurich: 49 %).

The proportion of inhabitants who feel secure at night in their own quarters is higher in Zurich (69 %) than in Stuttgart (53 %). 88 % of the respondents in Stuttgart and 73 % of the respondents in Zurich said that there were unsafe areas in their town.

3.7.2 Frequency of Victimizations and Propensity to Report Offences

According to official criminal statistics, the Stuttgart inhabitants are more often victimized than Zurich inhabitants (Stuttgart: 81.5 and Zurich: 45.1 property offences per 1000 inhabitants; Stuttgart: 2.1 and Zurich: 1.0 crimes of violence per 1000 inhabitants).

The victimization survey results only partly confirm these findings. The discrepancy between the results given in the police statistics and the survey results is greater in Zurich than in Stuttgart. Probably offences are registered sooner and thus more often in the Federal Republic of Germany than in Switzerland because of the Legalitätsprinzip being in force in the Federal Republic of Germany. A comparison with the results of the North American study shows nearly consistently a slightly higher number of victimizations of the respondents in the USA, only pick-pocketings and robberies being an exception.

Official crime statistics go to show an average victimization rate for the population in American cities which is comparably much higher both with reference to crimes of violence (Stuttgart: 1,88 offences per 1000 inhabitants; average of American cities: 5,69 offences), and with reference to property offences (Stuttgart 24,28 offences per 1000 inha-

habitants; average of American cities: 47,77 offences).

In summarizing the discrepancy between the victimization survey results and the police criminal statistics, one may suppose that the police in Switzerland more easily tend to keep the figures of their crime statistics low, whereas the North American police apparently try to increase as far as possible the police statistics. Due to the different intentions of the police in the different countries, victimization survey results are more likely to supply comparable data.

As far as the structure of crime is concerned, there is a high degree of similiarity in all three countries. The proportion of crimes of violence reported among total crime is comparatively small.

Concerning the propensity to report offences comparable data were available only from Switzerland: 55 % of the Stuttgart respondents and 56 % of the Zurich respondents reported an offence of which they had been victimized.

In both cities the respondents' propensity to report offences of which they had become a witness was significantly lower (Stuttgart: 40 % and Zurich: 47 %).

The propensity of persons who are insured against theft and who are victimized by theft to report the damage to their insurance companies was lower in Stuttgart (49 %) than in Zurich (61 %).

4. Methodological Findings

A comparison of the results obtained from partial random sample I (interviews with heads of households) and partial random sample II (family interviews) reveals that direct questionning of household members will result in data on the frequency of victimizations of individual persons that are more reliable than is the case when only the heads of households are not representative of the total population regarding their disposition to become a victim, since they have a higher degree of social integration and a lesser degree of mobility outside the home. Also they are not informed reliably enough about victimizations of other household members about whom they are questionned. Therefore, interviewing only heads of households will lead to an underestimation of

crime. This is exemplified by the fact that results obtained from partial random sample I (interviews with heads of households) showed only 32 % of victimized households, whereas the corresponding percentage for partial random sample II (family interviews) was 48.

12.5 % of the respondents in the first partial random sample (1) and 17.3 % of those in sample II had become victims of offences directed against them personally. 19.3 % of the respondents in partial random sample I and 24.8 % of partial random sample II reported offences directed against their households. 3.9 % of the respondents in the first sample and 7.9 % of the respondents in the second sample reported offences committed against themselves as well as against their households.

The comparison of results obtained from the two different partial random samples (I - interviews with heads of households and II - family interviews) shows that depending upon the type of random sample, victimization surveys will produce results differing from each other noticeably. This demonstrates that dark figure ratios must not be considered as exact figures but as mere estimates. The less frequent an offence is, the greater the estimation error will be which must be taken into account. In the field of violent crimes this becomes particularly significant, especially for competed robbery. In this category, no offence was reported in partial random sample I, whereas there were nine cases of robbery in the second random sample - adjusted to a base of 1000 persons.

Statements made by subjects about having informed the police must not be used unverified when calculating the extent of the dark field, i.e. dark figures. By additional questions it must be ascertained that the subjects reported the offence in the legal sense, i.e. within the purview of the law. If no such precautionary actions are taken, this will lead to an underestimation of the dark field, since subjects generally do not distinguish between formal complaints and merely informing the police, e.g. through a 'phone call.

The perception of the importance, development, and control of crime must be viewed in connection not only with social and status characteristics but also with individual psychological characteristics. The

tendency to be victimized and the propensity to report an offence are much more influenced by psychological than by social characteristics. Victimization surveys concerned with the perception of crime, the propensity to report offences and the disposition to be victimized should therefore also include psychological tests.

The effect of the formulation of questions on the results of a victimization survey has not been adequately examined so far in other studies. The results of the present study reveal that respondents attach substantially more importance to crime, for example, if the formulation of the question explicitly describes crime as a social problem. Likewise, the fear of crime probably is less marked than is indicated by the results of some interviews, since the use of questions in which crime or certain offences are mentioned may provoke attitudes artificially. This inaccuracy produces varying effects with the various population groups. Therefore, differences of attitudes observed among these population groups must at least in part be attributed to a differing susceptibility to influence, and not to actual differences of attitude.

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REGISTERED AND UNREGISTERED CRIMINALITY

Bernhard Villmow

1. Purpose of the study

The purpose of this investigation was to consider the dimension and structure of juvenile delinquency within a community over a certain time period. The qualitative and quantitative differences between offences actually committed and those recorded in the official crime statistics were reviewed. In addition to comparing official findings and investigated delinquency, we analysed the decisional criteria employed by judicial and non-judicial social control authorities in their treatment and sanctioning of offences and offenders known to them.

The criminal record of members of various age groups and social classes were thereby investigated. The dimension and structure of offences committed, as well as the particular situation of the victims involved, were also analyzed. Furthermore, we considered the degree to which the individuals interviewed were informed concerning the criminal behavior of others, as well as the extent of official registration of probationers at different levels within the system of social control. The individual, when pieced together, should outline somewhat more exactly juvenile delinquency in the investigated community and the reaction of the officials thereto.

2. Methodology

The data were collected between 1972 and 1978 during several phases of the investigation. Single pilot-studies were informative as to the different methods of inquiry. Moreover, class and age-specific assessments of the gravity of given case facts were examined. In the main investigation, 920 males between the ages of 14 and 26 were asked if they had been involved in any one of twelve selected offences within the last twelve months as an offender, victim, or informant. Through repeated control studies involving 150 and 300 individuals we were able to assess more accurately the relevance of the acquired data.

In further phases of the investigation, we reviewed police, prosecutor, and court records to determine which of the interviewees had been officially registered and which institutions had collected what type of information. The last part of the study included interviews with representatives of individual organs of social control, such as police and schools which helped to define more accurately decisional criteria and patterns of action with respect to juvenile delinquency.

3. Results of the investigation

3.1 General summary of the dimension and structure of the considered delinquency

Of the 920 individuals questioned, 11 % stated that they had been offenders only, 23 % victims only, 27 % both offender and victim, and 39 % neither offender nor victim during the twelve months period. More than one third of those questioned had committed a punishable offence within the past year, and one half had been victimized. Larceny, property damage and embezzlement were the offences most often committed. Drug offences and battery followed on a somewhat smaller scale. When the frequency distribution of offences according to individual offender is graphed, the well-known J curve appears. Numerous interviewees (about half) committed only one or two offences. Repeated offences (four and more), however, were reported by 42 % of the offenders. Almost two-third of all offences were committed by approximately one-fourth of the offenders. Only a few of the offenders had committed only one type of offence. The overwhelming majority of offenders had committed several different types of offences.

One must differentiate victims in general as to persons who were victims only and those who were victims as well as offenders. Of those individuals who were victims only, nearly one half had been victimized once within 12 months, one third two to three times, and even within this small sample, one seventh had been victimized four or more times. This distribution is different for individuals who were both victim and offender during the twelve months considered. In this group 31 % were victimized once and one third were victimized two to three times. The surprising result, however, was that 35 % of the questioned offenders/victims had been victimized at least four times. When both

victim groups are compared, it is apparent that victims, who were also offenders, at least to some extent are victimized more frequently (35 % as opposed to 14 %).

In a second inquiry which was carried out three years later, the previously described results essentially could be confirmed. The number of offenders and victims seemed to have increased only slightly and the dimension and structure of delinquency for individual sub-groups were largely unchanged.

3.2 Social class and delinquency

The proportion of offenders varied between 35 % and 40 % within each of the social classes considered. Statistically, the differences were not significant. Although an analysis of the degree of criminal behavior within different age groups (juveniles, adolescents, young adults) according to social class revealed the same relationship, it does seem possible that the level of delinquency within different social classes is influenced by age. It was found that young individuals from lower social classes had committed more offences than their counterparts, a result identical to previous findings, but the differences were not statistically significant. The same result was revealed in the qualitative analysis. Therefore, it can be maintained that criminal offenders within the upper social classes are not as limited as official statistics represent.

Although the question of the offender's social class affiliation has been discussed often in criminological investigations and has stimulated theoretical development, relatively few studies exist regarding the victim's social class. Our study revealed that the proportion of victims within the different classes varied between 44 % and 58 %. Members of the lower social classes were victimized the least, whereas members of the upper social classes were victimized the most often. However, the differences are not statistically significant. Regarding the quantitative degree of criminality, we found that multiple victims were distributed proportionately among all classes. The results of other studies of various offences which indicated that members of particular social classes were victimized more frequently than members of other classes (quan-

titative analysis) could not be confirmed to the same degree here.

3.3 Age and delinquency

Although of crimes registered, the highest percentage of both traditional as well as traffic offences were committed by 18 to 25 year old males. The results of more recent studies on unregistered crimes indicate that the "peak-age" lies between 14 and 18 years. Within the present study, 16 year-olds had an offender quota of 58 % whereas generally 14 to 21 year-olds regularly comprised 40 % to 45 % of the offenders. A strong decline was shown for 22 to 25 year-olds, of whom only one of every four to six interviewees admitted having committed one or more offences within the time period under consideration. The quantitative analysis also showed that young people had committed relatively more crimes than older individuals. Although nearly every second juvenile delinquent reported having committed four or more offences, it was shown that only 36 % of the adolescents and 31 % of the young adults had been multiple offenders. One must question, however, whether this result is actually based on a lower delinquency rate. It is possible that more mature individuals perceive norm pressure more acutely and, therefore, answer questions concerning their criminal involvement with more discretion.

The proportion of individuals victimized according to age group varied between 36 % and 65 %. The group of 16 year-olds also showed the highest rate of victimization. A gradual decline in the rate of victimization is recognizable with advancing years (juveniles 56 %, adolescents 48 %, young adults 44 %). The same picture is revealed when one analyzes the number of victimizations suffered per person. Generally more interviewees within the juvenile age category, as opposed to the other age groups, were shown to have been victimized four times or more.

3.4 Schools attended and delinquency

Four years, conviction statistics have indicated that special school students were the most delinquency prone whereas "Realschulen" (junior high schools) and "Gymnasien" (high schools) students were registered criminally the least frequently. In addition, past analysis showed that special school students were overrepresented in cases of sex offences,

robbery and blackmail, whereas high school students were involved primarily in traffic offences and particularly drug offences.

In our study of unregistered crime, a picture, which diverged from the results of past criminal statistics, was revealed. The various types of schools all had generally the same offender rates (between 40 % and 60 %). This apparent similarity among different types of schools, however, disappeared when the number of committed offences was considered. Non-high school students were more often multiple offenders than high school students. When seen as a function of total crimes committed, the above average number of official registrations of non-high school students could be a result of the fact that the risk of discovery increases as the frequency with which the criminal act is committed increases.

The victimization rates (between 43 % and 59 %) revealed no significant differences between schools. A comparison of high school and non-high school students showed no differences in victimization according to type of offence or frequency of occurrence. An interesting factor was revealed with respect to both offenders and victims when age variables were introduced. Non-high school students had higher offender rates with increasing age (14 to 17 years), whereas the number of individuals who had committed more than one criminal act increased. On the other hand, high school students had offender rates which remained almost unchanged as age increased and fewer multiple offenders existed. The general victim rate, as well as the number of multiple victims, among high school students decreased with increasing age. In contrast, a higher victimization rate was observed for non-high school students.

3.5 Offenders and self-victimization

Although over the last twenty years a great deal of research has been conducted on unregistered crime few empirical results regarding the connection between the frequency of committed and suffered offences, i.e., the frequency with which the offender is his own victim, are available. The present investigation indicated that 70 % of all offenders also had been victimized during the twelve months considered and that 54 % of all victims had committed a criminal offence during this time period. Youth from the upper social class were more frequently both offender and vic-

tim than other youth. It was also clear that the number of criminal acts committed was connected to the number of victimizations. The majority of individuals (approx. 75 %) who committed fewer criminal acts (1-3), also appeared to have been victimized less often (1-3 times). Multiple offenders also indicated a higher frequency of being multiple victims. In this subgroup, almost every second person who committed several offences also had been victimized several times. Here, it remained generally unexplained whether these data were based on particular strategies of justification or whether those interviewed actually were more endangered. Furthermore, it could be shown that perpetrators of violent offences were also more likely to be the victims of such offences. This result confirmed the results of other investigations although, here too,it remained unclear whether the status of offender or victim initiated the resulting relationship.Considered together, the data did permit the conclusion that one basically cannot differentiate between two groups, i.e., offenders and victims but rather can only determine that minorities exist who are either injured or who inflict injuries here to speak of two different social roles which are assumed by various individuals at different points in time and which do not exclude each other. Therefore, victimization and delinquency can be seen as a general behavioral phenomenon of youth and young adults which also holds true for the 14 to 25 year old males investigated here.

3.6 Individual and group delinquency

In contrast to German criminology, American criminology has dealt very intensively with the issue of the co-operative commission of offences by juvenile offenders. A topic of discussion in this connection has been to what extent the threat to social order increases as a result of such behavior. It was assumed hereby that negative socialization processes and group pressure could lead to increased deviant behavior on the part of individual mombers, since the effects of group influence cannot be disregarded. In our study, which corresponds with more recent investigations on unregistered crimes, we found that the proportion of co-operative offences, or the proportion of purely group offenders, is not as great as had been assumed in earlier publications. It also became clear that factors such as type of offence and age can play a definite role. Only two-fifths of the questioned offenders often, or always acted in

union with others. Particular class or age specific differences were not established. Nevertheless, it was shown that certain types of offence are more often committed co-operatively than others. Primary examples hereof are theft, property damage and drug offences which 43 to 64 % of the interviewees had committed in union with others.

3.7 Awareness of delinquent behavior and communication of personal delinquency and victimization

It is conceivable that individuals who realize that particular offences are committed often by others in their environment, may feel less inhibition to commit these offences themselves. Knowledge or suspicion of popular deviancy could foster the attitude that the act involved is normal and thereby increase the personal willingness to commit similar offences. Within a twelve month period more than two-thirds of the fourteen to twenty-five year old males studied were told by a friend, relative or acquaintance of his or her commission of an offence. Members of younger age groups, as well as the upper social classes, obtained the most knowledge in this manner. The information primarily concerned narcotic offences, theft, property damage and battery, i.e., offences in which the highest number of offenders and criminal acts, as well as a relatively high proportion of accomplices, could be determined. Those questioned not only obtained information about other individuals' deviant behavior, but also communicated their own experiences with delinquency. Information about circumstances in which one had been victimized were communicated, as was to be expected, more frequently than reports about one's own criminal activities. The most information is imparted to friends. Parents and siblings are informed the second most often. Official agencies of social control, such as police, educational institutions, and juvenile authorities, receive only a fraction of the total information communicated. This fraction usually concerns such offences as theft, property damage and bodily injury.

In contrast to the results of previous German investigations, we found that a somewhat low percentage (14 %) of all crimes committed were reported to the police. This relatively low quota of reported crimes could result from the fact that the individuals interviewed here were essen-

tially younger than those interviewed in other studies. The 14 to 25 year-olds in other countries also appear to inform the police of crimes with relatively greater reluctance. In addition to the negative attitudes existing toward organs of social control, offender-victim relationships as well as sub-cultural norms probably influence the willingness to report crimes.

3.8 Official registration of the interviewees and the extent of unregistered crimes

After the so-called labeling approach was accorded a greater degree of attention during the last decade in criminological research conducted within the Federal Republic of Germany, more studies began to deal with the possible problem of selective sanctioning of certain population groups. The discrepancy between the results of research on unregistered crimes and the data of official criminal statistics caused questions to be raised as to who exactly was registered, and which factors led to the arrest of some individuals rather than others.

In our study, we researched registration on three levels: by the police, by the prosecutor's office and in the federal central register (only upon conviction). Of the 17-28 year-old males interviewed on a particular day, exactly one-third had been officially dealt with by one of the three authorities. Our data also include those persons who refused to respond, failed to appear, or for any other reason could not be questioned on the extent of unreported crimes. We then discovered that essentially more non-participants had been registered criminally than participants. Since one can conclude from the results of previous investigations, on unregistered criminality that registered offenders have committed more total offences than non-registered offenders, we must conclude that our non-participants included many offenders who avoided our inquiries. For this reasen, our random sample does not appear to be representative of the total population.

Numerous previous studies came to the conclusion that official registration was primarily a function of the frequency or gravity of the of-

fence. Even though these studies indicate that an essentially rational method of selection is occurring, we must differentiate between two levels of selection. The first level thereby includes those offenders who apparently are more likely to commit serious offences frequently. The second level involves the selection of a relatively small subclass from the total group of individuals who, according to data on unregistered crimes, are often engaged in criminal activities. On this second level, less rational factors could play a role. We investigated this second level by interviewing three groups of individuals, who according to their own admission either had not, had only slightly or had to a great extent been involved in criminal activities. We were concerned hereby with whom, according to age and social class, had been registered officially. We found that over a period of three years, 10 % of those who had not been highly delinquency prone had been officially registered. Age or class-specific differences, however, could not be deduced. Of those who had been officially registered, 16 % were slightly delinquency prone whereas 27 % were highly prone. The data on these latter two groups also did not support the assumption that members of particular class or age group are more likely to be registered by the official system of social control than members of other classes or age groups. In our investigated random sample, therefore, we found that no selective procedure favoring particular population groups, as represented by our variables, was being used by those authorities responsible for criminal prosecution.

3.9 Work patterns, strategies, attitudes and deliberations by agents of local social control

One final goal of our investigation was to gain an insight into the deliberations and work patterns of institutions of social control, viz., police, juvenile authorities, educational institutions, through questioning the representatives of various agencies on a local level. The purpose of the investigation was to determine to what extent the dimensions and structure of unregistered criminality are determined by the internal strategies of these agencies. Moreover, we also investigated the assumption that no control agency acts independently from other institutions but rather in conjunction therewith. Because of our limited financial resources, as well as numerous methodological problems, only a limited

degree of insight could be attained. Although the significance of the results appears to present some problems, our data still are of interest in assessing local social control.

The most important discovery was that, according to the statements of those interviewed, a tight system of social control did not exist in the investigated community. Mutual collaboration and the occasional exchange of information occur seldomly without difficulty. The assumption contained in the relevant literature that interaction between educational institutions and associated agencies is often strained because of divergent forms of interpretation and reasons for intervening, appears to be confirmed at least in some areas. Although the majority of police officers questioned declared that they, for example, would usually inform the youth welfare office of the registration of a juvenile suspected of committing an offence, the number of police contacts available in this office nonetheless was relatively limited. The same problem with respect to the flow of information from the youth welfare office to the police was found. Apparently certain tensions exist between some of the co-workers of both these agencies. The causes of these tensions probably are related to the divergent training and goal orientations of the employers of the respective social agencies.

A higher level of contact between educational institutions and both of the other social control agencies, i.e., the police and youth welfare office did not exist or at least did not exist on a written level. According to the information offered by the police, the offender's school authorities rarely are informed of suspected violations and the school authorities rarely give information to the police. When one considers only the number of written reports, it appears that schools of special education maintain the closest contact with the youth welfare office. It also is assumed in the literature on this field that because of the higher degree of interaction between these two institutions, cooperation is more likely to exist. However, in the investigated community, according to information given by special education teachers, precisely these two agencies were involved in conflicts which needed particular attention. As was to be expected, we found that high schools interact with other institutions of social control the least and apparently maintain contact mainly for consultive reasons. This finding corresponds basic-

ally to more recent conceptions of the educational institution as an internal control agency for the middle class, and also corresponds to previous findings which indicated that higher level schools consistently endeavour to avoid reporting etudents offences to the police.

On the basis of individual statements it was evident that a "network of social control" existed in the investigated community. This network,however, was not so close-meshed in its crime control efforts that one agency's information was automatically related to other agencies in an effort to strengthen general definitional and sanctioning potential. In addition the problem, which would have to be overcome for such effective interaction, is considered to be too minor by the agencies involved. The protective mechanism, which particularly exists within the school system, is also given as a reason for this barriere. This mechanism, however, can be reduced in its effectivenese by other local (power) factore and non-echool counter-strategies (temporary).

It is difficult to determine from the available data whether stigmatization processee within the control system exist. We were informed that some deviants are paesed on from agency to agency. This stigmatization seems particularly likely to occur in schools of special education. We found, however, that exactly the teachers in these schools particularly were aware of the problem of potential stigmatization of their pupils, and it appeared completely believable that an individual faced with this problem would consider suitable counter-strategies. Our results deviate in this respect from the tendenciee indicated in other studies.

The existence of a somewhat disconnected control system for educational reasons partially explains the discrepancy between data on unregistered crime and police crime statistics. It is clear that numerous offences, which are discovered within schools are regulated internally. Although these offences probably are included in our offender and victim investigation for the above stated reasons, they do not appear in police crime statistics. In this sense a portion of the mentioned discrepancies between the data of both social agencies is a result of school strategies, which because of their probable reduction of stigmatization problems should be welcomed as a reduction of the existing burden on the official crime control system.

Another reason for the discrepancy between reported and unreported crime statistics involves police settlement of private complaints. Even though it may be true that the number of complaints entered did not reach a theoretical maximum because potential complainants were inhibited by certain reactions on the part of the authorities, it (nevertheless) should be noted that the number of complaints filed in the community investigated was extremely low. Police behavior appeared to be responsible for only a minimum part of the data discrepancy. It should be recognized that the decision to inform the police of almost any type of offence lies primarily with the victim or witness. In this early stage of decision, the rate of unreported criminality is pre-determined. All later influences are of secondary importance for the dimensions thereof.

4. Legal policy conclusions

The results of our work indicate that only a minority of the youth investigated were neither offender nor victim during the specified time period. Deviant behavior appears to be a reality which scarcely can be avoided by individuals in this age group. In the evaluation of our findings, however, one should not overlook the fact that the majority of these criminal activities entail very limited damage and that most of the offenders commit offences within their own age group. Nevertheless, social control agencies are faced with the question of how to react to this phenomenon in light of the significant increase in juvenile delinquent patterns of behavior. In addition to the problem of equal treatment and rational management of control means, a problem which has recently received greater emphasis concerns what the available legal measures and sanctions are ultimately capable of accomplishing. Particularly when it is determined that officially and sanctioned youth are more likely to commit crimes in the future than those who were not apprehended, it appears clear that the available social control instruments are not necessarily capable of compensating for existing socialization deficits. In this respect our findings, that juvenile crimes are infrequently registered officially and that usually registration involves the more severe offences, are only partially problematic. Here, of course it is hoped that most juvenile deviants reform themselves with increasing age in the absence of official intervention. On the other hand, it

is to be hoped that through juvenile law reform efforts aimed toward modernization, improved socialization assistance eventually can be offered to those youth whose numerous and serious offences signalize that they are burdened by problems and deficits which can only be eliminated through professional assistance. In this sense, a general, as well as special preventive effect is conceivable which would reduce the undesired stigmatization process to a tolerable level. Whether such a goal actually could be achieved appears at least doubtful in view of the present reform models.

A COMPARATIVE INVESTIGATION OF CRIMINAL VICTIMIZATION IN THE UNITED STATES AND THE FEDERAL REPUBLIC OF GERMANY

Raymond H.C. Teske, Harald R. Arnold

1. Introduction

The development of survey research tools for gathering data on crimes and victims is thought to be one of the most important advances in the last decade of criminal justice research. In victimization surveys of the general population respondents are asked about crimes they (may) have suffered during a specific time period as well as about other related issues.

Two aspects converge in criminal victimization surveys: the crime measurement and the victimological aspects.

a) Crime measurement aspect. Problems with the collection of data on the character, the amount and the extent of criminal activity have been known since the last century, when attempts were undertaken to develop an indicator of crime by collecting official statistics. Doubts were raised about the adequacy of these indicators as their shortcomings became obvious. To name only some of the problems: many - perhaps most - crimes are not reported to the police, and those reported are often not recorded at all or are recorded in a distorted, erroneous, or incomplete fashion. The view, based on experiences and supported by empirical evidence, that the real amount of crime not only is difficult to ascertain but is likely to remain unknown has engendered the concept of the "dark-figure of (unreported/unregistered) crime", which is the collective name for the hidden incidents.
The repeated failure of criminal justice administrations to establish acceptable official indicators of crime led the researchers in social sciences and criminal justice to test alternative methods. They used self-report questionnaires which were applied to (potential or real) offenders and/or victims. Numerous studies have tried to assess the weaknesses and stengths of the survey and self-report method and have compared them with the shortcomings and advantages of traditional indica-

tors of crime, e.g., police statistics. That discussion has led to a compromise assessment: each indicator has deficiencies and needs to be improved; but if used together they are able to describe the reality of crime and law enforcement better than each of them alone.

b) Victimological aspect. Only recently did it begin to look at the victim and its functional role in the criminal process. The introduction of the concept of the victim has broadened the criminological perspective and improved criminological thinking in numerous ways. The victimological perspective has enabled researchers to approach the reality of crime more closely than before by studying, e.g., the dynamics of offender-victim interaction and the relevance of victim characteristics for the commission of various crimes. Victimology not only emphasizes the impact of crime and the harmful consequences of criminal victimization but also stresses the mediated and vicarious experiences of criminal victimization in everyday life and its consequences, e.g.,fear of crime. In addition, the advocacy of criminologists for the rights and needs of the offender is now parallelled by their advocacy for the rights of the victim.

Both aspects moved the President's Commission on Law Enforcement and Administration of Justice to initiate the first pilot studies on victimization and a national survey of a representative sample in the United States in 1966. These series of survey studies and the National Crime Survey, which is carried out regularly in the United States, have been model for a number of victimization surveys in other countries.

Inherent in the application of the victim survey technique in the field of criminal justice are to major interests which partially overlap:

a) social engeneering: Particular concerns of that approach are accurate measurement of crime, the development of indicators and new measurements of crime and the gathering of information about crime. The ultimate goal is the improvement of control activities by means of planning, design, evaluation, etc.

b) scientific: under this approach, main research interests are victim characteristics, the causal association of offender and victim, the an-

tecedents, etiology, and consequences of victimization, etc.

Presently, many researchers have discarded the main goal of earlier victimization studies - improving crime measurement and developing alternative indicators of crime - for an increased interest in testing hypotheses and in developing theoretical models in victimology. At the same time there is an emphasis upon the refinement of methodology.

Despite the worldwide success of victimization surveys as a research tool, their application is still replete with technical limitations as well as methodological and conceptual problems. In addition, the high costs of victim surveys due to large samples needed makes the development of alternative research techniques and methods necessary. Also, there is a need for more comparative research to confirm hitherto existing findings under different circumstances and to determine cross-cultural differences and similarities in order to discover uniformities in (causal) relationships.

The comparative victimization survey described below is a joint project of the Survey Research Program, Criminal Justice Center, Sam Houston State University in Huntsville, Texas, and the Max-Planck-Institute in Freiburg.

2. Purpose of the study

The purpose of this investigation is to provide a cross-cultural comparison of criminal victimization in the State of Baden-Württemberg and the State of Texas. Although there have been some previous victimization studies carried out in the Federal Republic of Germany, they have been limited to specific cities or communities (e.g., Schwind et al. 1975; Schwind et al. 1978; Stephan 1976; Villmow and Stephan 1982). To the researchers' knowledge this is the first pre-designed comparative victimization study between a large geographical area in the Federal Republic of Germany and a comparable area in the United States.

More specifically, the study was designed to collect comparable data focusing on six areas: (1) fear of crime; (2) victimization experiences during the previous year; (3) victimization experiences over a lifetime; (4) knowledge of other victims of crime during the previous year, as

well as knowledge of victims of murder and rape during the respondent's lifetime; (5) attitudee regarding selected criminal justice issues; and, (6) basic demographic and socio-economic data.

In addition to the fact that the investigation represents a pre-designed cross-cultural investigation of factors related to criminal victimization, the investigation is also of interest in two additional respects. First, respondents are not only asked about their experiences as victims of crime during the previous year, but also about their experiences as victims during their lifetime. Although victim recall presents the researcher with a number of problems regarding both reliability and validity, and, more specifically, completeness of recall, nevertheless, the researchers make the theoretical assumption that, if the event has impacted the individual to the point that he (or she) readily recalls the event, or the obverse, then it certainly is real enough to the individual that it may impact on his fear of crime and/or attitudes toward the criminal justice system. In other words, the researchers are more interested in the theoretical implications associated with past victimization experiences than with accurately assessing the total number of victimizations during the respondents' lifetimes. At the same time, these data still do provide a minimum estimate of the number of victimizations experienced during the respondents' lifetimes.

3. Problems associated with cross-cultural research

Cross-cultural comparative research always presents the researcher with unique methodological problems. This is particularly the case in criminological studies due to peculiarities of the subject matter.

(1) The most difficult problem, of course, is operationalization of the concept crime as well as the various types of crime. In order to address this issue, or problom, the researchers have to concur with Sutherland (1973) that, as limited as they are for research purposes, legally defined crime categories still provide criminologists with the most functional position or basis for studying crime. And more importantly, the researchers decided to operationalize the concepts according to selected events, rather than specific legal categories per se. For

example, rather that ask, "Where you the victim of burglary during the past year?", respondents are asked, "During the past year, did anyone break into your home and take something or attempt to take something?" In doing so, the problem of respondents misunderstanding or incorrectly defining the concept in question has been addressed. This procedure, then, was followed throughout with respect to the victimization questions.

(2) Secondly, cross-cultural comparative researchers are plagued with the problem of differences in methodological procedures. Axiomatically, data collection procedures which may work very well in one culture may not work equally as well, if at all, in another culture. The current study is no exception - especially with regard to the sampling procedures. At the same time, one purpose of the study is to determine if the mail survey technique as developed and used for the data collection in Texas will work equally as well in Baden-Württemberg, respectively, the Federal Republic of Germany. Therefore, although the sampling sources are different, the essential goal is to obtain a representative sample of adult residents of Texas and Baden-Württemberg. Thereafter, the research procedures will be replicated exactly. (More details regarding the actual sampling procedures in both Texas and Baden-Württemberg are presented below).

(3) Thirdly, there is the problem of differential cultural perceptions of attitudes and values, as well as differences in both the formal and informal procedures regarding the criminal justice systems. In some cases, of course, the concepts are not directly comparable and a comparison of attitudes cannot, therefore, be assessed. For example, respondents in Texas were asked: "How would you rate the job being done by your Sheriff's department?" One would not ask the respondents in the Federal Republic of Germany to evaluate the effectiveness of their local Sheriff's department. This, of course, is an obvious difference. Other differences are more subtle and present the researchers with unique problems. For example, respondents in Texas were asked: "Over the past three years, do you feel that the crime problem in your community is: (1) getting better; (2) getting worse; or, (3) about the same?" The concept community is used in a number of questions in the study. The problem, of course, is (1) how to translate the concept community so that it

means the same thing to respondents in both cultures and (2) how to assess whether the researchers' assumptions regarding the meaning this concept has for the general public are valid. One way, of course, is through careful pretesting procedures. Secondly, the research team consists of members of both cultures which provides the opportunity to work together toward a resolution of the problem. And, thirdly, of course, the researchers are relying on the literature and the experiences of other researchers in this area. Throughout the construction of the questionnaire, then, special care has been taken in order to assure that the questions are valid cross-culturally in their phrasing.

4. Theoretical implications of cross-cultural victimization research

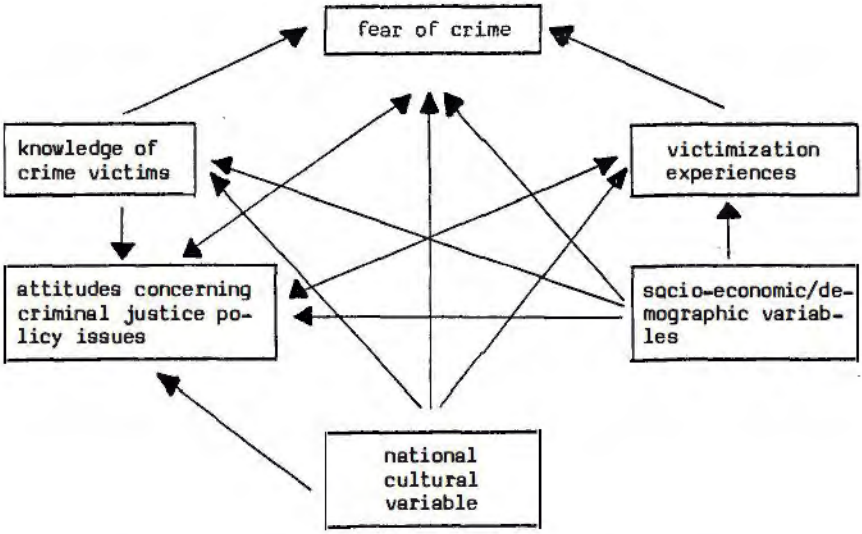
Methodological considerations regarding victimization surveys conducted by using the mail obviously place some limitations on the generalizations which can be made from the data. Non-respondents present the major problem for generalization in any type of survey research, but particularly in this case. Therefore, any direct comparisons of descriptive findings will be more heuristic than dogmatic. One can, of course, provide minimum estimates of the victimization rates by treating all non-respondents as if they were not victims of a crime; however, even this is difficult when such comparisons are made cross-culturally.

At the same time, these data should provide a sound basis for examining some theoretical assumptions. More specifically, if these theoretical assumptions hold true across both cultures, regardless of the differential victimization rates, then the veracity of the theoretical positions is strengthened.

Also, in this regard, it should be pointed out that the data collected in these studies are not controlled for in terms of time-sequence. In other words, the researchers are limited, though not totally inhibited, regarding the development of causal models. This is specifically so with regard to the effects of victimization on both fear of crime and attitudes toward the criminal justice system. At the same time, it is hoped that sufficiently significant relationships will be found to allow for the development and postulation of causal models which can subsequently

be tested in a time-frame research analysis. Specifically, then, the following relationships, among others, will be examined and compared cross-culturally (see Diagram 1):

Diagram 1 Basic Operating Model



1. Factors correlated with the probability of victimization.
2. The relationship between fear of crime and personal victimzation experiences during the previous year, as well as personal victimization experiences during the respondent's lifetime.
3. The relationship between fear of crime and personal konwledge of crime victims during the previous year, as well as knowledge of murder and rape victims during the respondent's lifetime.
4. The relationship between attitudes concerning criminal justice policy issues and personal victimization experiences.
5. The relationship between attitudes concerning criminal justice policy issues and personal knowledge of victims.
6. The relationship between fear of crime and attitudes concerning criminal justice policy issues.

7. In all cases, controls will be introduced for selected demographic and socio-economic variables.

Nine offence categories are used to measure criminal victimization experiences: (1) burglary of the home; (2) motor vehicle theft; (3) other theft; (4) robbery; (5) assault with weapon; (6) assault with body; (7) rape or attempted rape; (8) arson or attempted arson; and, (9) vandalism or malicious mischief. Data are being collected for both the previous year and the respondent's lifetime. The same categories are used to collect information regarding personal knowledge of victims during the previous year. Also, in addition, data concerning personal knowledge of murder victims during the previous year are being collected. Regarding personal knowledge of victims during the respondent's lifetime, data regarding murder and rape are being collected.

5. Research procedure of the Texas victimization survey

5.1 Sampling

The survey has already been completed in Texas in 1980 using a systematic random sample of 2000 names drawn from the list of persons holding valid drivers licenses in the State of Texas - age 18 and over. Every nth name was taken from the list in order to provide the size sample required. Over 90 percent of Texas residents age 18 and over are listed in this file. This does, of course, present a problem regarding those who do not hold valid drivers licenses, but the procedure does provide a very systematic and reliable way of acquiring a random sample. The procedure has been used several times by the Survey Research Program at the Texas Criminal Justice Center for various research projects and has, in each case, proven to be very reliable (cf. Teske and Moore 1980).

5.2 Research format

The first set of questionnaire was mailed at the end of January, 1980. One week prior to this date, each person in the sample was sent a postcard informing him/her that a questionnaire would arrive within a week

and explaining the purpose of the study. Subsequently, each person in the sample was sent a large envelope, by first-class mail, containing the following: (1) a personalized letter explaining the purpose of the Crime Victimization Survey; (2) a copy of the survey instrument; (3) a stamped, return-addressed envelope; and, (4) a pencil to be used in completing the questionnaire. At the end of two weeks 40,9 % of the questionnaires had been completed and returned. In addition, a number of the questionnaire packets had been returned as undeliverable. At the end of two weeks, all non-respondents were sent a postcard asking them to complete and return the questionnaire.At the end of three weeks, 48,0 % had been completed and returned. At this time, all non-respondents were sent a second packet, including a letter asking them to reconsider if they had not already returned a completed questionnaire. Finally, at the end of five weeks, all non-respondents were sent one more reminder postcard. The cut-off date for the last questionnaire was at the end of the 10th week.

Prior to the first mailing all Spanish-surname persons in the sample were identified. A Spanish-language version of the questionnaire, along with an explanatory letter in Spanish, was included with both the first and second mailings.

Each of the questionnaires was coded with an assigned number and the same number was placed on both the English and Spanish followup questionnaire. This procedure allowed the researchers to check for duplicate questionnaires which might have been received from the same respondent. Respondents were assured that the code numbers would be used only for this purpose and that their responses would remain confidential.

5.3 Returns

A total of 1331 individuals - representing 183 counties - returned completed, usable questionnaires, 27 of which were in Spanish. This represented a return rate of 66,6 % of the original sample of 2000. Among those not responding, the researchers were initially able to ascertain that 12 were deceased and had no forwarding address. Also, a followup survey of a sample of 50 non-respondents using registered mail suggested

that an additional 26 % were either deceased or had moved and their mail was not forwardable. If the known nonforwardables and deceased are subtracted from the original sample of 2000, this leaves a potential sample base of 1719. The 1331 usable returns, then, represents an adjusted return of 77,4 %.

One other factor is noteworthy in this regard. In the past, the return rates for the Texas Crime Poll Surveys have been approximately 75 %,even without adjustment for deceased and nonforwardables. However, these previous surveys have sampled only individuals who have re-registerd or registered for their drivers licenses during the previous year. Due to a programming error the sample for this survey was taken from all licensed drivers. Since drivers in Texas re-register only every four years a much larger proportion of the sample had either moved or were deceased.

At the same time, the question of whether or not the subject matter affected return rates should also be addressed. For example, individuals who had been victims of a crime might be more likely to respond, thereby biasing the results. Fortunately, the fifths Texas Crime Poll was conducted simultaneously using the same sample base and the return rates were almost identical (N = 1341; 67,1 %). Also, the responses to several general questions included in both surveys were very similar.

Therefore, it appears reasonable to assume that even though the sample base contained a larger proportion of nonforwardables, the proportion of returns based on the potential sample is similar to that in previous surveys. Moreover, judging by a comparison of the proportion of returns, as well as responses to selected questions in the fifth Texas Crime Poll, there is no reason to believe that the subject matter resulted in a biased set of respondents.

5.4 Summary of findings

Although the data analysis is incomplete, some of the more noteworthy findings revealed to date can be listed.

- During 1979, a total of 1.096 crime incidents were recorded by 419 (31,5 %) of the respondents.

- The most salient crime during 1979 was vandalism or malicious mischief, with 204 (15 %) of the respondents having been the victim of this crime at least once during the previous year. That was followed by burglary (11 %), other theft (11 %), assault with body (5 %), motor vehicle theft (4 %), robbery (1 %), assault with weapon (1 %), arson or attempted arson (1 %), and rape or attempted rape (.4 %).

- Average losses due to selected crimes, per victim, were: burglary, $ 873.39; other theft, $ 191.72; robbery, $ 9,948.51; and, arson or attempted arson, $ 3,717.50.

- 57 % of the respondents who were victims of a crime during 1979 always reported the crime(s) to the police or sheriff, 23 % never reported the crime(s) to the police or sheriff, and 11 % reported the crime(s) sometimes.

- The crimes most likely to always be reported to the police or sheriff were arson or attempted arson (90 %), motor vehicle theft (38 %), and burglary (75 %). The crime least likely to always be reported was assault with body (19 %).

- Respondents recorded that persons they knew personally were the victims of 3,016 crimes during 1979, with an average of 2,26 known crime victimizations per respondents.

- 53,1 % of the respondents knew at least one person who was the victim of burglary during 1979.

- 9,9 % of the respondents knew at least one person who was the victim of rape or attempted rape during 1979.

- 9,8 % of the respondents knew at least one person who was the victim of murder during 1979.

- 26,1 % of the respondents knew at least one person who was the victim of murder during the respondents' lifetime. The total number of victims known to respondents during their lifetime was 505.

- 19,9 % of the respondents knew at least one person who was the victim of rape or attempted rape during the respondents' lifetime. The

total number of rape or attempted rape victims known to respondents during their lifetime was 353.

- The 1,331 respondents recorded that they have been the victims of 3,039 crimes during their lifetime.

- 28,5 % of the respondents have had their home burglarized at least once during their lifetime.

- 6,9 of the female respondents have been the victim of rape or attempted rape during their lifetime.

- 32 % of the rapes or attempted rapes were committed by a stranger, 57 % were committed by someone known by the respondent, and 4 % were committed by a relative.

- 68 % of the rape or attempted rape incidents experienced by respondents during their lifetime were not reported to the police or sheriff.

- Additional crimes experienced at least once by the respondents during their lifetime were other theft (35,8 %), assault with body (21,6 %), motor vehicle theft (13,2 %),assault with weapon (7,7 %), robbery (3,7 %), arson or attempted arson (2,2 %), and "other serious crimes" (1,1 %).

- 44 % of the assault with weapon incidents occurring during the lifetime of the respondents were with a gun, 33 % involved a knife, and 10 % involved the use of a club.

- 100 (7,5 %) of the respondents indicated that they had witnessed a total of 121 major crimes taking place in which they were not the victim. Crimes witnessed included 18 (1,4 %) murders, 37 (2,8 %) robberies, and 23 (1,7 %) assaults.

The next step in the data analysis will be the examination of the data according to the theoretical constructs listed above (cf., Teske and Arnold 1982).

6. Replication of the research procedure in the Federal Republic of Germany

The same research procedure has been followed in the State of Baden-Württemberg, including the same time frame for mailing the questionnaires and followup material. Also, a translated version of the questionnaire used in Texas, with some minor modifications, has been used. The modifications consist of the deletion of several items which would be inappropriate to ask in the Federal Republic of Germany due to cultural or procedural differences and the addition of several items of special interest for research in this area.

The sampling procedure, however, has been peculiar to the Federal Republic of Germany since the proportion of individuals holding drivers licenses is smaller than in the United States. To use only licensed drivers in Baden-Württemberg for the study would have undeubtedly produced a biased sample. Moreover, it would have been impossible for the researchers to get access to public registers of licensed drivers. Therefore, an alternative way of drawing a random sample had to be found. This was not an easy task due to the recently enacted data protection laws of the Federal Republic of Germany and the state of Baden-Württemberg, which impede to some extent large scale studies. The researchers decided to get the names and addresses necessary for the survey sample from local communities' registers of inhabitants. According to the Baden-Württemberg law regulating the registration of residents, everyone living in the state is obliged to register with the community administration of his place of residence. Most of the administrations of the 1,111 communities in Baden-Württemberg have the option of utilizing the services of the seven large regional data centers for computerization and storage of this kind of datas. More than 85 percent of the communities are members of the regional data center association; a few larger cities have data centers of their own, and some communities are not associated with any data center.

A random probability sample was drawn from the files of residents registered with the regional data centers; in addition, two of the large cities' data centers were included. Over 90 percent of the residents of Baden-Württemberg were listed in these files.

Legal problems added to the more technical difficulties of drawing a sample. The above-mentioned data protection law as well as the residents registration law presented several obstacles to access to the data needed. For example, each community whose residents were included in the sample first had to permit data centers to turn the data over to the researchers for survey purposes. More than 800 community administrations were approached by letter and asked to give their permission. For that reason the process of building and collecting a sample took several months. Finally, at the end of October 1981 the survey started with the mailing of questionnaires. After 10 weeks, about 59 percent of the questionnaires were returned. If one takes into account the specific German situation as well as some of the characteristics of the research format of the Baden-Württemberg survey, the return rate seems approximately comparable to that of Texas. (Because entering and cleaning of data was not finished when this report was written, no analysis of the data can be presented here).

7. Comparative crime statistics

A secondary part of the investigation concerns the comparison of criminal justice statistics in the United States and the Federal Republic of Germany, as well as Texas and Baden-Württemberg. The purpose of this comparison is to provide a background or framework against which to compare the findings from the victimization surveys. Three areas are of particular interest: (1) police crime statistics; (2) prosecution statistics; and, (3) prison statistics. To date, the comparative police statistics are available and are presented in Tables 1 and 2 below. Data concerning the remaining two areas will be forthcoming in the future.

In order to derive these data a systematic comparison had to be made of the penal codes of both countries and, moreso, the comparative definitional base had to be established. The researchers decided to use the crime category definitions established by the Federal Bureau of Investigation Uniform Crime Reporting Program (cf. U.S. Department of Justice, 1980). Moreover, since crime data in the United States are already reported according to this format it was, then, only necessary to establish which paragraphs of the Federal Republic of Germany's Penal Code (StGB) fell within the definitional parameters (cf., Teske and Arnold

Table 1

Summary of Index Crimes: 1979

	Bundesrepublik Deutschland		United States		Baden-Württemberg		Texas	
	Number	Rate per 100,000	Number	Rate per 100,000	Number	Rate per 100,000	Number	Rate per 100,000
Murder	929	1.5	21,456	9.7	100	1.1	2,223	16.6
Forcible Rape	6,576	10.7	75,989	34.5	971	10.1	6,025	45.0
Robbery	21,950	35.8	466,881	212.1	2,767	30.2	25,626	191.5
Aggravated Assault	58,338	95.1	614,213	279.1	6,985	76.3	33,847	252.9
Burglary and Larceny Theft	2,139,237	3,487.7	9,877,002	4,487.5	242,853	2,651.8	649,776	4,854.5
Motor Vehicle Theft	211,880	345.4	1,097,186	498.5	25,984	283.7	72,630	542.6
Total Violent Crime	87,793	143.1	1,178,539	535.5	10,823	118.2	67,721	505.9
Total Property Crime	2,351,117	3,833.2	10,974,188	4,986.0	268,837	2,935.5	722,406	5,397.1
Total Crime Index	2,438,910	3,976.3	12,152,727	5,521.5	279,660	3,053.7	790,127	5,903.1

Table 2

Summary of Index Crimes: 1980

	Bundesrepublik Deutschland		United States		Baden-Württemberg		Texas	
	Number	Rate per 100,000	Number	Rate per 100,000	Number	Rate per 100,000	Number	Rate per 100,000
Murder	1,017	1.7	23,044	10.2	110	1.2	2,284	16.1
Forcible Rape	6,904	11.2	82,088	36.4	1,131	12.2	6,441	45.4
Robbery	24,193	39.3	548,809	245.5	3,003	32.5	27,694	195.4
Aggravated Assault	57,236	93.0	654,957	290.6	8,303	89.9	38,729	273.3
Burglary and Larceny Theft	2,277,099	3,698.9	10,871,850	4,824.4	251,206	2,720.0	694,806	4,903.4
Motor Vehicle Theft	217,284	353.0	1,114,651	494.6	25,454	275.6	74,303	524.4
Total Violent Crime	89,350	145.1	1,308,898	580.8	12,547	135.9	75,148	530.3
Total Property Crime	2,494,383	4,051.9	11,986,501	5,319.1	276,660	2,995.6	769,109	5,427.8
Total Crime Index	2,583,733	4,197.0	13,295,399	5,899.9	289,207	3,131.4	844,257	5,958.1

1980a). A summary of these paragraphs is presented in Table 3. (For more details the reader is referred to a manuscript on the subject prepared by the researchers; cf., Teske and Arnold 1980b).

8. Summary

In summary, then, this project should provide a systematically pre-designed cross-cultural criminal victimization study involving large areas of two countries. It is expected that the project will, as a minimum, accomplish the following:

1. Provide a theoretically sound basis for explaining selected relationships between criminal victimization, knowledge of victims of crime, fear of crime, and attitudes toward criminal justice policy issues.

2. Produce systematic procedures whereby criminal statistics in the United States and the Federal Republic of Germany can be more easily and validly compared.

3. Provide an accurate assessment of the extent to which the use of these methodological procedures, which have proven to be methodologically sound in Texas, are functionally useful for survey research in the Federal Republic of Germany.

4. Provide a basis for the establishment of a causal model explaining the interrelationship between fear of crime, criminal victimization, knowledge of crime victims, and criminal justice policy issues.

9. Supplementary note

In the beginning of 1982 a third victimization study was carried out in Hungary. As the same research format and instrument were used, interesting comparison with a socialist country will be possible.

At the same time the Texas victimization survey was replicated so that now two sets of data are available for comparative analysis.

Table 3 Articles from the Penal Code of the Federal Republic of Germany Applicable to the Uniform Crime Reporting Program's Categories

Murder and non-negligent homicide [1]

§ 211 Mord (Murder)
§ 212 Totschlag (Manslaughter)
§ 213 Minder schwerer Fall des Totschlags (Less serious cases of manslaughter)
§ 216 Tötung auf Verlangen (Homicide upon request of the person killed)
§ 217 Kindestötung (Infanticide)
§ 226 Körperverletzung mit Todesfolge (Assault with death resulting) 2
§ 251 Raub mit Todesfolge (Robbery with death resulting)

Forcible rape

§ 177 Vergewaltigung (Forcible rape) [3]

Robbery [4]

§ 249 Raub (Robbery)
§ 250 Schwerer Raub (Aggravated robbery)
§ 252 Räuberischer Diebstahl (Predatory larceny)
§ 255 Räuberische Erpressung (Predatory extortion)
§ 316a Räuberischer Angriff auf Kraftfahrer (Predatory assault upon a motorist)

Aggravated assault [5]

§ 223a Gefährliche Körperverletzung (Dangerous assault)
§ 224 Schwere Körperverletzung (Assault with serious bodily injury)
§ 225 Beabsichtigte schwere Körperverletzung (Intentional infliction of serious bodily injury)
§ 227 Beteiligung an einer Schlägerei (Participation in a fight, i.e., a brawl which results in serious injury to someone)
§ 229 Vergiftung (Poisoning)

Burglary and larceny-theft

§ 242 Diebstahl (Larceny) [6]
§ 243 Besonders schwerer Fall des Deibstahls (Especially serious cases of larceny) 6
§ 244 Diebstahl mit Waffen; Bandendiebstahl (Larceny with a weapon; gang larceny) 6
§ 248b Unbefugter Gebrauch eines Fahrzeugs (Unauthorized use of a vehicle) 6
§ 248c Entziehung elektrischer Energie (Extraction of electrical power)
§ 265a Erschleichung von Leistungen (Fraudulent acquisition of services)

Table 3 cont.

Motor vehicle theft

§ 248b Unbefugter Gebrauch eines Fahrzeugs (Unauthorized use of a vehicle) 6

Arson

§ 306 Schwere Brandstiftung (Aggravated arson)
§ 307 Besonders schwere Brandstiftung (Especially aggravated arson)
§ 308 Brandstiftung (Arson)

1 All cases of attempted crimes falling under these articles of the Federal Republic of Germany's Penal Code should be included under Aggravated Assault.

2 Cases of Brawling (§ 227) or Poisoning (§ 229 II) were death resulted are included by the Bundeskriminalamt under § 226. In addition, any cases of rape or arson where death resulted should be transferred to the Murder and Non-negligent Homicide category.

3 Cases resulting in death could be included under Murder and Non-negligent Homicide.

4 § 251, Robbery with Death Resulting, should be subtracted from the total number of cases of Robbery and included under Homicide and Non-negligent Homicide.

5 All attempted cases (see § 23) falling under the following articles of the Federal Republic of Germany's Penal Code should be classified as Aggravated Assault: Murder (§ 211), Manslaughter (§ 212), Less Serious Cases of Manslaughter (§ 213), and Infanticide (§ 217). In cases of Poisoning (§ 229 II) or Participating in a Fight (§ 227), where death results, the Bundeskriminalamt includes these statistics with § 226, Assault with Death Resulting.

6 Cases of unauthorized use of a motor vehicle should be subtracted from the total and used to calculate the total number of Motor Vehicle Thefts.

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EVALUATION OF SERIOUSNESS OF OFFENCES*

Bernhard Villmow

1. Aims of the Study

The main aim of the investigation described here was as follows: to examine the different estimates of the seriousness of offences among members of different social classes and age-groups, and among victims and offenders.

We also investigated whether education has an effect on attitudes toward offences and whether our respondents thought that their views on this subject agreed more with those of their friends or those of their parents.

A further aspect of the study was a comparison of the rank-order of seriousness of offences according to the legal code with their evaluation by judicial authorities and by the general population. At the methodological level we examined to what extent the respondents knew and understood the offence-descriptions. We tried to find to what extent the respondents were in a position to give consistent judgements of the seriousness of offences. Finally, we compared the efficiency of two social-scientific scaling methods.

The many, to some extent contradictory, results of earlier German and other studies of similar questions make it necessary to analyse the whole problem-area again on a wider basis. Hypotheses were worked out and discussed in the light of socialization theory. We are able to relate our findings to those of the parallel study of the "dark figure" carried out by a team of the Criminological Research Unit of the Max Planck Institute under Stephan, so that the attitudes of unrecorded offenders and victims could be studied.

* Original text: Villmow, B.: Schwereeinschätzung von Delikten. Berlin, Duncker & Humblot 1977, pp. 169-175, published with the kind permission of author and publishers.

2. Method and Sample

To this end, in autumn 1972 we questioned 333 male inhabitants of town X aged from 14 to 25. 257 of them were later studied in the "dark figure" project. In addition, 104 prisoners estimated the seriousness of certain offences.

At the beginning of this "attitude-measurement" 15 offence-definitions were presented to the respondents. (The prisoners were not included here.) After reading these, each respondent gave an example of such an offence or explained what he personally understood by it. For the estimation of seriousness the respondents received the offence-definitions paired in all possible ways (105 pairs). For each pair they decided which offence was the more serious (paired comparisons).

To examine another, more economical method, grammar school (high school) students and prisoners were asked to list all 15 offences in order of their own personal estimate of their seriousness (rank ordering method).

The attitudes of victims were ascertained since the respondents stated how often they had been victims of each type of offence and the extent of the loss or damage they had suffered. To examine the attitudes of offenders, we drew out the replies from those of our respondents who in the course of Stephan's study had admitted committing offences.

3. Methodological Results of the Present Study

3.1 From our examination of the understanding and knowledge of the offence-definitions it appeared that these descriptions of the offences were relatively well understood. This was especially so for property and money offences. For offences against the freedom of the person, threatening behaviour, coercion and kidnapping, it appeared that the acts described in §§ 240 and 241 of the criminal code were often confused with each other and with extortion. The definitions of offences involving bodily injury were mostly understood correctly. There were difficulties with particular offences against morals and drug-offences. However, in the case of forcible sexual activity the high rate of error seemed to derive from the "delicate" topic rather than from misunderstanding. In the case of drug offences it was found that more than half

the respondents believed that only the dealer made himself liable to a penalty.

3.2 For the estimation of seriousness by paired comparisons it was important to know not only whether the respondent understood the definitions correctly, but whether he was able in general to make consistent judgements on the seriousness of offences. Here it appeared that only 3 of the 333 respondents were not able to do this. Grammar school students achieved no better results here than the others. On the other hand, it was generally clear that judgements become more consistent with increasing age.

3.3 By comparing the two scaling methods we hoped to establish whether the more time-consuming and technically more complicated method of paired comparisons led to more precise results in the estimation of seriousness of our 15 offences than did the method of rank ordering. The values obtained showed that the rank ordering method's results differed very slightly from those of the more detailed method, so that the simpler method is to be preferred, at least in the case where grammar school students or other similarly educated respondents are carrying out this task.

4. Results of the Estimation of Offence-seriousness

4.1 The respondents place on the highest levels of seriousness the three sexual offences and causing grievous bodily harm. (Intentional homicide was not included in the study). Then followed crimes against personal freedom, i..e., kidnapping and coercion. The seventh rank was reached by minor bodily harm, ranking higher than any property offences. At the middle level lay serious theft, threatening behavior and fraud. After drug offences and forgery the least serious offences were embezzlement, simple theft and damage to property (all of them property offences).

4.2 The rank-orderings, that is to say the attitudes, of the three age-groups 14-17, 18-21, 22-25 years, were in agreement to a great extent. Nevertheless a few offences produced age-specific differences in estimated seriousness. Social class also exerted an influence. Apart from particular offences against morality, which in general were seen

as less serious by the younger groups, age-specific differencee for different offences could be established when we controlled for claes membership.

4.3 The rank orderings of the three social classes, lower class (upper lower and lower lower), lower middle clase and upper clase (middle middle, upper middle and upper) showed a large level of agreement.

Class-specific differences were found for specific offences where age-group also played its part. Among the 14-17 and 22-25 year olds causing bodily harm was judged more serious as social clase rose. Among the 18-25 year old respondents the members of the lower classes showed themselves less tolerant of drug offences. Youths (14-17) rated rape and forcible sexual activity lower among the higher social classes; among the young adults (22-25) this result appeared for sexual offences with children. Finally, there were class-specific differences in the case of serious theft. Among the 18-25 year olds the members of the higher classes judged this to be more serious than did the remaining respondents.

4.4 Victims were not influenced by their experience of crime to adopt a different estimate of the seriousness of particular offences from that of non-victims. Nor did it play any part whether the respondent had often been victimized, nor whether the damage had been relatively high, nor whether the date of the crime was recent or a long time before the interview.

4.5 Offenders did not make significantly different rank-orderings of offences from non-offenders.

Two offences yielded significant but contrary differences in estimated seriousness. Offenders rated property damage as more serious than non-offenders, while the picture was reversed for drug offences. But furthermore, there was a relationship between estimated seriousness and statistical frequency of an offence. The subjectively estimated less serious offences were more often committed, and more often admitted, in the "dark figure" study.

4.6 Grammar-school pupil's offence-seriousness estimates were compared with those of other respondents. No significant differencee were found.

Offences such as kidnapping, coercion, causing grievious bodily harm and fraud were estimated as more serious by the grammer-school pupils, while they rated minor bodily harm and drug offences more lightly.

4.7 To the question whether in their opinion their parents or their friends agreed more closely with their ratings of offence-seriousness, the respondent's answers showed that in general they thought that both groups shared their opinions.

Six out of the 7 age and class groups showed a tendency to suppose that their friends agreed rather more closely than their parents. It was particularly clear that the respondents felt that their parents regarded drug offences markedly more seriously.

4.8 In order to compare the rank-ordering of offences in the criminal code with the evaluations found in judicial practice and among the population, the offences were ranked in order of the maximum penalty then imposable, and also according to the penalties reckonned actually to have been imposed for each offence. We had thus rank-orderings of the offences from the public, the criminal code (maximum penalty) and judicial authorities (actual penalty). The level of agreement between the three was examined and no significant differences were found.

As expected, there was a noticeably stronger agreement between the evaluations of judicial authorities and those based on the criminal code than between the public and the criminal code. If we examine individual offences, we see, among other things, that the criminal code and judicial authorities both regard property offences relatively more seriously, and bodily harm relatively more lightly, than did our respondents. Possibly, we see different value-orientations here. In the case of drug offences differences were found between the judicial authorities and the public. Here, however, it can be accepted, on the basis of analysis of the offence-examples, that the public and the judicial authorities agree in their evaluation of the so-called "dealer" while simple possession and moderate use did not seem to the public to constitute a punishable offence.

5. Conclusions

So far we have described the course of the research and the results

obtained. Now, in conclusion, we shall consider briefly the question raised in the introduction, and the hypotheses and theories tested in the research, and attempt to draw conclusions for criminal and youth policy from our results.

5.1 As we set out at the beginning of this report, the estimation of offence-seriousness has in the last ten years mainly been discussed in connection with studies of a crime index. In particular the study by Sellin and Wolfgang (1964) has produced a large echo. In Germany Schindhelm (1972) has carried out a very detailed study in this area. Our work described here is only marginally concerned with this question-area. We examined to what extent the assumption of Sellin and Wolfgang applied, that in all social classes a far-reaching agreement reigned in the estimation of offence-seriousness. The fact that in the overall rank-ordering no significant differences between the results from three social classes were found indicates that in the area examined (attitudes to offences) there is no subculture, e.g., in Miller's (1974) sense, with a totally different type of value-orientation.

However, the different values attached to bodily harm, drug offences, individual offences against morality, and serious theft show that class- specific attitudes are possible, especially if one can get hold of extreme groups, e.g., in a large city. One must bear in mind that value- orientation is not only influenced by class but also by age. This fact is very clearly brought out in the present study.

5.2 The fact that members of the three age-groups (14-17, 18-21, 22-25) largely agreed in the overall rank-orderings shows that this aspect of socialization is already, so to say, successfully achieved during youth. Nevertheless, one must differentiate. On the one hand the results show that the young respondents knew pretty well what behavior was covered by most offence-categories; so a certain knowledge of the law was present. On the other hand, however, we also find among the youths an uncertainty in estimating the seriousness of certain offences, and it became very clear that among the youths and young adults "correct" knowledge and "correct" attitudes did not unconditionally draw law-conforming behavior in their wake. It is precisely with these groups that the discrepancy between attitude and action becomes visible when one looks into the data provided by criminal statistics and "dark

figure" studies. The members of these age-groups also agree substantially with the attitudes to offences of their parents, or at least they think they do. Yet in their style of social behavior it appears that the internalization of norms has not yet gone so far that behavior matches knowledge, for they are, officially, the age-group with the highest level of delinquency.

5.3 Offenders also showed "normal" estimates of offence-seriousness and in the area studied there is no sign of a different subcultural value-orientation. They know the general attitudes thoroughly, and, at least in the present study, they agree with them. As already stated, however, it is clear that knowing the norms is apparently not enough by itself to prevent illegal behavior. Here apparently the socialization-process has only run a partially successful course. The rules of behavior have been learned, their meaning and relative importance largely accepted. Apparently, however, the technique of acting according to these learned norms is missing. Scientists dispute whether the term socialization covers this conforming behavior and compliance with norms. This is said to be more a matter of upbringing, teaching, social control, interactions, influences and associates. This point can be allowed if it is clear that young people need more than simple communication of knowledge of the norms plus later instruction in the law either at school or through "legal propaganda". Apparently "social training" is needed here to create the possibility of learning certain techniques which enable one to remain faithful to the norms in a conflict-situation. Training does not only imply scope and opportunity to make mistakes without incurring a negative sanction, but also especially help and leadership. It is open to question whether this concept is compatible with the laws presently applicable to young people. It is not without purpose that Kaiser (1975, 214), in an analysis of these laws, pleads for "an increase in socialization actually offered ... a reinforcement through social work and social education". Here legal policy and youth- policy still have something to achieve in the area of reform of the law relating to young people. Present suggestions do not seem to go further than "reforms imminent in the system" (Kaiser 1975, 216).

5.4 The tolerant attitude of the victims is surprising, above all when we see that they in no way judge the offence from which they have suffered more severely than do the ordinary respondents. This indicates a

certain "distancing" which is hard to explain. One can assume that during the questioning the victim was able to take an abstract view; it is also imaginable that for many types of offences a few victims have also been offenders and this brought about their "balanced" attitude.

5.5 With regard to the other question, that of the comparison of the rank-orderings of offences in the criminal code with their evaluation by judicial authorities and among the population, differences were found in the respective value-orientations. However, the discrepancies that we found are not large enough to justify talking of a breach between the judicial authorities and the people needing rapid consideration and remedy. But here again we are made aware of our limitations when we ask what results might have been obtained from a sample in a large city. Here, as in the other problem-areas studied, the results were obtained from a small-town sample, and only a limited generalization of these results is possible.

5.6 Nevertheless it may well be that the generally-agreed rank-ordering of offences that we found may provide information on the readiness of the public to lay charges, and also in which categories of offences "dark figure" research must expect distorted results caused by false statements about offences felt to be serious.

One can go further; for example, charges are laid in cases of causing bodily harm, or offences against morals or against freedom (which are seen as relatively serious) more often than for other offences, so that the "dark figure" is lower in these areas than for minor offences. It follows from this, however, that "dark figure" studies obtain less exact data for these seriously regarded offences; for lighter offences people are readier to speak out, so that a more realistic picture is given, unless other sources of error such as forgetfulness or exaggeration influence the results.

5.7 Estimates of seriousness and corresponding rank-orderings also disclose information about the public's judgement of present ideas and actions on the part of legislators towards decriminalizing certain forms of behavior such as shop-lifting. The evaluation of simple theft as an especially slight offence shows that other, lighter sanctions (such as use of the civil law) would hardly cause any resistance from

the public. One would have had to conclude otherwise if this offence had been listed as moderate or very serious.

Rank-orderings bring information as to the areas in which general viewpoints and changes of attitude are made convincing to the public, and in what areas more information and explanation are needed to achieve a better understanding of decisions on legal policy.

Estimates of seriousness are also an index of the general preventive effects of certain laws. If, as Cramer (1974, 14) points out, general prevention presupposes, among other things, knowledge "that the proposed plan merits punishment", the attitude regarding this question at a given time can be established by research into the estimation of offence- seriousness. We must assume here a reduced preventive effect for the most lightly regarded offences, i.e., simple theft and damage to property. Certainly this is also true for those offences which are seen as very serious at a given time but which later come to be judged less so. In the present study this could not be investigated.

5.8 Finally, something should be said about the influence of judgements of offence-seriousness on the possibility of re-socializing offenders. It is to be supposed that the reintegration into society of offenders whose offences are seen as serious costs far more effort than, for example, that of people who have only committed damage to property or shop-lifting. Offences against morality, for example, may really be of a light character. Nevertheless, if the public judges such offences to be very serious, one can understand the research results which show that 87 % of respondents would want to have nothing more to do with such an acquaintance. Here we must recognize that the rank-orderings also give us information on stigmatization-tendencies, which should be considered in work towards resocialization.

5.9 To sum up, we may say that estimates of offence-seriousness give information about problems, and answers to questions, in numerous areas of criminology and legal policy. Certainly the data presented here clarify a whole series of present-day problems. Nevertheless we must not fail to recognize that our knowledge in this area needs to be filled out by further studies and results.

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ECONOMIC CRISIS, UNEMPLOYMENT, AND THE PROCESS OF CRIMINALITY*

Ulrich Martens

1. Introduction

The purpose of this study is to shed light on the much-discussed question as to the effect economic crisis, and in particular unemployment, have on deviance within the population. It was prompted by the worldwide economic recession that began late in 1974 and the subsequent fear that the length and extent of this recession might unleash antisocial reactions on the part of those individuals affected by the crisis.

2. Methodology and random sampling

This empirical study covers the period between 1971 (boom) and 1976 (then the height of the recession), and deals with the town of Mannheim, a large West German town with approximately 300,000 inhabitants. In addition to examining suicides and psychotic/neurotic illnesses, it analyzes in particular the development of criminal behavior within various population groups and attempts to determine the possible influence of economic crisis and unemployment on this development.

Data were obtained primarily from the annual police crime statistics, the Mannheim Police Department's suicide statistics, the statistics of criminal justice, and the statistics of the Federal Association of Local Health Insurance Authorities on mental illnesses. The incidence of crime (offences per 100,000 inhabitants) was then computed and correlated with the corresponding unemployment figures quoted in the official unemployment statistics.

* Original text: Martens, U.: Wirtschaftskrise, Arbeitslosigkeit und Kriminalitätsbewegung. BKA-Forschungsreihe. Wiesbaden 1978, pp. 180-191, published with kind permission of the Bundeskriminalamt and the author.

Focal point of the study, however, is a survey conducted of the city of Mannheim by the office of juvenile court aid. Its records yielded social and criminal data on more than 3,000 juvenile offenders (14-21 years of age), including information as to whether or not these juveniles were unemployed at the time the crime was committed.

The data were then transferred to punchcards and processed by computer. It was thus possible to cross-tabulate and compare employed and unemployed offenders to determine distribution of criminal activities. Tree-analysis yielded information on the role individual social factors such as unemployment played in the perpetration of various crimes.

3. Hypotheses and results of the investigation

The extent to which our assumptions concerning the reaction of the population to economic crisis and unemployment were confirmed in our investigation will be presented here through a comparison of the most important results with the respective working hypotheses:

Working hypothesis Nr. 1

"During economic crisis, the number of suicides and mental illnesses increases".

Results:

We observed a minimal increase in the number of consummated suicides during periods of economic crisis. This increase, however, was too insignificant in Mannheim and too contradictory in the entire Federal Republic to support any conclusive statements thereon.

The number of attempted suicides, contrarily, increased extremely during recession periods and supported the hypothesis of a relationship between suicide and economic crisis. Because of the assumed large and fluctuating number of unreported suicide attempts, however, these results are limited in documentary strength.

An indirect relationship exists between the number of mental illnesses

and the economic or unemployment situation. When unemployment increases, the number of mental illnesses decreases, particularly in the case of women, and when unemployment decreases, mental illnesses increases. Only after a long period of economic crisis does the number of mental illnesses, in the case of men, increase.

This part of the investigation, therefore, could offer reliable information only with respect to mental illness. In the case of women, our hypothesis was negated and in the case of men modified.

Working hypothesis Nr. 2

"During periods of economic recession, total criminality does not increase".

Results:

In the entire Federal Republic, the number of almost all offences increases continually such that no additional trend could be established.

On the contrary, in Mannheim, as the economic situation became worse,the number of simple thefts and aggressive offences increases disproportionately to offences in general, and the number of severe robberies and property offences decreases disproportionately. Criminal offences involving deceit decreased slightly in 1975 but continued increasing the following year. No developmental trend could be established with respect to sexual and drug offences and periods of recession.

Our working hypothesis is thereby confirmed for the entire Federal Republic and must be modified for Mannheim.

Working hypothesis Nr. 3

"Male adults commit fewer crimes during recession periods than during economic booms".

Results:

Once again, the results for Mannheim indicated completely different

trends. In the case of adult men, offences continued to increase at the beginning of the economic crisis with the exception of serious crimes against property committed by older men, which decreased slightly. At the highpoint of unemployment in 1975, crimes committed by men, particularly younger men, decreased in comparison to 1974. An increase occurred only in the number of less severe crimes of violence and simple property offences committed by younger adults. During an unchanged period of unemployment in 1976, the number of all offences for all age groups increased.

Working hypothesis Nr. 4

"Young and adult women commit more shoplifting offences during a recession, whereas their commission of other offences remains constant".

Results:

At the beginning of the economic crisis in 1974, shoplifting offences committed by young and adult women decreased in accordance with the general trend since 1971. In the following year, the number of suspected shopliftings by young women increased significantly and remained at this higher level in 1976. Shoplifting by adult women, however, continued to decrease during the same period.

Remaining criminal offences by women have continued to increase significantly since the beginning of the crisis. The working hypothesis cannot be confirmed entirely because of the vast differences in results. It can be partially verified in the case of shoplifting by young women.

Working hypothesis Nr. 5

"The number of property offences committed by male juveniles and young adults decreases during periods of economic crisis, while the number of less severe crimes of violence committed by the same group increases".

Results:

In Mannheim, property offences committed by male juveniles and young adults remained constant during the recession. Only the number of shop-

lifting and severe property offences decreased (further) during this period.

Less severe crimes of violence by young adult men did not increase during the economic crisis more than they increased generally since 1971. The commission of these crimes by male juveniles decreased significantly at the beginning of the crisis but increased more rapidly as the crisis progressed. The working hypothesis is thereby only partially verified, even though the results were generally as expected.

Working hypothesis Nr. 6

"Crimes committed by foreigners, particularly those from non-Common Market countries, decrease during an economic crisis. The number of intentional batteries, killings and sexual offences committed by this group remains at least constant".

Results:

The number of all types of criminal offences suspected to have been committed by foreigners significantly decreased during the recession. As the recession continued over a longer period of time, offences by foreigners increased. A comparison of Common Market and non-Common Market foreigners was impossible since separate data is not available. The working hypothesis is thereby modified.

Working hypothesis Nr. 7

"Unemployed individuals commit significantly more crimes than employed individuals".

Results:

In the entire Federal Republic and West Berlin, a higher proportion of crimes are committed by unemployed individuals than the proportion they represent in society. This higher proportion is particularly the case for severe crimes of violence and property offences, for which more than every tenth offender at the time of the offence was unemployed. In Mannheim, the proportion of unemployed juvenile and young adult offenders is higher than to be expected from their percentage of the entire popula-

tion. In 1976, unemployment was at 3.5 % for men and 4.0 % for women, whereas almost every fifth male offender and every third female offender were unemployed.
This working hypothesis is confirmed totally.

Working hypothesis Nr. 8

"Unemployed juveniles and young adults commit more property, violent, sex and drug offences than their employed peers".

Results:

In Mannheim, unemployed juveniles commit significantly more violent crimes than unemployed juveniles. Unemployed juveniles and young adults commit four times as many drug offences as employed juveniles.
Sex offences are so rarely committed by both groups of juveniles that a comparrison is impossible here.
The working hypothesis, therefore, is confirmed with respect to property and drug offences and falsified with respect to violent offences.

Working hypothesis Nr. 9

"Unemployed juveniles, who have a previous criminal record, commit proportionately the same amount of crimes as employed pre-convicted juveniles".

Results:

Delinquency by pre-convicted, unemployed juveniles is extremely different from delinquency by pre-convicted employed juveniles. Although the unemployed commit more property and drug offences, the employed are over-represented in the commission of violent crimes.
With the exception of severe property crimes, which are committed equally frequently by both groups, the working hypothesis is refuted. We must point out, however, that our data sample was particularly small here.

Working hypothesis Nr. 10

"Unemployment represents only one criminological factor that encourages criminality only when combined with other unfavorable secial factors".

Results:

Unemployment, in addition to sex and pre-convictions, has a decisive influence on the type of crime committed. Since both unemployed and employed offenders came mainly from the same social class, the unemployment factor has independent relevance and is not merely the expression of a particular social milieu.

To the extent that particular offences are committed more by unemployed individuals, viz., property and drug offences, unemployment can be seen as one cause of increased criminality. In the case of crimes of violence, unemployment seems to counteract criminality, particularly for pre-convicted juveniles.
The working hypothesis is hereby only partially confirmed.

4. Conclusions

Our investigation clearly indicates that completely different socially deviant trends develop during a time of economic crisis. Whether deviant behavior increases or decreases, therefore, is not as important as the question of which social group is particularly endangered during periods of economic recession. Although we could specify the population groups, which commit more crimes or more often suffer from mental illnesses during a recession, we could not find support for a causal relationship here, since the available data is too limited in many areas.

This lack of causal relationship was also true with respect to crimes committed by the unemployed. Even though it is clear that the unemployed commit proportionately more crimes than the employed, the reason why unemployment leads to higher criminality remains unanswered. Our intense study of Mannheim led to some new recognitions in this field, particularly regarding the meaning unemployment has in the differentiation of offences committed. Our results, however, are partly based on an extremely low amount of data and, therefore, are limited in their validity.
The first prerequisite for a well-founded study of crime and economic trends would be a wide information base. The suspected offender's employment status should be recorded during the police investigation. In

cases of unemployed suspects, the length of unemployment and possible previous convictions should also be noted.
The question of causality between unemployment and criminality can be answered only through research on the offender's real motivations. Thie type of research, however, presents a great number of further problems concerning procedure and reliability.
The first attempt at documenting crime committed by the unemployed began in 1975. This attempt, however, proceeded in a completely falee direction. Although until 1975 the criminal suspect's occupation was recorded in the police records (PAD 3), after 1976 theee data were ommitted completely.

In light of the dim econemic prospects for the 1980's, it is important to consider whether at least the unemployment status of criminal suspects should be included in the otherwise extensive police statistics. This information could advance a movement away from the purely administrative nature of police crime statistics to the instrumental character thereof in causal research and crime prevention.

III. THE POLICE

PRIVATE CRIME CONTROL

An Empirical Investigation of the Filing of Complaints

Richard Rosellen

1. Questions raised and methods of investigation

1.1 Introduction

The private filing of a complaint with the police usually represents the first link in a chain of selection and definition, the end of which forms or can form the final criminalization of a deviant in the individual concrete case. Altogether more than 90 % of all cases of classical criminality registered with the police are reported through private complaints. Moreover, in the majority of cases the complaint is filed by the victim. Therefore, the proportion of unregistered, as well as the extent and structure of registered criminality is decisively influenced hereby. In addition, the "positivistic" definitions of criminality in the criminal code are transformed into social practice through the private filing or omission in filing complaints. Pragmatic definitions of criminality become operative through the behavior of complaints. Important criteria for criminal law definitions are not determined by specialists, politicians or organs of crime control but rather by the "man on the street".

1.2 State of research

In spite of the significance of the private filing of complaints to legal effectiveness and the introduction of criminal processes, as well as to the development of criminological theory, empirical knowledge here is not extensive. In the following sections, the existing research is summarized in the form of theses. Attention should be given to the fact that often only relatively uncertain empirical assumptions were considered. On the one hand, relationships, which were discovered in certain investigations, frequently could not be identified in other investigations. On the other hand, the results were obtained partially with me-

thods, which do not justify the assertion of cogent statements about the behavior of complainants. The extent of unregistered criminality, obtained in victimization surveys, for example, is not a clear indicator of complainant behavior since it is also a product of the selective behavior of the police in recording of complaints. The following theses, presented in summary form, present the status of research:

The willingness to enter a complaint is influenced by

1. characteristics of the offence or of the circumstances

The probability of a complaint being filed for various offence categories increases with the severity of the act and the amount of damage. Thefts of valuable technical devices and motor vehicles were reported more frequently in comparison to thefts of other goods. Consummated offences were reported more frequently in comparison to attempted offences.

2. characteristics of the offender

It was shown consistently in investigations of shoplifting and private crime control in businesses that middle-aged offenders are reported more frequently than younger or older offenders. Within the shoplifting category of offenders, foreigners were reported more frequently than Germans.

3. characteristics of the social relationship between the offender and and the victim or (potential) complainant

The willingness to report a crime increases when the victim suspects a particular individual, provided that the suspect and the victim do not have common ties such as family, business, organization, etc. If the latter situation is the case, the probability of reporting the crime decreases.

4. characteristics of the victim or the (potential) complainant

The insignificance of damage and the lack or limitation of prospects for success were recorded most frequently as subjective reasons for the

failure to report crimes. The desire for compensation and recovery of the stolen object were given as motives for filing a complaint. Moreover, emotions such as anxiety, anger and annoyance as well as the desire for deterrence and punishment of the offender and for personal retribution also play a role. Complainants tend to have more positive attitudes toward the police and consider themselves to be somewhat more threatened by criminality than do non-complainants. Complainants also differ from non-complainants regarding particular variables, which may be measured in psychological personality tests. Females and single persons are less likely to inform than males and non-single persons. The existence of theft insurance increases the probability of reporting this offence. The willingness to report crimes varies according to the residence of the individuals questioned.

1.3 Questions raised in the investigation

Until now research in this field has been directed toward finding the motive for failing to file a complaint. On the contrary, the motives for filing criminal complaints scarcely have been investigated. A goal of our investigation is to develop hypotheses about these motives on the basis of qualitative material. A further goal is to identify differences between complainants and non-complainants. In this regard, we are interested in the criterion complexes "conception of routine police work", "attitude toward police" and "demographic characteristics". Finally, a theoretical approach based on our findings will be made of the process of filing complaints.

1.4 Methods of the investigation

In order to answer the two central questions of investigation "why do private individuals file complaints" and "how do complainants differ from non-complainants", we conducted interviews of a random sample of the population of a southwest German city who were at least eighteen years of age and of German nationality. Since it was of interest to us to record the attitudes and conceptions including those which could not be foreseen, of the persons interviewed as differentiatedly as possible, as well as to secure extensive reports on cases of complaints filed, we

constructed a semi-structured interview component, which consisted exclusively of open questions. In a second, fully structured part of the interview, we recorded attitudes regarding the police and collected demographic data, through the use of several statements.

In order to record fully the complexity of the answers in the semi-structured interview component, as well as to relieve the interviewers from data notation and thus to facilitate unrestricted communication with the interviewee, the interviews were recorded on tape.

We worked with a staff of six interviewers. During data collection they were in close contact with the author. The taped protocols were played back immediately after recording so that the interviewer could be supervised continually and if necessary corrected.

The material collected was prepared for computer evaluation. The codification schema was derived from the answers to the fully structured part of the interview. From the semi-structured part the answers had to be transcribed literally and subjected to content analysis for the production of a codification key. According to the key, complete interviews were prepared by two coders working independently. The two codifications of each interview were compared and differences were corrected on the basis of the original material.

Our investigation covered a random sample of a total of 98 individuals. A control for representativeness revealed that this random sample optimally represent the reference population in the characteristics "sex" and "religious affiliation". With respect to "age" a weak correlation of the random sample to the population distribution is present. On the contrary, the characteristic "civil status" in our random sample was not representative of the entire population. The results indicate, however, that when students are excluded from our sample satisfactorily passes the test of representativeness.

2. Occasions and motives for filing a complaint

2.1 Introduction

This part of the investigation concerns the results of a qualitative analysis, which was based on the following questions:

What is the victimization situation of the complaint? What expectations does the complainant have of police behavior? How does the complainant react to the disappointment of fulfillment of his expectations?

Our results were drawn particularly from the case descriptions, which the interviewees gave in response to the following questions:

When did you last call or notify the police?

WHEN: "NEVER" etc.	Perhaps once a long time ago you called the police. Are you sure that you do not remember such a time?
	WHEN ONCE AGAIN: "NO" ----------> Q 13a
WHEN NECESSARY INQUIRE	Please tell me what happened.
ALLOW PERSON TO FINISH REPORTING AND THEN INQUIRE	You have already answered several of the following questions in your report. May I, however, ask you a few more questions regarding this case?
	Where did it happen?
	How long ago did it happen?
	Were the police immediately called or only later notified?
	What did you expect the police to do?
	And what did the police do?
	Did you believe that the police would be successful in this regard?

In your opinion, were the police successful in their attempts in connection with this case?

The collection of case descriptions in this manner has the advantage of extreme practicality but also has certain disadvantages. Since a portion of the cases reported occurred a long time ago, memory lapses may have affected the reporting thereof. Although we may assume that cases were fabricated, cases could have been forgotten or not mentioned.Even though the results of an investigation published by Kürzinger (1978) suggest that the selection of reported cases and reported persons is not essentially distorted, this investigation method always is at a disadvantage, which here exists in the fact that the contrast between the groups of complainants and non-comlainants diminish and that the number and possibly the bredth of the recorded cases decrease. In spite of the limitations mentioned, and the methodological problems generally connected to questions of fact in interviews, this method is still suited for our purposes. Its suitability lies in the fact that it is primarily our goal to form hypotheses from the findings of our investigation, which is to be understood as an orientation study, and not to make assessments about the distribution of certain manifestations of characteristics in the total population.

2.2 Victim situation

We included all cases in our analysis, in which the individuals questioned had called or informed the police because of crimes against property, crimes against human life or bodily integrity, or because of other violations and conflicts. Individuals who reported such occurences were defined by us as complainants. Police contacts reporting traffic accidents or other events, which in the widest sense could not be interpreted as conflicts or violations were not coneidered. We could identify complainants, in our sense of the word, in n = 46. About half of the individuals questioned stated that they had contacted the police in one of the situations mentioned. These persons reported a total of more than 57 cases, which were distributed over the various types of situations as follows:

Number of various types of situations

Number of Cases	Type of Case
more than* 11	breaking into locked buildings and rooms
2	breaking into automobiles
4	theft of automobiles
3	theft of bicycles
7	other thefts and fraud
more than 5	damage to property
more than 6	fights
6	other injuries to bodily integrity - either feared or already having occurred
more than 2	disturbances of the peace
1	disturbance of domestic peace
3	other offences
3	molestations
4	quarrels

* "more than" is utilized when individuals reported, e.g., "numerous", "several" cases without giving the exact number.

In the following section, the cases extensively described by the persons questioned were considered as a whole. We dispensed with an analysis of the cases according to situation because of their limited number, but when necessary, they were differentiated according to type of offence.

A series of different forms of victimization resulting from the offence could be identified in our material. Of all types of cases, those in which the complainant himself is the victim in the more narrow, legal sense are dominant, e.g., something was stolen from him, he was physically injured, he got involved in an argument, etc. In these cases the victim is the directly affected beneficiary of the broken norm.

A somewhat different victimization situation occurs particularly in regard to fights. The complainant himself is frequently not involved in the dispute, but he feels that his peace is being disturbed or that he is being disturbed in some other way through the noise and other circum-

stances connected with the fight. A fight is reported to the police in these cases, but for the complainant the occasion has the significance of disturbance of the peace. The police definition of the case as a fight, bodily injury etc. often differs from the "action-relevant" definition of the situation by the complainant. In this sense, the complainant, although he is not directly involved in the actual event, is also a directly affected victim in these cases. He is the beneficiary of a norm, which is broken indirectly through another offence.

Another situation frequently encountered in property crimes occurs when the complainant is not the affected beneficiary, in the more narrow sense, but rather is the member of a victim group. He is, for example, not the owner of a stolen object and was not robbed himself, but he is tied to the person who was robbed through family or other primary social group relationships and his interests are affected through the other person's being "victimized", in the more narrow sense of the word. The theft of the father's automobile, e.g., usually affects the whole family and if the bicycle is stolen while the wife is shopping, the interest of the husband usually also are infringed upon. Comprehended under the term "victim group" are primary groups in which the victimization of a member affects other members. In the case descriptions in our material, the interviewees frequently did not differentiate between the victim in the more narrow sense of the word and the other persons affected. For example, they usually reported simply: "We were robbed" or "We called the police".

Similar formulations also are used when the complainant is active as the representative of the victim in the narrow sense. This representation occurs as a part of the professional roll of the complainant, e.g., as supervisor to guarantee subordinates' conformity to norms, as supervisor in a children's home, or as nightwatchman protecting the property of the employer. Here the complainant is affected by the violation in that he must act as the representative of the victim and in certain cases notify the police. Should he fail to respond, he himself becomes the offender. While members of a victim group themselves are affected by an offence, representatives of a victim, primarily in their failure to intervene, are affected by the consequences of the offence to the extent that they are blamed for their failure to react.

A completely different victimization situation is present when a single individual or social unit, directly affected by a crime, cannot be identified. In the case of such offences, the victimization of individuals vanishs in that the interests of a great many are affected. In addition the degree and/or perceptibility of the resulting disturbance is often very limited for each member of this victim aggregate. We conceive of a victim aggregate as a plurality of individuals, who are affected by a single crime, e.g., environmental or tax offences, as a totality and not as individuals.

The above presentation reveals that under victimological perspectives it is important to go beyond the legal definiton of "victim". Not only the victim's situation but also the form of his involvement are relevant to the expansion of this legal concept.

The following situations have been differentiated:

Victims in the narrow legal sense,

Victims of side effects of a crime, which are not legally relevant or are not registered,

Victims indirectly affected by a crime because of their social relationship to the directly affected victim,

Representatives of victims, who represent the power (professional) roll of the victim,

Victims affected by a crime as members of a victim aggregate.

In almost every case analysed, the individual complainant revealed characteristics which fit into one of the above categories. In only three cases, which were mentioned by two individuals questioned, could the complainant not be associated to one of the above groups. Our data thus indicate that one's being victimized on one of the forms presented is almost a necessary condition to the filing of a complaint.

The victimization situation, however, may not be comprehended according to the dimension of the occasion of victimization or the form of victimization only, but also according to the degree of harm suffered. In the case of property crimes, this degree of harm suffered is differentiated on the corresponding amount of damage. Corresponding differentiation can also be drawn in regard to offences against individual inte-

grity and other offences.

The history of the offence or its repetition is never important to the reporting of property crimes but rather the value or the type of loss. This fact does not hold true, however, with respect to other offences, in which the background of the offence frequently is reported. The offender usually carries some social relationship, such as neighbor, tenant or colleague, to the complainant. In these cases, a conflict generally precedes the filing of the complaint. During this conflict the complainant attempts to influence the behavior of his adversary through informal sanctions and transactions. Only when these efforts prove to be unsuccessful does the injured party file a complaint. The reason for the initial conflict, however, must not be identical to the occasion for filing the final complaint.

Another situation exists when similar or identical offences, particularly public brawls, are commited repeatedly but by different offenders. The complainant,who views these offences as a disturbance of peace, reacts at some point "when his patience has come to an end". The complaint then is filed against only those persons who were involved at the time of the actual stimulus for reporting the offence. They are reported to the police,so to speak, as representatives of all previous offenders.

Some variance in the degree of victimization as the severity of damage to interests, e.g., material amount of damage, severity of bodily injury, duration of the offence or of the conflict preceding the offence, frequency of offence repetition, can exist for one and the same offence type.

2.3 The complainant's behavioral expectations of the police

The aims and goals, which the complainant pursues in reporting an offence to the police, may be ordered, among other things, according to expectations of police reaction to his complaint. In order to record these expectations, we raised the question regarding the respective case reported, "What did you expect the police to do"?

The thus recorded behavioral expectations of the complainant toward the police may be classified into three types: "information or sanctioning", "remedy" and "services".

Under the category "information or sanctioning", we included all statements, which described expected police measures as oriented toward solving the crime, i.e., securing evidence, identifying the offender,pursuing, seizing and/or punishing him.

Measures aimed at "information and sanctioning" easily can have the side effect, in the case of disturbance of order, that "remedy" is provided. The offender's arrest also may lead, for example, to the recovery of stolen goods. Under "remedy", we included only those statements in which no measures regarding "information or sanction" were described, and in which the mere aim was expressed as the restoration of order and the termination of a disruptive situation. "Remedy" can occur in that a stolen good is replaced, a fight or a controversy is settled or a disturbance of the peace is ended.

We included under "services" those statements in which actions of the police were described,which were directed toward advising an individual, taking a protocol necessary for an insurance claim or other legal claim, calling an ambulance or the fire department. Interviewee's statements were included in this category only if additional measures regarding "information or sanctioning" or regarding "remedy" were not mentioned.

In 27 of the cases analyzed, the individuals questioned awaited "information or sanctioning", in 11 cases "redress",and in 6 cases "services".

It is striking to note that expectations of "information or sanctioning" are found to the greatest degree in regard to property offences. This may be a result of the fact that in these cases, unlike in others, the offender is generally unknown. In addition, the search for the offender, which, when successful, usually involves his sanctioning, is also the most suitable method of replacing the stolen good. Therefore, it may be aseumed that some of the individuals questioned, who awaited measures of "information and sanctioning", attach less value to the punishment of the offender than their own "remedy". In the two cases in which "remedy"

was awaited for property crimes, the stolen goods were an automobile and a bicycle. A replacement of the objects stolen here is not only possible but also probable in the absence of identification of the offender.

The fact that when the offender is known, or as in the case of brawls present, only "remedy" is expected and that when the offender is not known, as in the case of offences against personal integrity and other offencee primarily "information and sanctioning" are expected, support the assumption that the punishment of the offender is relatively seldom the primary goal of the complainant. On the other hand, it must be recognized that a minority of the individuals questioned expressly awaited the sanctioning of the offender as a result of police involvement.

2.4 The complainant's reaction to perceived police behavior and its consequences

When the individual questioned named "information or sanctioning" or "remedy" as the expected police measure, we asked them "Did you believe that the police would be successful in their efforts"? In a total of 31 cases, the complainants stated that they had expected unlimited success. Only in 7 cases were the complainants sceptical or totally disbelieving of any poesible success. These relatively high expectations of success frequently could not be fulfilled by the police. The question "Were the police successful in their efforts in the case"? was answered in the affirmative in only 17 cases. Accordingly, the complainants, who awaited measures aimed at "information or sanctioning" or "remedy" found that the police had had no success or incomplete success in 21 cases. It is noteworthy that only a few of these individuals expressed disappointment or annoyance in police failure.

It is apparent that unsuccessful police measures do not cause complainants to be dissatisfied or annoyed. If the police, in the opinion of the individuals questioned, reacted reasonably in their treatment of the case, then their failure generally was excused spontaneously in the commentaries collected. Contrarily, this excuse was not given when the individual questioned, frequently because of the absence of police information after the complaint was filed, assumed that the police either

were inactive or not sufficiently active. Annoyance and criticism was expressed only in those cases in which the complainant's disappointment in his expectations of success was connected to his disappointment in his expectations of police measures. In fact, several individuals stated that because of their experiences, they no longer would call the police in a similar case.

3. Comparison of complainants and non-complainants

3.1 Introduction

We have analysed the case descriptions given by complainants, and in the following section we will compare complainants and non-complainants. Here, we are interested in public conceptions of daily police work and in attitudes toward the police. Moreover, we will compare complainants and non-complainants according to several demographic features.

3.2 Conceptions of daily police work

With the question noted in the following section, we attempted to determine the individual's conception of police work resulting from the filing of a complaint and his expectations of police behavior in this regard.

1. On what occasions do individuals generally notify the police?
2. Can you think of any other occasions for notifying the police? (The answers to Q 1 and Q 2 were collectively coded).
3. What do you think people expect when they call the police in such cases?
7. When did you last call or notify the police?
13. Apart from the case (cases), which you just related to me, in what other situations would you otherwise call or notify the police? (The answers to Q 7 and 13 were collectively coded).
14. What, in your opinion, would the police do in such cases?

The listing of occasions on which one called or would call the police, as well as occasions on which individuals in general call the police, indicates extensive agreement between complainants and non-complainants as to typical police work. A total of 13 categories of situations were identified from the answers: accident, burglary, emergency, theft, robbery, fire, public fight, argument, crime, disturbance of the peace, disturbance of domestic peace, child abuse, murder. Significant differences existed for none of these categories of situations with respect to the frequency of their listing under $p \leq 5\ \%$.

Non-significant differences existed in regard to the answers to Q 1/2 as well as to 7/13 only for the category "accident" in that complainants less often mentioned this occasion than non-complainants. These differences most likely are the result of differing experiences, which the two groups have had in their contacts with the police.

The differing frequency with which accidents are named as occasions for calling the police correspond to differences regarding expectations of police behavior. The complainants stated significantly more frequently than the non-complainants ($p \leq 1\ \%$) that they expected "information or sanctioning" in cases in which they themselves would call the police. On the other hand, non-complainants tended to state more frequently ($p \leq 10\ \%$) that they expected "help" from the police in such cases. If one considers the expectations people have, according to the views of the individuals questioned, then under $p \leq 1\ \%$ parallel and significant differences are shown for the category "help".

Our data show that complainants primarily expect the police to explain cases and find the offender, whereas non-complainants more likely expect the police to render aid and emphasize accidents as occasions for calling the police. A somewhat exaggerated statement based on these results is that complainants tend to see the police as an organization specialized in fighting crime and non-complainants view the police more as a general assistance organization.

3.3 Attitudes toward the police

Attitudes toward the police and toward the filing of complaints were measured in part according to reactions to the following statements.

21. I am happy when I see and hear nothing of the police.
22. I find most policemen to be generally friendly.
24. If I needed the police for some reason, I would find the situation to be very uncomfortable.
25. If I were to notify the police, I could never be certain that I would not be burdened with even more difficulties.
26. If I were to call the police into my home for some reason, the neighbors always would gossip.
27. I always would feel uncomfortable at a police station.

A significant difference ($p \leq 5\ \%$) is shown only for statement 21, and a non-significant trend ($p < 20\ \%$) for statement 25. Both of these differences can be interpreted and indicate the same tendencies: complainants show more positive attitudes than non-complainants toward the police.

The answers to the question "Do you think that the police are successful in what they do in such cases, i.e., in cases in which one could call the police"? also show a non-significant trend ($p \leq 20\ \%$) running parallel to this finding. The expectations of police success expressed by the complainants tend to be more positive than those of the non-complainants. Under $p \leq 5\ \%$ significant differences may be established for the answers to the question "Many people avoid or have an unpleasant feeling calling the police. How do you feel about this situation"? Non-complainants more frequently expressed inhibitions in this regard than complainants. The commentaries and answers to the inquiry "Why do you only reluctantly notify the police"? showed, however, that these inhibitions usually are not founded on negative attitudes toward the police. Rather, the reason vary for the general avoidance of or uncomfortable feeling about calling the police, viz., the negative reactions from persons informed against or from one's own social surroundings, primarily from neighbors are feared. Some individuals seem to view the filing of a complaint with similar negativeness as a denunciation. Some individuals avoid filing a complaint because of the loss of time associated therewith.

Trivialities are not viewed as police matters. Some indiviudal statements, however, did indicate negative attitudes toward the police, viz., the police and the entire justice system are incalculable in their behavior: the efficiency of police work is doubtful; the police generate fear in individuals.

The data presented thus far suggest that the attitudes of complainants toward the police are more positive than those of the non-complainants. This finding, however, is supported only weakly. Accordingly, it may be assumed that attitudes toward the police are only of relatively limited relevance to complainant behavior. This assumption is supported by the reactions gathered to the following complex of questions.

Would you call the police today under the same circumstances, as shall we say, five to eight years ago, or has something changed in your opinion?
How would you act differently today?
Why has your opinion changed?

The answers to this complex of questions do not permit the conclusion that differences exist in the frequency of changes in attitude between complainants and non-complainants. In addition no differences were discovered regarding the proportion of complainants or non-complainants, who would call the police more often or less often today than in the past. In this context, the 23 persons questioned, who stated that their opinion had changed, are of particular interest. The overwhelming majority of persons questioned (n = 18) based the change in their potential behavior on the belief that their personal situation had changed, that criminality had increased or that their attitude toward particular situations had changed. Only 5 of the persons questioned gave answers from which one could conclude that changes in behavior were a result of a changed attitude toward the police.

3.4 Demographic features

The following differences between complainants and non-complainants with respect to a series of demographic features are significant except for one in particular, which is characterized under $p \leqslant 5$ %. Our data show

that complainants are more often male and non-complainants female. This finding corresponds to the fact that heads of houshold and employed individuals are more significantly represented in the group of complainants than as in the group of non-complainants. Both of these variables also correlate with the sex of the individual ($p \leq 1\ \%$), i.e., men are more frequently employed and more frequently heads of houshold than women.

More cemplainants are married than non-complainants, whereas in more cases the latter are single, widowed, or divorced. Marital status corresponds here with the finding that complainants live in larger households than non-complainants. Finally, our data confirm results consistently attained in investigations in German, viz., that members of higher social classes are complainants comparitively more often than members of lower social classes. Parallel to this finding, we discoverd that more frequently have at least a ninth grade education than non-complainants.

4. Outline of the theoretical framework

Finally, a general theoretical framework will be outlined in answer to the question "When do private individuals file criminal complaints"? The more concrete completion of this framework has been reserved for the future main publication of our research report.

Our survey showed that the victimization situations in which complainants find themselves can be described according to a series of different dimensions: type of situation, form of involvement, degree of involvement. The latter dimension may be differentiated according to the severity of damage to interest as well as the length and frequency of repetition of this damage. Moreover, the complainant's unfamiliarity or familiarity with the offender and in the case of familiarity, the quality of the social relationship involved are of significance. These findings indicate that the filing of a complaint cannot be viewed as the normal reaction to certain types of offences, but rather as a behavioral response to extremely situative constellations within one and the same offence category. These constellations result from features of the case itself, e.g., automobile theft, as well as from features of the potential com-

plainant, witness to or victim of the offence. We may assume that the probability of a complaint, being filed in an observed or presumed situation, is dependent on the manifestations of these situative features.

Of course, in general all members of a legal system do not react in the same way to particular dimensions of features and their constellations, and one and the same individual reacts differently at different points in time. How individuals will behave in response to a concrete case and the victimization situation caused by it is dependent on the results of two, analytically separable decisional processes. First it must be decided whether the given situation is the type of event that can be reported to the police, and second, should this decision turn out to be positive, it must be decided whether a complainant actually should be filed. It can be assumed that these two decisions, which usually are not consciously separated, are influenced in their outcome by different classes of variables and further that these variables are of differing significance on various occasions and victimization situations:

Relatively stable personality characteristics in the narrow sense e.g., aggressiveness,

Attitude e.g., toward criminality and toward the fight against crime,

Conceptions e.g., about norms,

Actual effects e.g., annoyance,

Motive e.g., desire for punishment,

Roll assignment e.g., head of houshold,

Situative features e.g., availability of the police,

Communication processes e.g., conversation within a victim group.

Cross relationships may exist between these different variable groups, and it may be assumed that all dimensions thereof are connected to certain demographic features.

The analytical separation between the problem of definition (whether this is the type of event to report to the police) and the decision about action (if the event can be reported, whether a complaint actu-

ally should be filed) reveals that if at all only the latter decisional process can proceed according to the pattern of a cost/benefit analysis. The model of the cost/benefit analysis is not suitable for explaining cases in which, e.g., the same situatiene are responded to differently by different individuals because these individuals possibly come to various definitions on the basis of different conceptions of norms.

Our data show that similar to the victim's situation and partly dependent on it, the purpose with which the complaint is filed varies. The most frequently given expectation of police activity in response to a complaint filed was the restoration of the complainant's concept of order and the social norm, as well as the explanation and sanctioning of the criminal act. The explicit desire for the punishment of the offender is relatively seldom expressed. The individual case descriptions, however, suggest that frequently less rational motives than those stated exist for lodging a complaint. In situations in which the victim feels that his rights and interests have been violated and that he is unable to take action himself, his interest in filing a complaint is often that at least some action should be taken. What the police do, as well as whether or not they have success, appear lese important than the fact that the police actually undertook something.

Here again, the motives behind filing a complaint may be dependent not only on the victim's situation, but also on the group of variables listed above, which are significant for decisions concerning the definition of an act as an offence and the willingness to take action against the perceived offence.

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COMPLAINTS AND POLICE REACTION*

Josef Kürzinger

1. The Research

1.1 Aims of the Research

One aim of the research was empirically to make clear what were the place and the value of private complaint-laying and the reaction of the police to it in the following-up and prosecution of offences, in recorded crime, and in private and official crime-control. Also, we wished to find out how far the selective sanctioning of particular offences postulated in criminological theory were objectively observable in police behavior in dealing with private complaints. We also sought to obtain basic data on the practice of laying complaints. Four areas were principally to be examined: the way of laying a complaint, the matter complained of, the complainants and the police. It also seemed necessary to clarify the social background against which complaints were played out, so as to be able to estimate the importance for the population in general of complaint laying as a legal form of crime control lying in private hands. To do this we examined the attitude of the public to crime, crime-control, complaint-laying, and the police and their activities in connexion with complaint actually laid.

1.2 The Carrying-out of the Research

The research methods used were determined by the choice of research instruments. To investigate the actual laying of complaints the method of participant observation in a police-station was chosen; the public's attitudes, and data on their behavior, were obtained by direct questionning.

* Original text: Kürzinger, J.: Private Strafanzeige und polizeiliche Reaktion. Berlin, Duncker & Humblot 1978, pp. 250-263, published with kind permission of author and publishers.

The participant observation was carried out on 81 days in the period from February to October 1973. In order to disturb the observed field as little as possible, the observer wore police uniform. The total observation-time was 650 hours. In this time we were able to observe 100 unselected cases of complaint-laying. The place of observation was the police station of the sole police-district in the area researched, a medium-seized town in South-West-Germany.

The questionning was carried out within the observation-area between May and August 1974. 294 people were interviewed, aged more than 14 years. 145 of those questionned were known by the police to have laid complaints. The remainder were chosen at random from the population of the observation-area.

1.3 Results of the Research

1.3.1 Crime-control Among the Population

The research results showed no significant difference between the complaint-layers and the control group with respect ot their estimation of crime as a severe social problem, nor with regard to their anxiety about crime and criminals. In general there was no widespread specific fear of crime and criminals. Further, crime was not seen as an especially important problem. We could not establish statistically that complainants, women, older people or those with lower education saw crime as a more serious problem, nor that they had a clearly greater anxiety about crime. However, significant differences appeared between the various social classes in their estimates of the seriousness of crime. Members of the lower classes regarded crime and criminals as a more important problem than other people did. As social class rose so the estimated danger of increasing crime fell; members of the lower classes felt threatened by crime noticeably more often.

Men, older people, members of the lower classes and people with less education more often wanted rigorous measures against crime and criminals. We could not establish, however, that complainants had in general a harsher attitude than members of the control-group. Compared to male members of the control-group, male complainants clearly verbalized a greater readiness to lay complaints, defended complaint-laying more

strongly and were more often of the opinion that harder measures should be taken against criminals.

Female complainants too, more than female members of the control-group, defended complaint-laying even against those in their own social circle, and supported harsher punishments as a means of suppressing crime. Altogether, complainants took a more rigorous stand against crime than did members of the control-group.

1.3.2 The Complaint as a Form of Private Crime-Control

We can count as confirmed the hypothesis that complaints by the lower class, in contrast to those among the remaining classes, are used above all to discipline members of their own class. Members of the lower class would rather use the police to deal with private conflicts, while the middle class apparently show other reactions. The lower class expressed a greater readiness to lay complaints. Respondents of low social status evidently saw something negative in complaint-laying, even against a member of one's own social circle, more rarely than did other respondents. The research suggested that, more than in the other classes, members of the lower class use a complaint to discipline members of their own class.

It was established that not all complainants admitted having laid a complaint. However, no relationship could be statistically established between willingness to admit complaint-laying in the interview and age, sex, social class or education.

Only two thirds of the complainants admitted having laid a complaint in the interview. The cause of this frequent omission could be mainly a wrong memory of the data of the complaint, and not a social rejection of complaint-laying.

In connexion with estimates of the success of laying complaints the data only partly supported our hypotheses. Differencee in estimates of success by members of different social classes and with different educational levels were statistically significant, contrary to our assumptions. We could not establish that complainants estimated the success of complaints more highly than members of the control-group.

Lower-class respondents saw complaints as senseless noticeably more often than others. They also more often said that the police had acted wrongly in connexion with the recording of a complaint. The more educated a respondent was, the more sensible did complaint-laying in general to be sensible, but more than a third were clearly sceptical. Dissatisfaction with the activities of the police in recording complaints was widespread among respondents with actual complaint-laying experience. People who saw complaint-laying as sensible also judged the police more positively. Different evaluations of complaint-laying by complainants and members of the control-group were not found. Even their own negative experiences of police activities did not alter respondents' evaluations. Older respondents were more sceptical of complaints and showed more dissatisfaction with the police. Sex had no decisive influence on concrete or abstract estimates of the value of complaint-laying.

The hypothesis may be seen as confirmed that complainants would often say that laying a complaint against an unknown offender did not lead to his detection and so remained unsuccessful.

One third of the complainants held the opinion that the police had not bothered enough about their complaint. One may deduce that they saw their complaints as having been unsuccessful with regard to clearing the case up and detecting the offender.

It could not be established that naming a suspect when laying a complaint was dependent on the sex, age or social class of the complainant. But complainants with lower education (Volksschule pupils) named significantly more suspects that better educated respondents. The higher a respondent's education, the less likely was he to name a suspect.

Members of the upper and upper-middle classes named a suspect somewhat more rarely than members of the lowest class. A suspect was named most frequently by members of the "middle-middle" class. Women and older complainants named a suspect when laying a complaint more often than men and younger complainants.

1.3.3 Judgements about the Police Contacts, and their Relation to Private and Police-initiated Crime-Control

The judgements made about the police and their activity by males were

different. It could be established that the judgements by male control-group members were significantly more positive, as were those by older persons and members of the higher social classes; on the other hand the sex and education of the respondents had no significant influence. Altogether there was to be found a general good will towards the police, even granting that this was stereotypically formulated. Thus the police were more positively judged as an institution and as an occupational group than they were in terms of their actual activities.

The view was widespread that the police discriminate against lower-class complainants in following cases up. No significant differences were found here between male and female respondents, nor between complainants and control-group members. But differences associated with age, social class, occupation and education were statistically established.

Nearly two thirds of the respondents assumed that the police discriminated against lower-class complainants in following cases up. The lower a respondent's social class, the readier he was to impute class-specific inequality of treatment to the police. It was observable that members of the upper, upper middle and "middle middle" classes also often assumed that police activity discriminated against lower class complainants. The lower the social prestige of a respondent's occupation, the oftener did he believe in this difference in following cases up. Educational level also influenced the uttering of this attitude. As educational level rose, so the assumption of class discrimination fell.

But it is surprising that younger respondents assumed this class discrimination more rarely than their elders.

The hypothesized variation in frequency of police-initiated contacts showed itself in part. This frequency was not significantly higher for complainants, nor for lower-class respondents, but a higher level of such contacts was statistically established for younger and for male respondents, and for those with more than a Volksschule education. The grounds for these contacts were equally variable. Younger respondents had spoken to the police about their own (i.e. the respondents') offences more than twice as often as older respondents, who in the main mentionned matters that were not offences. Social class, sex and level

of education achieved were without relevance here.

Inhibitions against calling the police again in case of need proved to be expressed very little by complainants. Contrary to our expectations these inhibitions did not depend significantly on the complainants' sex, age, occupation, class or education.

Complainants admitted to having contacted the police exactly as many times as non complainants in the period between the complaint that we had recorded and the subsequent interview. The complaint-laying did not lead to any reduction in police-contacting. Nor were "involuntary" contacts significantly more frequent. Readiness to lay complaints was not lower among complainants. Further results lead to the conclusion that fear of the police is one reason why a few respondents reduced the number of their contacts with them.

The expectations that private police-contacts would be higher among the control-group, men, younger people, people of higher social status and those of higher education could not be verified.

1.3.4 The Complainant: Social Status and Motivation for Complaint Laying

The hypothesis that most complainants would come from the lower and lower-middle classes, i.e. from people of low social status, was only partly confirmed. Certainly in absolute terms persons of low social status clearly predominated among the complainants, but not more, relatively speaking, than would be roughly suggested by the proportion they form of the population of Baden-Württemberg.

Thus no support could be found for the idea that persons of low social status actually lay more complaints than one would expect from the proportion of the population that they form. Further, according to statements in the interviews one must conclude that members of the middle and upper class lay far more complaints than people of lower social status.

The results of the participant observation show that the motive for laying a complaint varies and is usually subjectively coloured. However, we could not establish statistically that these motives varied

between social classes, although unmistakeable hints of differing motives were present.

Material motives for laying a complaint were only mentioned in about a third of the cases. Maintaining law and order was a relatively rare motive. In their verbally expressed motivation complainants were unequivocally ruled by the pursuit of personal goals. Laying a complaint was very often understood as a means of carrying out a personal idea. As one would expect, the matter complained of and the motive were clearly connected, but even with complaints against property of financial offences almost half the complainants quoted a non-material motive. Complainants of low social status gave such motives as revenge, anger or annoyance more often than did those of higher status, and the fulfillment of a moral or civil duty less often. Thus the motives of complainants of lower social status seems to show the achievement of private interests even more often.

1.3.5 Police Reaction to Private Complaints

The hypothesis was confirmed that the police follow up certain offences especially intensively, others less so or not at all. Complaints of offences against the person were predominantly (70 %) not recorded. Complaints of offences against property, etc., were more successful: 97 % were recorded. For the police, the damaging of someone's material or financial good gave more occasion to accept a complaint than damage to a non-material good. However, the offences against the person were throughout practically mere trivialities. Nevertheless, the principle that damage to a non-material good was of lesser worth was clearly recognizable. The police that we observed did not tend to overcriminalize. They did not follow up any of the nonpunishable matters complained of. They clearly set their "intervention-treshold" higher than the legal norms demand. The abstract legal seriousness of the matter complained of was important for their readiness to accept a complaint: The more serious the offence reported, the more readily was the complaint recorded.

If a policeman saw the possibility of defining a matter as a case for either the civil or the criminal law, he defined it basically as a civil matter.

The police visibly tended to define criminal matters as trivial. If a complained-of act against a complainant was to be classified according to legal categories, we should see a clear tendency for the police to define offences against the person as non-criminal rather than offences against property, etc. As far as possible in the circumstances the police define matters as civil rather than criminal, or define them as trivial from the point of view of the criminal law.

1.3.6 Interaction between the Citizen and the Police: The Course of Events in Laying a Complaint

To summarize the results of the participant observation on the formal course of events in laying a complaint, we can establish, as hypothesized, that this depends on

- the police officer and his position in the hierarchy
- the complainant and his social status, and
- the matter complained of.

The results on police behavior in the course of the laying of a complaint showed this to depend on his grade in the service, length of service and shift.

Grade in the service was relevant to his behavior. Only officers at the simple and middle levels are in question here, as others could not be observed during the recording of a complaint. The higher a policeman's level, the more authoritarian and the less cooperative was his confrontation of the complainant. Police with a great length of service behind them were far and away more dedicated, but less cooperative and friendly than newer policemen. Also the shift which the policeman worked influenced his behavior.

The complainant himself had a partial importance for the behavior of the police.

Certainly it was not of decisive importance for the general behavior of the police whether they were faced with a man or a woman. Nevertheless this was seen to be relevant to a few details of their behavior. The police were more authoritarian, but at the same time worked more routinely, in dealing with women. The complainant's age had no visible

effect. Neither did his social status affect the general behavior of the police to any mentionable degree, although the police dealt with low-status complainants somewhat indifferently. The police showed themselves more dedicated and more cooperative towards well-kept complainants, towards the less "clean and tidy" they were more indifferent.

In cases involving legally punishable actions the police appeared less negative. They were also less authoritarian and worked less routinely than in other cases.

The theoretical legal seriousness of an offence also influenced the behavior of the police. In the case of breaches of regulations and infractions (the West German criminal code divided offences in four categories: "Ordnungswidrigkeiten" (Breaches of regulations), "Übertretungen"(Infractions), "Vergehen"(Misdemeanours) and "Verbrechen" (Crimes); the terms are in ascending order of seriousness, but the translations are only approximate) the police were friendlier, more dedicated, more cooperative and more controlled, but also fussier. In the case of misdemeanours they worked more calmly, in the case of crimes more routinely and in a more authoritarian way. Offences against the person and non-punishable behavior were settled relatively quickly, but complaints of offences against property or possessions were the most slowly dealt with. In the case of offences against the person the police showed themselves less friendly and more authoritarian than otherwise. If one compares their behaviour in cases of offences against property or other assets, it is seen that their overall behavior bears the decisive stamp of the type of offence. In the cases of offences against the person the police behaved more negatively than with offences against property or other assets. They were also calmer and more authoritarian, worked less routinely and were less friendly. When no loss or damage had resulted from the matter complained of, the police were even more authoritarian and unfriendly, but when there was loss or damage they clearly worked in a more routine manner and were more committed. The extent of the loss or damage also influenced the behavior-style of the police. The higher the amount, the more committed were the police when they registered the complaint.

The time needed to lay the complaint did not depend in any standard way

on personal characteristics of the policeman. No individual practice could be determined for the length of the conversation when a complaint was laid.

The behavior of the complainant presented a more unified picture than that of the police. Apparently their mode of behavior involves above all appearing committed, calm but provoked and independent. Complainants appeared to react very little to the behavior of the police.

In laying a complaint they reacted more independently, more calmly but in a more provoked manner to policemen with less time in the service. In their overall behavior differences between the sexes were clear. Men appeared less negative than women; they also behaved in a more versatile and composed way, and more calmly. On the other hand women appeared more awkward, angrier and more discouraged. Older complainants were angrier, and at the same time more committed, versatile and independent. Those with low social status behaved more awkwardly, less independently, and in a less discouraged but more provoked way than those with higher social status. Complainants with an unkept appearance were less versatile, more committed, less independent, but more submissive, more provoked and more annoyed. The "cleaner" complainants showed themselves more independent in conversation than the police, and less discouraged. The seriousness of the matters complained of also influenced the overall behavior of the complainants. Their level of commitment rose in the case of offences of low abstract legal seriousness. The seriousness of the offence was inversely related to emotional commitment. In cases of offences against the person the complainants were more awkward and more discouraged. Offences against property or other assets found them at their calmest and most indifferent. When there was no financial loss, the complainants were more committed, more annoyed, more provoked, more awkward and more discouraged.

The length of the complaint-laying process depended on the punishability of the matter complained of. The conversation took longer for punishable matters than for other events. The effect was the same whether the complainant of a third party had suffered loss through the matter complained of. When such loss had occured, it took longer to lay the complaint.

The contents of the complaint-laying conversation, and so the interaction and communication between the police and the complainant, showed themselves to depend on:

- the policeman himself and also his position in the hierarchy,
- the complainant himself and also his social status, and
- the matter complained of.

For the contents of the conversation, a policeman's rank, length of service and the shift worked were less important. Readiness to record a complaint was independent of length of service, but rank was decisive. Police of relatively high rank refused to record complaints more often than the others.

Male complainants did not show more self assurance or dominance than females in their conversation with the police. But older complainants and those of higher social status were far more domineering than younger ones of those from the lower classes. The difficulty for members of the lower classes to express themselves articulately and so put their point of view across was hardly anywhere to be seen more clearly than in the conduct of the complaint-laying conversation. There was an apparent connexion between a complainant's social status and his success in having his complaint recorded. Persons of lower social status had less success, but this difference was not statistically significant. Probably the matter complained of has itself an influence on readiness to record a complaint. Our data allow the conclusion, that the social position of the complainant is one ground for readiness to record a complaint. The wish of the police as far as possible not to follow up or prosecute private quarrels was clearly visible in their decision-making behavior. The police refused to accept a complaint the more often personal non-material interests on the part of the complainant became apparent. However, this was only demonstrably valid for relatively light offences. The sex of the complainant had as little influence as had his age on the readiness of the police to accept a complaint.

The type of matter complained of had little influence on dominance in the complaint-laying conversation, though the latter was more strongly structured by the police in cases of serious crime. Conversations about offences against the person were more likely to be cut short by the po-

lice than were those about offences against property or other assets. On the other hand in other cases of offences against the person a clear drawing-out of the conversation could be observed.

2. Criminological Appreciation

The social control of private individuals through the criminal law is not recognized by the people themselves as a social problem of great importance; the same is true for crime. Where in the community crime is seen as a problem it appears as a private matter. This can also be seen in the fact that the police are not primarily considered to be an agency for following up and prosecuting crime, but as an organization for helping with accidents. Possibly among the people at large loss of property or money, even when brought about by a crime, is mostly seen as an accident and less often as an (avoidable) crime. Several research results speak in favour of this view, and for a relatively moderate, if variable, attitude to crime and an apparent inability to call the police in such situations, in spite of almost unlimited readiness to bring them in cases of need. Personal non-material grounds clearly predominate among motives for laying a complaint. The abstract maintenance of law and order was relatively rarely found as a motive. The prosecution of personal ends stood between the two; even in cases of offences causing financial loss was this clearly to be seen. The complaint reveals itself as an instrument for achieving the most highly private ideas of social order. Furthermore, the people understand it as such. Above all, persons of low social status unmistakeably accept its use within their social near-group.

Even if private control of crime is not clearly stamped as a problem in the consciousness of the people, as an actually practised form of social behavior it remains objectively of decisive importance for the social control of crime. Criminology up to now has unfairly underestimated the importance of private citizens' complaints to the police and of the police reaction to them. What led up to the police recording of a complaint showed itself to be in no way an unproblematic set of events running their course according to a fixed scheme, and leaving no doubt about their outcome.

Far more was it a case of a complex social process, in which complain-

ant and policeman sought to resolve the conflict being reported. Here it was clear to see that the two parties had different expectations. For the police the deciding factor is the nature of the reported occurence. At the centre of the complainant's interest is the resolution of a private conflict. In the interaction of the complaint-laying process the police were usually able to make their content-based decision prevail.

Here we can regard it as an established result of our research that the approach of the labeling theorists has overemphasized selection by the state. The reduction of selection to the activity of state organs of crime control has neglected the importance of control by private persons. They decisively determine the extent and nature of the population identified as criminal, because they overwhelmingly influence the criminalization-process. The selection practised by the police on the basis of this impulse is of relatively restricted importance. Certainly it can slightly distort the picture of crime and the criminal and shift the accent, but it can make no basic alteration. The explanatory effort of the labeling approach, limited to state crime- control organizations, apparently does not reach far enough. The police reaction to crime reported by private persons reduces the number of offences followed up. In fact it leads, independently of the social class of the suspect to a decriminalization. The private control of crime by means of laying complaints, however, is not equally successful for all classes. This is because the police follow up some offences more readily and more intensively than others. Types of offences complained of are not equally distributed over all social classes. Thus members of the lower classes bring to the police those of their social conflicts to which the criminal law is relevant, to an importantly greater extent than do other people. The police have very little disire to define these offences as coming within the scope of the criminal law and to start investigations. They would rather "decriminalize" such events.

The police do not proceed observably differently against suspects of different social classes in dealing with private complaints. The basis of the model on which the police operate is the type of offence. But the naming of a suspect in a complaint already reduces the chance that the police will follow up the offence. For in everyday crimes the readiness of the police to follow up an offence is independent of whether

a suspect can be named or not. But it is above all in the offences which the police do not much care to follow up that complainants can name a suspect most frequently. These are mainly offences against the person. The consequence of this follow-up policy is that there is less pressure to follow up criminal activities by members of the lower classes. Thus police practice in this area works to the advantage of lower class criminals. Here at least the claim of the labeling theorists that lower class suspects are especially intensively followed up is certainly not true. How far this might be true of other crimes the present study could not attempt to establish. Steffen's study (Steffen, W.: Analyse polizeilicher Ermittlungstätigkeit aus der Sicht des späteren Strafverfahrens, Wiesbaden 1976), however, allows one to conjecture that for offences against property or other assets a uniform follow-up policy occurs, independent of the social class of the offender.

Steffen found, with regard to the influence of the suspect's social class on the investigating behavior of the police and law-administration officials, that it did affect the extent to which charges were laid against members of the lower, as against middle, classes. On account of class-specific norms of punishment, and of chances of committing specific to each type of offence, lower-class suspects are clearly overrepresented in the figures of recorded crime. This occurs before the point in time at which the official crime-control organizations have become decisively active. Statistically significant class-specific selection to the disadvantage of lower class on the part of the police and law-administration can rarely be established. Nevertheless, measured by almost any criterion there is a tendency to treat members of the lower classes "worse". This tendency gains importance because it is revealed consistently in the same manner and the same direction by the police, the state prosecutor's office and the courts. This weak but consistent tendency to class-specific selection working against the lower classes is caused by a whole bundle of factors. In the case of the police it is possibly due above all to differences in the willingness to confess of suspects belonging to different classes. In view of the importance of confession for the police "clear-up success-rate" this alone would produce class-specific differences in the probability of clearing up a case. Furthermore there would be a class-specific effect in the circumstance that certain suspects gain an advantage from their class membership: the state's claim to punish them cannot be made

good with the same intensity because, for example, as members of the middle class they deal with the police with more self-assurance, are less easily overawed by the whole atmosphere and know their rights better.

If we start from the position, for which there is supporting evidence, that classical criminality is to be found rather among the lower than among the middle classes, then it is plain that the police do not follow up with equal intensity all offences where one might suppose the offender to belong to a particular social class. In following up offences they recognizably give preference to certain types of offence which are unequally distributed over social classes. Independently of the problem of selection, which is not here in question in its pure form, we maintain that the sets of interests of members of different class vary, as do their chances of committing different types of offence. This circumstance could be why middle class persons are among those who appear in the role of offender in property and financial offences (roughly as in the case of offences at the place of work) but that on the other hand violent offences are more, or even exclusively, found in the lower classes. This stems mainly from the different ways of coping with social conflict. Thus offences against the person will be more widespread among the lower, property and financial offences among the middle-classes. If this is so, it follows that above all the police do not follow up these offences, where the suspects are as a rule to be found among the lower class. Far more do they follow up with special intensity property and financial offences, where at the time of the complaint the offender is usually unknown. Since it is in this case that offenders from all classes are in question, to this extent follow-up practice is democratized.

So far only the staring-point of the criminalization-process has been described. The research can make no contribution to answering the question whether this start, in its favouring of the lower classes, differs from any tendency of the police, in their investigations, to use strategies which favour members of the middle and upper classes. Certainly one would think that the long-term recurrence of the same circle of offenders works in practice the disadvantage of the lower-class. This, however, does not arise from an intentionally more intense following up of members of the lower classes, but is structurally condi-

tioneed. The lower classes start in a worse position where the following up of crime is concerned. The police investigative activity affects them more comprehensively. Furthermore they are less in a position to compensate by their own efforts for this bad starting situation. In contrast the middle classes, who according to police folk-knowledge (which may be true) have less to do with crime, are in a better position; they are not so strongly nor so helplessly exposed to suspicion and to follow-up strategies. Thus the actual advantage accorded the middle classes is a result of their better starting position in the criminalization process. It does not appear as the result of behavior involving conscious systematic discrimination against the lower class by the police.

ANALYSIS OF THE INVESTIGATIONAL POLICE ACTIVITY FROM THE VIEW-POINT OF THE SUBSEQUENT LEGAL PROCEEDINGS*

Wiebke Steffen

1. Intentions of the Study

This study examines the factors which exert an influence on the control functions of the police with respect to their law enforcement activities in the fields of larceny, fraud and embezzlement, seen as a part of the entire system of penal social control.

On the assumption that "criminality" is the result of a comprehensive selective process in which the penal social control-institutions - i.g. police, public prosecutor and court, and even the public themselves - are decisively involved, as well as the perpetrators and victims of actions defined as legally punishable, and arising from such acts, there are above all two questions of central interest to our research:

a) which are the criteria leading to the elimination of offences and offenders from the process of prosecution?

b) who, that is, which of the penal social-control institution concerned in fact decides which persons will be selected for accusation and finally convicted, out of the total number of individuals considered as suspects?

The question of the structure of the penal definition and selection processes, the part played by the institutions of penal control with respect to the coming into existence, and not merely the overcoming, of criminality, may be answered if we consider it from the standpoint of

* Original text: Steffen, W.: Analyse polizeilicher Ermittlungstätigkeit aus der Sicht des späteren Strafverfahrens. BKA-Forschungsreihe. Wiesbaden 1976, pp. 309-312, published with kind permission of the Bundeskriminalamt and the author.

the efficiency of prosecution: what are the aims to be achieved by means of prosecution, how far are police and legal authorities' operations coordinated, how efficient do police investigations turn out to be when seen from the view-point of the subsequent legal proceedings?

2. Methods of the Study

The practical attempt to realize the aims of this study is made by means of three empiric methods which complement and control each other:

a) Analysis of a sample of 4.588 dossiers referring to crime against property and other assets, carried out in eight Provincial Court jurisdictions of the Federal Republic of Germany. The period of inquiry covers the year 1970; discontinued and charged legal proceedings are included.
Out of these dossiers
3250 preliminary proceedings refer to larceny,
826 preliminary proceedings refer to fraud, and
512 preliminary proceedings refer to embezzlement.

b) Non-standardized individual interviews with 79 police officers at the places where the Regional Courts in question are located. Investigating officers of the uniformed and plain-clothes police force who had been handling these cases were contacted. Moreover, this topic was the subject of informative talks with the head of each specific section.

c) Subsequently, eight group discussions with the interviewes were held. "Theses as to investigational police work and the rate of cases cleared", containing the most essential results of the dossier-analysis, served as a basis for these group discussions.

3. Results of the Study

3.1 The Structure of Penal Selection Process: Factors which Determine Police Control Functions

While the police (and also the subsequent institutions) are handling a case, features of the offence as such turn out to be decisive for or against further prosecution: each individual offence presents the po-

lice authorities with different investigational possibilities and difficulties. In this connection three features of the offence are of particular importance for success in clearing it up:

- the "visibility" of an offence "from outside", i.e. to the victim or to the police, which will have its effect on the victims' decision to report (more than 90 % of the offences analyzed here came to the notice of the police through a complaint) and on the information which the victim may furnish to the police when lodging his complaint, including the circumstances of the crime and the possible offender.

- the "probability of solving a case", that is to say, the possibility of tracing a suspect still unknown at the time that the offence is reported to the police. The (statistical) knowledge that police officers have gained through experience in cases with "suspect unknown" has a strongly selective effect on the consideration of the type of offence to be pursued: Inquiries are not pursued into thefts by unknown suspects; complaints of this sort will only be "followed up on paper"; however, this procedure is far less used in cases of fraud and embezzlement offering "no hints whatsoever". The greater the portion of "unknown factors", the lower the probability that investigations will be carried out in a serious attempt to solve the case.

- the varying extent of "evidence problems" in connection with a punishable act, viz. the possibility or impossibility of proving the offence in a legally sufficient way.

These rather "juridical" problems in clearing up a crime occur above all in cases of fraud and embezzlement, and frequently end up with the quashing of the proceedings.

The greatest part of the eliminations of offences from further prosecution is based upon these factors. Thus selectivity is widely dependent on the offence concerned.

Selection determined by certain social features of a suspect, such as his age, sex, social class and so forth, is far rarer:

- young suspects (14-20 years) are more easily convicted of an offence than older ones. The reasons for this are very likely to be found in the higher visibility and consequently in the possibility of verifying their conduct. For young suspects the probability that the processes of prosecution will culminate in a trial is greater than for older suspects.

- women are not treated "in a milder way". Sex does not have a manifest impact on the further course of the prosecution.

- it is of little relevance, to the police investigations or to their results, to which social class the suspect belongs: very seldom can it be proved that police control functions show statistically significant selection with respect to their way of life and to the detriment of benefit of a specific social rank.

- of greater importance than the suspects' social characteristics are their previous records and their readiness to make a confession and thus render police enquiries successful. Both factors can, as intervening variables, explain the greater part of offender-oriented selection.

Compared with offence-variables the suspects' social features are of relatively little importance as far as the control functions of the police (and also of the judicial) authorities are concerned. The preponderance of juveniles and adolescents, male adults and persons of lower social ranks among traced suspects must be seen rather as a consequence of penalty norms applying to specific categories of lawbreakers, of the perpetrator's opporunity to commit a particular offence, and the selective reaction of the victim in lodging a complaint, and less as an offender-oriented selection on the part of the police.

3.2 Preliminary Proceedings and the Position of Police and Public Prosecution

The relative positions of police and public prosecution have developed in a direction contrary to that intended by the legislators. Not the public prosecutor, but the police, are in fact the master of the preliminary proceedings. They it is who determine which offences qualify for further intensive enquiries: the obligation to prosecute all offences

which derives from the "principle of legality" is not realized. The police focus their investigational efforts on particular fields, taking especially into account the harmful effects of an offence on society. Petty misdemeanours falling within the range of offences studied here are now to a considerable extent just "administered"; investigational efforts by the police concentrate on major crimes.

Only in exceptional cases do the public prosecutors' offices intervene in police enquiries which, as a rule, are autonomously conducted by the police forces themselves. The outcome of their investigations, their success rate (clear-up rate), and also their failures, mistakes and omissions have a very noticeable and decisive influence on their prosecution-practices.

The main burden of the police enquiries lies in the first instance on the solution ("clearing up") of a case and not on the possibility of finding a basis for the prosecutor to decide whether proceedings are to be dropped or an indictment is to be brought in.However, as "cleared up" does not always imply "indictable" or "punishable" - police and prosecutor define the notion of "reasonable suspicion of an offence" to some extent in different ways - misunderstandings and wastage may come about which jeopardize the efficiency of the prosecution.

The question posed in this study as to who and which factors determine the penal selection-process may thus be answered as follows: Whereas the opportunities of committing different offences, the different norms applying to different sections of the population and the reaction of the victim in lodging or not lodging a complaint determine to a great extent what information and which persons come to notice of the law enforcement organizations, the police, who are in fact "master of the preliminary proceedings", determine which offences and offenders will remain in the prosecution process. Communication and cooperation seldom come about between police and public prosecutor's office, but on the other hand it is very rare that major frictions and misunderstandings arise between them. Since the control functions of police and justice depend decisively upon their limited material means and the available personnel, police investigations and legal proceedings dealing with the offences covered in this study, i.e. those representative of "mass criminality", are not characterized by interest in the individual case

but represent bureaucratic routine work. All the organizations concerned are in the first instance interested in settling the proceedings as fast and smoothly as possible. In this connection it is not of the same importance whether or not this procedure always corresponds to prescribed norms governing the organizations' activities, nor to the goals of prosecution.

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IV. CRIMINAL JUSTICE

THE PROSECUTOR'S OFFICE WITHIN THE PROCESS OF PENAL SOCIAL CONTROL*

Erhard Blankenburg, Klaus Sessar, Wiebke Steffen

1. Introduction

It has been the aim of this study to obtain results of general relevance on the decision-making processes of a central - but so far neglected by criminological research - agency of penal social control: the prosecutor's office.

The description of the prosecutor's office in GVG (Court Organization Act) and StPO (Code of Criminal Procedure) already makes clear that the function and the role of the prosecutor within the criminal justice system are not defined consistently and free of conflict; therefore, it is to be expected that the letter of the law and law in action will diverge - which means that knowing of the relevant statutes is not a sufficient condition for understanding and adequately describing the actual situation. Legal rules for the most part only define the scope of authority of the prosecutor; its use is regulated by a set of additional rules of application. The description of these rules and of their operation in practice constitutes the core of thie study.

The summary of the most important reeults of the study follows the subdivision of prosecutorial functions into three fields:

- investigation
- selection of offenees and suspects for full criminal proceesing
- decision whether or not to prosecute (charging decision).

For each topic, we indicate the questions and hypotheses that formed the basis of our research as well as the main findings and the conclusione we gained from the results of our study.

2. Methodology

The collection of data took place in three phases between June 1973 and

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April 1975. We used three distinct empirical methods: analysis of documents, individual interviews, and group discussions.

During the first phase (June to August 1973) the 1970 caseload statistics of all 93 prosecutor's offices in the Federal Republic of Germany were evaluated. Eight offices were selected for further investigation according to the criteria "size of office" (i.e. number of deputy prosecutors employed) and "indictment rate". The 1970 registers of these offices were used for drawing random samples of approximately equal size from the entire case-load (between 3,330 and 4,495 cases per office) which were then evaluated under the aspect of the correlation between the organizational structure of each office and the structure of its settling of proceedings.

Based on the results of this evaluation we defined the scope of our samples of dossiers which was drawn for an extensive analysis of the prosecutor's decision-making (second phase, September/October 1973 and September/October 1974). Using a pre-tested enquiry form we coded information from randomly selected dossiers in 3,230 cases of larceny, 889 cases of fraud, 567 cases of embezzlement, 623 cases of regulatory offenses ("minor" white collar crimes), and, in an additional enquiry, in 257 cases of robbery and 294 cases of forcible rape. From a seperate study, concerning the evaluation of 820 criminal homicide cases, some data were incorporated into this book.

During a third phase of the study (March/April 1975) partly standardized individual interviews and group discussions were conducted in seven out of our eight prosecutor's offices in order to test and extend the results of the document analysis.

3. Findings and Results

3.1 The Prosecutor's Office as an Investigating Agency

Question

To what extent does the prosecutor succeed in carrying out the threefold task assigned to him by the law: (1) to investigate the facts of each case with the help of the police (§§ 160 [1], 163 StPO, 152 GVG), and to collect the evidence necessary for the decision on guilt or innocence during trial (trial preparation function - the prosecutor as "master of pre-trial proceedings"); (2) to limit the investigation to matters legally relevant for the decision of the case (directing function); (3) to supervise the legality of police investigations (control function)?

Results

1. Participation in police investigations

As a rule - i.e. with respect to "mass criminality" which constitutes

more than 90 % of the prosecutor's case-load - the prosecutor is informed only after police investigations have been closed. With the exception of capital and white collar criminality (see below) he personally investigates in very rare cases only, and only in a very limited number of cases does he give specific directions to the police. As a consequence, he has to accept the results of police investigations to a large extent. He only rarely tries to supersede them by investigations of his own, or to control the legality of police procedures during investigations.

2. Extent of the prosecutor's investigative activities

In cases of "mass criminality" the prosecutor's investigating activities depend on whether proceedings with known or unknown suspects are concerned. In proceedings with unknown suspects, the prosecutor confines himself to accepting the results of police investigations, i.e. he does not try to find a so far unknown suspect, respectively to have him found by the police. Depending on the type of offense, this conduct applies to over 90 % of the proceedings.

In cases with unknown suspects, the extent of prosecutorial investigations depends primarily on where the complaint is laid. Usually, the complaint goes to the police; if the complaint is brought directly to the prosecutor the rate of his investigations rises; but even then about a quarter of these cases are not investigated by the prosecutor, i.e. they are passed on to the police without specific requests for investigation.

In proceedings with known suspects the prosecutor induces investigations in 19 % (theft without aggravating circumstances) to 61 % (robbery) of the cases. Only in 3 % (theft under aggravating circumstances) to 12 % (embezzlement) of all cases, however, does he carry out investigations of his own. This far-reaching abstinence from investigating also applies to the "minor" white collar crimes that were evaluated. In 6 % of the cases the prosecutor investigates himself, in 17 % of the cases he has additional investigations carried out.

3. Nature of the prosecutor's investigating activities

By far the greatest part of the prosecutor's investigating activities consists of filing requests and motions (e.g. search and arrest warrants) which, under German law, have to originate from the prosecutor's office.

4. Investigating activities in the area of capital crime

Extent and intensity of investigative activities in the area of capital crime are greater than with other offenses, but still falls short of the legislative mandate as well as of the prosecutor's own preceptions of his work. For even in murder cases we could not find any prosecutorial investigations in 44 % of the cases; only in less than 50 % of these cases the prosecutor was at the scene of the crime; and four out of five suspects had not been personally questioned by the prosecutor.

5. Function of the prosecutor's investigating activities

A comparison of offenses shows that the intensity of investigating - with the exception of capital crime - is neither influenced by the seriousness of the offense nor by the existence of evidence problems. The function of the prosecutor's investigating activities is evidently less the further clearing-up of facts than the supporting of the charging decision made previously. Typically that decision is based on the original (police) documents of the case, i.e. not on investigations instigated.

Conclusions

The frequency, the cause, and the direction of prosecutorial investigating activities make his decision on whether or not to prosecute dependant on the contributions and interests of the other agencies and persons participating in preliminary proceedings, i.e. especially on the clearing-up results of the police, the victim's interest in prosecuting and his contributions towards clearing-up, the willingness to give evidence of eventual witnesses and of the suspect. The prosecutor's decision on dismissal or charge of proceedings becomes other-directed to the degree he cedes his investigating initiative and does not participate in investigations. This investigating abstinence on the prosecutor's part is probably not only, or first of all, the result of a "custom become habit", but more the necessary consequence of his professional socialization and of his work load. The division of labour between police and prosecutor - investigation on the one side, charging decisions on the other - is the inevitable consequence of the allocation of resources to these agencies, and is normally accepted by both sides.

3.2 The Prosecutor's Office as a Selecting Agency

Question

To what extent is the decision-making of the prosecutor, and consequently the selection of offenses and suspects for prosecution determined by formal legal rules and/or informal rules of application?

Hypothesis

Legal rules only set the outer limits of the prosecutor's scope authority; therefore, they need to be supplemented by rules of application, which are expected to be found in the following conditions of the prosecutor's action program:

- in organization-specific conditions of action
- in offense-specific conditions of action
- in suspect-specific conditions of action
- in (offense- and offender over-lapping) normative and pragmatic conditions of action.

3.2.1 Organization-specific Conditions of Action

Hypothesis

The prosecutor's decision on dismissal or charge of proceedings depends on the size of the office, the prosecutor's burden of preliminary proceedings, and the registered case-load, i.e. the nature and number of offenses registered. The rate of dismissals rises in proportion to the size of the office, the case-load, and the registration of offenses with a high share of unkown suspects.

Results

1. The prosecutor's load of preliminary proceedings does not prove relevant for the rate of dismissals, not even for the frequency of different ways of settling proceedings, e.g. dismissal because of minor guilt (§ 153 StPO) or applications for a written penal order.

2. The size of the prosecutor's office and the structure of dismissing or charging proceedings are clearly correlated: the ratio of dismissals because of lack of evidence (§ 170 [2] StPO) rises with increasing size, whereas dismissals because of minor guilt (§ 153 StPO) are independent of size.

3. These differences in the structure of charging decisions decrease, however, when the type of offense is held constant: the larger a prose-

cutor's office, the higher is not only the general crime rate but also the portion of offenses with a particularly high rate of "unknown suspects" cases (especially larceny). As "unknown suspect" is almost an equivalent of dismissal, it is only natural that larger offices should have a higher rate of dismissals because of insufficient evidence (§ 170 [2] StPO). It can thus be said that the different overall rate of dismissals of the offices are rather the expression of the respective crime structures than of the respective charging policies. Controlling the influence of local criminal structure, it becomes evident that the patterns of dismissal or charge are quite similar and always show the same tendency: large prosecutor's offices charge more seldom than smaller offices.

Conclusions

For reasons of research economy, we were unable to further analyze the extent and the consequences of regional differences in prosecutorial law enforcement. That question had, for the most part, to be left for future research. Yet at least the following can be stated: This study proves results of other analyses of geographical differences in law enforcement - mainly concerning sentencing by trial judges. In the different district court areas the respective legal proceedings pending are either dismissed, charged or sanctioned to an offense-specifically varying high degree: suspects thus have regionally different chances of being convicted for comparable offenses.

3.2.2 Offense-specific Conditions of Action

Hypothesis

The prosecutor's decision whether or not to prosecute depends on the nature of the offense in question, particularly on the type and amount of evidentiary barriers to conviction the description of the offense provides.

Results

1. Whether or not the police can name a suspect when handling over the dossiers to the prosecutor's office, proves to be the most important criterion of selection for the prosecutor's decision on dismissal or charge (as had been the case with his participation in investigations).

In cases with unknown suspects the prosecutor accepts the results of police investigations, i.e. he almost always dismisses such cases, irrespective of whether the offense is serious or of minor importance. This policy leads to high dismissal rates for crimes such as larceny, robbery, and rape.

2. Cases with known suspects but with - according to the police report - evidence problems are significantly more frequently dismissed than clear-cut cases. Yet, in about 25 % of the cases regarded by the police as "difficult" the prosecutor nevertheless decides to press charges; and in about a third of the cases which the police regard as "clear-cut", the prosecutor refuses to indict. Thus, in cases where a suspect is known, the results of police investigations predetermine the prosecutor's decision to a significantly lesser extent than in cases with unknown suspects.

The "definitive" clearance rates, as well as the sanctioning rates of definitely cleared-up proceedings, vary with the offense: Whereas white collar crimes in 83 % of the cases are passed on as definitely cleared up, and 62 % of these are then sanctioned, the rate of definite cases of larceny and fraud amounts to over 70 % , with a sanctioning rate of 71 %, respectively 62 %. In the case of embezzlement the rate of definite clearance drops to 66 % - the respective charging rate is 49 % - in cases of robbery to 43 %, of rape to 38 %; it is here, that the highest charging rates of 83 %, respectively 73 % are found. The sanctioning rate of offenses which - according to police opinion - are difficult to prove, also varies with the offense: in cases of larceny, fraud, white collar crimes, and embezzlement prosecutorial evaluation of evidence differs from that of the police in about a fifth of the cases, i.e. they are sanctioned contrary to police evaluation of evidence.

The prosecutor thus follows police evaluation of evidence only with restrictions. As the divergence between the police's and the prosecutor's evaluation of evidence is greatest in cases of serious crimes (rape, robbery, high damage cases) it is to be assumed that the prosecutor - when deciding whether an offense can be charged or not - also takes into account the gravity of the offense (a "public interest"-factor).

Conclusions

The nature of the offense has proved relevant for the prosecutor's charging decision. The knowledge of the type of offense in question

allows a prediction of the prosecutor's decision. This strong influence is a consequence of the fact that the statutory definition of an offense can diminish as well as increase the prosecutor's chance for successful investigation and final conviction of a suspect. The overriding importance of evidentiary problems created by criminal law holds true even for serioue crimes, even though they are partly counterbalanced by a strong interest in prosecution in spectacular cases.

3.2.3 Suspect-specific Conditions of Action

Hypothesis

The prosecutor's decision to dismiss or charge proceedings is dependent on the social status characteristics of the suspect. On the one hand because his decision is influenced by suspect-specific common place theories (stereotypes) concerning social characteristics - in this sense social characteristics of the suspects become directly relevant to the charging decision; on the other hand because the social characteristics correlate with other influential normative and pragmatic considerations and thus work as mediating criteria.

Results

1. Of the four social characteristics that had been included in this analysis - age, social class, sex, nationality - age proved to be the only one of independent relevance: juvenile and adolescent suspects had a persistently higher chance than adults of being selected for full processing. The influence of the three remaining social characteristics varies according to the offense in question.

Juvenile and adolescent suspects are significantly more frequently prosecuted for each offense than adults. In cases of fraud and embezzlement, members of the lower-class are more frequently sanctioned than members of the middle-class - but this does not hold true for larceny, robbery and rape. Women are significantly more frequently convicted in cases of theft without aggravating circumstances, men, however, in cases of embezzlement. Foreigners and Germans are treated equally - except in cases of fraud where the foreigners stand a better chance of having their cases dismissed.

2. The only social characteristic that has direct relevance for the prosecutor's decision is age: the higher prosecution rate for juveniles and adolescents remains even then when the influence of normative and pragmatic rules of application is controlled. Compared to this the social characteristic class is of lesser direct impact on the charging

decision; the only exception seems to be the area of petty offenses where lower-class people have a greater chance of being brought to trial. Sex and nationality of the suspect do not seem to play a significant part in the prosecutor's charging decision.

3. The mediating character of social status characteristics, however, is more important for the selection of suspects of different social status for further prosecution. Selection for prosecution depends strongly on other offender-related factors which make suspects more or less acceptable targets for full criminal processing, e.g. the individual's prior records or the availability of a confession. In so far as these factors are again correlated with social characteristics, these characteristics influence the charging decision in an indirect but probably not less important way. For example, lower-class people are more ready to confess and tend to have a higher number of prior convictions than middle-class people: thus, if the prosecutor relies on factors like confession and prior record for his decision-making, he will "automatically" prosecute more suspects from the lower- than from the middle-class. Yet, if these factors are held constant, variations in the treatment of suspects of different social classes become negligible.

Conclusions

Thus the prosecutor - e.g. by applying suspect-specific stereotypes in decision-finding - has a relatively small part in producing the specific social structure of the population against whom criminal charges are brought. The criteria for dismissal or charge are more or less established by the time he enters into preliminary proceedings, and are only "reinforced" by his decisions to the further disadvantage of juvenile or adolescent suspects, whereas they are generally confirmed in the case of the social characteristics concerning class, sex, and nationality.

It is characteristic of the prosecutor's decision-making that he displays a marked lack of interest in the individuals affected by his decisions. This is also shown by the fact that the prosecutor does not carry out or induce any investigations concerning the personality of the suspect - not even than if the law expressly requires him to do so, as is the case with regard to juveniles (cf. §§ 43, 105 JGG - Juvenile

Court Act). His decisions are based on data contained in dossiers,which are often incomplete and only rarely give useful information on the personality and social environment of the suspect. The prosecutor generally takes into account very few criteria to substantiate and legitimate his decisions, and he has only very little information about the individuals who are affected by his decieion. Thus, the very "objectivity" of the prosecutor's decision-making strategies turn out to have socially selective consequences to the disadvantage of certain groups and persons of the population. This effect is due to the fact that the prosecutor applies the same pragmatic and normative criteria to different groups of suspects: to those who can make effective use of the procedural options provided to them by the law, and to those who cannot.

3.2.4 Pragmatic and Normative Conditions of Action

Hypothesis

The prosecutor's decision to charge or dismiss proceedings is determined by considerations which can be broken down into "pragmatic" and "normative" rules of application:

1. Pragmatic rules of application are related to the evaluation of evidence. They are determined by the strength of the evidence collected by the police, in particular by the suspect's readiness to confess and his representation by counsel; by the cooperation of the victim; and by the results of the police investigation.

2. Normative rules of application are related to the evaluation of guilt. Main criteria are the extent and degree of the damage or harm caused, the participation of more than one offender, the frequency of the offense,and the prior criminal record of the suspect.

Results on the Influence of Pragmatic Rules of Application

1. Social characteristics of the victim proved to be influential in several waye:

- cases with middle-class victims tend to be dismissed less often;
- an existing relationship between offender and victim results in a higher chance of dismissal in cases of robbery and rape, whereas in cases of fraud and embezzlement it leads to a higher conviction rate. Next to the readinese to confees (see below) the offender-victim relationship has the strongest influence on the prosecutor's

decision to dismiss or charge;

- if the victim is not a private person but a firm the rate of dismissals also drops significantly. Shep-lifting is a good example of the strong influence of firms on law enforcement.

2. The position of the suspect in the criminal process, especially his chance of resisting the labeling of his conduct as criminal, depends decisively on his interactional competence in his association with the agencies of crime control. Indicators for this competence are

- remaining silent vs. making a confession
- making use of defense counsel vs. self-representation
- (in a wider sense) pre-trial release vs. pre-trial detention.

The findings confirm our assumptions on the influence of the suspect's interactional competence on prosecutorial selection:

- if the suspect makes a confession, prosecution follows nearly automatically (with the exception of fraud); thus the availability of a confession is the prosecutor's most important decision-making criterion;
- if the suspect is represented by defense counsel during pre-trial investigations he stands a better chance of having his case dropped. In addition retained counsels reach better rates of dismissal than appointed counsels;
- in cases of larceny, fraud and embezzlement no one detained before trial can expect to have his charge dismissed; in cases of robbery the dismissal rate for pretrial detainees is 3 %, in cases of rape it is 17 %.

Results on the Influence of Normative Rules of Application

The variables: extent and degree of damage or harm, frequency of the offense, previous conviction of the suspect had the expected impact on the charging decision; a significant influence could not be proved, however, for the factors: number of offenders participating in the offense, and seriousness of the offense (felony vs. misdemeanor):

1. there exists no correlation between the qualitative importance of an offense - i.e. its classification as a felony or as a misdemeanor -

and its indictment rate;

2. there was no increase in the chance of sanctioning if the offender acted in concert with others; this unexpected result appeared for all offenses studied except robbery;

3. when the monetary value of the damage is higher than 500 DM, for all offenses studied a common tendency towards higher indictment rates was found;

4. if a suspect is alleged to have committed two or more unrelated offenses, he owns an increased risk of being prosecuted;

5. the prior criminal records of a suspect proves to be a highly indicative criterion for his chances of being indicted. The previously convicted suspect is more likely to be charged than a suspect without previous conviction - regardless of whether the former conviction was for the same type of offense or not. Dismissal because of minor guilt becomes less likely; so does dismissal because of insufficient evidence. Especially the latter phenomenon indicates that previous convictions are also used for the construction of the chargeability.

Conclusions

Depending on the strength of the evidence and on his interest in pressing charges, the prosecutor uses pragmatic and normative criteria either as support for his decision to dismiss or as an additional factor in favour of seeking conviction. The exchangeability of these criteria indicates that they do not actually determine the prosecutor's decision regardless of the nature of the crime, but that the prosecutor's decision is, in the last analysis, grounded on considerations of criminal policy: his interest in the prosecution of a crime has consequences for the construction of the "chargeability" of a particular offense, and the perceived desirability of official punishment influences his evaluation of the strength of the evidence. Of course, there are limits to the exchangeability of pragmatic and normative factors in justifying the prosecutor's charging decision; yet it can be said that the prosecutor ultimately bases his decision on overall criminal policy rather than on evidentiary considerations.

Multivariate analysis of the prosecutor's charging decisions reveals not only each variable's significance for the prosecutor's treatment of each offense and thereby the structural particularities of the offenses studied, but also the overriding influence of some of the variables which supersedes even the impact of the nature of the offense. The readiness to confess has the highest superseding significance of all variables; the following variables were of minor importance: prior victim-offender relationship and victim's social status. The suspect's prior criminal record gains independent relevance for the prosecutor's decision if no confession is available. Another factor with offense-related influence is the age of the suspect - in fact, age is the only social characteristic which sometimes outweighs the impact of pragmatic and normative criteria. All other variables were taken into account by the prosecutor only as secondary factors.

3.3 The Prosecutor as Decision-maker

Question

To what extent does the prosecutor make use of his legal options to determine the outcome of cases before trial? To what extent does he take over respectively encroach upon the task of the judge by actually selecting cases and offenders for further procecution?

Hypothesis

The prosecutor has broad discretion, almost beyond judicial control, in his decision whether (and how) to dismiss or to bring charges (with or without oral trial). Discretion, assumption or pre-determination of judicial decisions, and decision-making based on "judicial" considerations, all indicate a tendency of the prosecutor to develop into an independent agency with the quasi-judicial authority to determine the outcome of a case - a tendency which remains unchallenged by the judiciary.

Results

1. Legal possibilities of dismissing or charging proceedings

Some grounds for dismissal turned out to be of so little quantitative or qualitative relevance for the prosecutor's decision-making that they were not included in this study. Thus, we did not analyze:

- dismissals because the suspect had died or was not legally responsible because of his age;

- dismissals because of a statue of limitations;
- dismissals because the suspect's act was justified or excused;
- dismissals because no suspect was known (5 % to 81 % of all proceedings settled);
- dismissals because the suspect was under prosecution for a more serious offence (3 % of all proceedings settled).

The following types of dismissals or charges were included in the analysis:

- dismissals because of lack of sufficient evidence (§ 170 [2] StPO) and because of absence of a crime; because of their structural similarities these are treated together as "dismissals because of evidence problems";
- dismissals because of minor guilt and lack of public interest in prosecution (§ 153 StPO, § 45 [2] JGG);
- motions for informal adjudication by the juvenile judge (§ 45[1] JGG), motions for a written penal order and motions for a judicial order opening trial; these are treated jointly as "sanctions", the third possbility of settling proceedings.

2. Frequency of dismissals and charging decisions

The widest discretionary power of the prosecutor is to be found in cases of dismissals because of evidence problems. Their importance is not only due to their quantitative extent - between 26 % (simple larceny) and 57 % (forcible rape) of all cases with known suspects are dropped for this reason - but also to the fact that the statute neither prescribes nor guides the prosecutor's assessment of the chance to obtain a conviction; moreover, judicial control of that assessment is possible only if the victim applies to the court for a writ of mandamus - a proceeding which is, according to the findings of our study, practically never used.

Dismissals on de minimis grounds ("minor guilt and lack of public interest" - § 153 StPO) in 1970 ranged between 5 % (aggravated larceny) and 20 % (embezzlement) of all cases which could otherwise have been prosecuted; with respect to "minor" white collar crimes, the dismissal rate on these grounds was as high as 25 to 30 %. De minimis dismissals must therefore be accorded considerable relevance for the prosecutor's decision-making, particulary in light of the fact that the corresponding statutary provision constitutes a deviation from the principle of mandatory prosecution. The significance of our figures is enhanced by the fact that the judge in no case refused to give his approval (required

by the statute) to the prosecutor's decision not to bring charges. One specific problem with de minimis dismissals stems from the fact that they sometimes were as camouflage for dismissals because of insufficient evidence: contrary to the mandate of the statute, minor guilt is occasionally used as grounds for dismissal in cases which could never have been prosecuted successfully.

Our analysis of cases in which the suspect was sanctioned also showed the broad extent to which the prosecutor autonomously decides on the outcome of the case. The prosecutor's typical instrument for self-determined sanctionning is the (written) penal order. He uses that tool with smooth efficiency and without serious conflict: on the one hand the number of cases in which the judge (who officially issues the penal order) refuses to go along with his suggestion is negligible, which can be explained by the heavy case-load and limited capacity of trial courts; on the other hand, the accused only rarely appeals the penal order and demands a full trial, possibly because of the lower degree of stigmatization following from conviction by penal order rather than by public trial.

In relation to the offenses studied, the frequency of the three different modes of settling proceedings can be summarized as follows: if the offense is simple larceny, aggravated larceny, or robbery, prosecution is more frequent than dismissal; in cases of fraud, embezzlement, and forcible rape, however, the suspect has a better chance of seeing his case dismissed than of having to face criminal charges. This means that the prosecutor applies the formal (legal) rules designed to guide his decisions with differing results, dependent on the nature of the offense - even if one would expect equal results from equal application.

3. Cooperation and conflict between prosecutor and court

While judges almost never withhold their approval in connection with dismissals and with applications for a penal order, conflicts between judge and prosecutor occur somewhat more frequently during trial. The main source of disagreement is some prosecutor's propensity to press charges in spite of evidentiary problems. In these cases, the prosecutor's tendency to base his charging decision on normative criteria cla-

shes with the judge's tendency to emphasize the requirement of full proof rather than the interests of law enforcement; the result of this conflict is a higher rate of judicial dismissals and acquittals.

It is possible, however, that the prosecutor anticipates and consciously accepts the higher risk of dismissal or acquittal in these cases, because he regards the mere unpleasantness of a public trial, even if it does not result in a conviction, as a sanction for the offender.

Conclusions

The fact that the prosecutor quite extensively uses his possibilities of carrying out proceedings independently, clearly indicates, that he seeks to avoid the problems of his awkward role as "middle man" between police and the courts by an increasing orientation towards judicial functions, and thus towards the issue of proceedings. Together with the results, according to which normative criteria rather than pragmatic-criminalistic criteria are used for evaluating the chances of conviction, it can be said that on the whole the prosecutor has taken a turn away from the police and investigations towards the court and the disposal of proceedings.

3.4 Main Characteristics of the Prosecutor's Decision-making

According to the results of this study, the decision-making of the prosecutor is distinguished by five main characteristics: by other-directedness, orientation towards criminal policy, lack of interest in those affected by his decisions, by information deficits, and decision-finding solely based on documents.

3.4.1 Other-directedness of Prosecutorial Decisions on Dismissal or Charge of Proceedings

The division of labour between police (investigation) and prosecutor (dismissal or charge) and the lack of interest on the prosecutor's side in clearing up and investigating cases with evidence problems, necessarily have the consequence, that the evaluation of the strength of the evidence, i.e. the charging decision, is other-directed to a great extent: by the victim's and the suspect's cooperation in solving the case, and above all by the results of police investigations.

3.4.2 Orientation Towards Criminal Policy of Prosecutorial Decisions

The prosecutor's marked abstinence from investigative work, his almost complete renunciation of participation in police investigations, and thus of taking influence on the collection of evidence is increased by his normative orientation towards the State's interest in doing justice, i.e. by his tendency to substitute respectively superimpose, criteria of evidence by criteria of the State's right to punishment, when assessing the chance of conviction. This obeervation holds true especially for the large intermediate area between proceedings cleared up beyond doubt, and evidently completely futile proceedings. By making his decision dependent on the State's interest in imposing punishment, and not on the sufficiency of proof for conviction, the prosecutor no longer remains indifferent (as the law requires), as to the nature of the offense and as to the personality of the offender, but acts in accordance with his perception of good criminal policy. Whether the proeecutor employs policy criteria for deciding on "chargeability", thus becomes another aspect of prosecutorial discretion.

3.4.3 Prosecutorial Desinterest in Persons Affected by his Decision

The remarkably poor consideration for the social conditions of acting associated with the suspect, in favour of concentrating on normative and pragmatic criteria of decision-making, is typical for the prosecutor's desinterest in those affected by his decisions.

This can be regarded as a consequence of his professional socialization and his self-conception resulting from it. His training enables and induces the prosecutor to approach and solve decision-making problems with judicial, not with sociological categories of thinking. It would probably be asking too much of him - and, in any event, would render decision-making more difficult - if he tried to elucidate the background of a criminal act, to find explanations for the social and individual problems underlying the crime, and to take them into consideration when finding and justifying his decisions.

On the contrary, the prosecutor is inclined to exclude the "personality of the offender", respectively the "cause of the offense"; at the most, he will simplify the decision-making programe by using offender-related stereotypes and thus render it manageable. As for the rest, however, he is inclined to retreat to the well-known and familiar canon of the material legal, normative, and pragmatic decision-making program

to justify the charging decisions.

3.4.4 Information Deficits and Decision-making Based on Written Documents

In the most cases, the prosecutor bases his decision whether or not to file charges on only a small portion of the totality of pragmatic, normative, and social factors that could influence his decision - viz. on those, that can be gathered from the dossier and are provided, through the filter of the police, by victims, suspects, witnesses, respectively reports on the scene of the crime. Thus, only little information is available to the prosecutor for the justification and legitimation of his quite often far-reaching decisions.

This finding is not without importance for the methodology of our study: at the outset, we regarded it as an unavoidable methodological short-coming that we had to concentrate our research on prosecutorial files which contain only a selective, decision-oriented account of the actual flow of events. That initial assessment must now be judged differently under the aspect of the typical decision-making situation of the prosecutor. The study has made clear that the selective reality of documents is the reality of prosecutorial decision-making actions, which can after all be told from documents and from documents only. For the fact that prosecutorial decisions normally are "decisions based on documents" implies that the prosecutor considers facts only to the extent that they appear in the dossiers.

Thus, only documents can give information on the labeling processes taking place in the prosecutor's office. The reproach, that the analysis of documents does not constitute a strong methodological basis for the investigation of substantial labeling processes, because labeling consists of applying rules to a person in social interactions, and thus can only be told from the context of social interactions and not from the analysis of "dead files", can now be countered as follows: documents are nothing but "frozen" interactions viz. constituting results of previous interaction processes reduced to written form. When we deal with a criminal justice agency such as the German prosecutor, who bases his decisions almost exclusively on written information and who places every decision on file, labeling and criminalization processes must - and do - find expression in writing and can thus be detected through analysis of documents.

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LEGAL AND SOCIAL PROCESSES TO DEFINE "CRIMINAL HOMICIDE"

Klaus Sessar

Summary

The objective of this research was to study the well known "mortality rate" of criminal cases between their registration by the police and the final decision by the court. This has been done in a theoretical way, i.e., by formulating relevant questions within the theoretical frameworks of the sociology of law and criminology. For this purpose, we have chosen non-negligent criminal homicides. Because of the gravity of these acts, theoretical prespectives such as the social reaction approach dr the labeling approach are usually said not to be applicable. However, the scientific interest is significantly challenged precisely by this type of crime: the loss of cases as can be determined by comparing police statistics with court statistics is not lower in terms of criminal homicide as compared with other crimes; quite on the contrary, it is insurpassably high with respect to attempted murder and manslaughter cases.

The basis of all these considerations refers to the so-called "relevant optimum" of each criminal prosecution (which considering the growing crime figures, should better be called "non-prosecution"). In other words, selection processes guarantee the crime balance in a society; they are sometimes called "homeostatic processes" because they assure that crimes (or better, its social relevance) does not exceed certain limits. This means also that the widely discussed capacity problem of the agencies of crime control is more than just a technical problem - it also reflects the restrained readiness to prosecute each and every committed offense.

Consequently, the general question was not what crimes of criminal homicide are, but how they are defined. In order to answer this question, two points were taken into account; first, the definition of the suspect's intention to kill (its negation or affirmation); and, secondly, the definition of murder as compared to manslaughter (however, solely under the aspect of avoiding mandatory lifelong imprisonment as is provided for murder).

Further criminological and legal-sociological considerations belong in this macrostructural context. The mortality rate was considered to be a process of selecting or filtering in which several agencies participate: the persons who perceive the act, including the victim (providing that he has survived); the police as the most important agency to register and investigate those acts; and the prosecutor's office and the court as independent decision-making instances. For each of these instances or stages in the process of crime control, the specific conditions of action were studied as far as the data permitted. Regarding the police and the administration of justice, we made the distinction between pragmatic, offense-oriented, and offender- and victim oriented conditions of action:

- pragmatic conditions of action ar those which externally determine the instances of crime control - the consequence being quite different reactions (for example, the predetermined quality of police investigations for the decision of the prosecutor and the judge, the case loads, various structures of organizations, differently motivated participants in the process);

- offense-oriented conditions of action are those which, like the outcome (death or survival of the victim), the method used to commit the crime, or the victim's contribution to the crime, seem to be appropriate for informing about the "policy" with respect to the definition of what are to be understood as capital crimes (legal factors).

- offender- and victim oriented conditions of actions are the personality characteristics of the suspect and the victim as well as their inter-personal relations; these are extra-legal factors in as far as they become relevant for legal decisions independent of other factors.

The following summary will give an overview of the methed used as well as of the results concerning the criteria used for the definition of criminal homicides with the aid of police and court files.

1. Methods

Our most important method was document analysis. After the permission of the Ministry of Justice of the State of Baden-Wuerttemberg was received, the 1970-1971 case load statistics of all prosecutor's offices of this state were evaluated concerning attempted and completed non-negligent criminal homicide cases as well as fatal assault and battery (according to the Germal penal law, three versions of criminal homicide exist: murder and manslaughter which both must be committed with premeditation, and fatal assault and battery, where only the violent act is intended, not the fatal outcome. Murder as compared to manslaughter must be committed under aggravated circumstances - for example - out of greed or with cruelty). A total of 1,024 cases were found and requested from the prosecutor's officee and court offices. Of these 151 cases were sorted out of the research design because, among other reasons, the acts had been committed long before 1970. Fifty three cases could not be obtained so that 820 cases were evaluated by using a questionnaire. After a first analysis, we skipped all cases (73) in which the police altered their initial definition of the crime as a criminal homicide. From the remaining 747 files, classified according to the final police definitions, 194 acts of completed criminal homicide, 26 fatal assault and battery cases, and 527 attempted criminal homicide were at our disposal.

The whole research was based on one offense, which means on one victim-offender relationship. When there was more than one participant on one and/or the other side, the data regarding the main suspect or the most severely attacked victim were taken into consideration.

2. Conditions of a definition of criminal homicide acts

The analysis of how the cases are treated between the initial perception of the acts and their final disposition by the prosecutor or the judge (Verlaufsanalyse) is based on the assumption that legally provided for, as well as factually established, organizational structures and practices guarantee that the extent of criminality is continuously reduced so that the courts receive for treatment only a fraction of the originally registered crimes. This means also that the official agencies of crime control depend upon the informal agencies - for example, the informant or notifier (mostly the victim), who may or may not in-

form the police about the percepted or suffered crime. All agents have their own legal and/or factual criteria for selection: the victim or a bystander must decide whether or not to go to the police; the police ... to register or not to register the violent act as a capital act; the prosecutor ... to define the nature of the act when deciding about charging or dropping it; and the judge ... to define the act when he convicts the offender.

2.1 The informant

When we studied the role of the informant for the registration of violent acts, as well as for their definition and treatment, we had to take into account that we did not have a control group consisting of people who had not informed the police. Therefore, we were obliged to carefully conclude from the existing findings that the behavior of the informant follows specific criteria when he decides to go or not to go to the police. Existing empirical studies helped to clarify this point. We restricted this part of the study to non-fatal violent acts as we assumed that the existence of a dead body with visible signs of violent attack usually will be reported.

The significance of the informant for the process of crime control in terms of non-fatal violent crimes was assumed to be found in three different areas, namely:

- in the definition of the offense
- in the readiness to report it
- in the chances for prosecution on the basis of the complaint.

For this purpose we made a distinction between victims and non-victims (for example, by-standers, witnesses from hearsay, medical doctors, etc.) as informants and complainants.

The definition, i.e., the perception of the act with respect to its legal meaning, depends on whether the outward occurrence of the act or the inner intention of the perpetrator indicates the decisive evidence. In cases of violent crimes it is the intention of the perpetrator which determines whether or not a crime is defined as a capital crime because its outward form is similar to numerous other violent crimes (this becomes clearer when one considers that the prosecutor used 27 alterna-

tive legal versions for what the police had called non-fatal criminal homicide). We assumed that victims as opposed to non-victims have experienced the violent situation much more closely; therefore, they have a more dramatic interpretation of their own victimization and consequently are more willing to go to the police. In fact, we could show that victims more frequently define the suffered offense as an attempted criminal homicide act than do non-victims. Moreover, their definition was dependent upon the closeness of the physical threat. (Stabbing was more frequently defined as an attempted murder or manslaughter than shooting; beating, more frequently than stabbing; strangling, more frequently than beating.) On the other hand, non-victims defined the offenses almost in the reverse order.

The readiness to report the crime, which usually is studied in respect to the victim, was of special interest in this context because only every second complainant was the victim. Even when only those cases were taken into account in which the victim had not been injured, only one out of three victims went to the police. Therefore, we tried to discover peculiarities in the behavior of complainants within both groups concerning how quickly they reported offenses after their occurrence. If the victim was more prepared to define the suffered crime as a capital crime than as another offense, then one could assume that he was more prepared to report it as quickly as possible. This assumption, however, was erronious because non-victims went more quickly to the police than victims (also true when the analysis is restricted to non-injured victims). After more than three days, four times more victims than non-victims had not yet gone to the police. These unexpected results could be mainly explained by considering the offender-victim relationships, which are differentiated according to whether they are family relationships, close friendships, acquaintanceships, or non-relationships (strangers). Victims went to the police reluctantly if the suspect was an acquaintance, and even more reluctantly if he was a member of his family or a close friend; however, these differences did not exist when a non-victim was the informant. At the same time, victims and non-victims were equally quick in reporting the crime if the suspect was a stranger. In this connection, we could confirm results for filing complaints; violent crimes committed by spouses or family members are more rarely reported than similar acts committed by strangers. Therefore, we felt justified in interpreting our results

in the same manner.

As a consequence of our investigations, some questions about the dark figure problem could be answered. The dark figure is commonly discussed only in terms of completed homicides, not in terms of attempted homicide. Because, as mentioned above, the phenomenological occurrence of the criminal act only rarely shows the intention of the perpetrator, it must be inferred. However, there must be someone who is able and willing to infer the intention of an act from its occurrence and is equally willing to communicate his observations; therefore, a large dark field of attempted criminal homicides can be assumed, mainly structured by the personality of the victim and complainant and by relations to the offender; therefore, it concerns violent crimes between closely associated participants.

The chance for successful prosecution (according to the initial definition offered by the police) was measured according to the reaction of the prosecutor on the basis of how fast the crime was reported. In this connection, we wanted to know whether the role of the informant deals only with the initiative of crime control or also with its efficiency. We were able to establish that the definition of the offense by the complainant had no impact upon the definition by the prosecutor. However, this was the case with respect to the speediness in filing the complaint. The police definition of the act as criminal homicide was retained by the prosecutor in one out of three cases when it had been reported within one hour after its detection by the victim or a third person; however, this was almost never the case when more than 24 hours had elapsed. These results show that the importance of the complainant is more than just his readiness to go to the police.

2.2 The police

The study of the role of the police within the context of crime control was linked with the assumption that the police possess a certain discretionary power when defining and investigating reported violent crimes. (The overwhelming number of cases came to the attention of the police as a result of complainant initiative; only 4 % of the crimes were registered as a consequence of police initiative.) This discretion was studied in police investigations and for the extent to which prose-

cutors kept or altered their definitions - the aim being to find out the extent of consensus between both agencies. This analysis revealed high investigatorial activity by the prosecutor with respect to fatal violent crimes and relatively low investigatorial activity when the victim had survived the assault; accordingly, the frequency of definitional changes was low in the first category and high in the second category.

Our interpretation was that the police remain more or less uncontrolled when they define a non-fatal violent act; for example, they may define it as an attempted manslaughter instead of aggravated assault and battery or vice versa. Therefore, our further analyses were restricted to attempted criminal homicides. We again had to consider the fact that we lacked a control group consisting of violent crimes which had not been filed as capital crimes. The investigation was limited to two questions which could be answered with the available data. These questions refer to:

- firstly, the relationship between the police caseload of completed criminal homicides and the impact of this caseload upon the definition of non-fatal crimes (for example, attempted manslaughter as opposed to assault and battery).

- secondly, the relationship between the geographical distribution of police officers (rural/urban distribution) and the impact of this distribution upon the structuring of violent crimes.

A further aim of both analyses was to find out if such police-specific conditions of actions not only lead to selections of violent crimes at the time of registration but also determine the decisions-making processes within the judicial system.

The case load factor was measured by placing the 24 months within the investigation period (January 1970 to December 1971) into a rank order. The increasing burden in this rank order was associated with completed criminal homicides; 4 such cases comprised the lowest monthly burden and 16 such cases comprised the highest burden. (The burden could, among other things, be measured from the number of witnesses - on the average, 19 in cases of completed murder or manslaughter, and 4 in cases of attempted murder or manslaughter.) The next step was to calcu-

late the percentages of attempted criminal homicides for each month; the hypothesis was that in the case of a greater burden, fewer attempts are registered than in the case of a leeser burden. The hypothesis was fully confirmed as the rank correlation coefficient was R = .84. If two categories are constructed, one consisting of the most extreme monthly burden and the other of the least extreme monthly burden (four months in each of these categories), then the percentage of attempts in the first group was 52 % and in the second group was 83 %. In addition, we could show that this discrepancy remained in the decisions of the prosecutor and the judge. Their definitional policy does not compensate for the definitional policy of the police; in fact, attempted criminal homicides, as defined by the police, were "downgraded", whereas aggravated assaults and batteries and other types of violent crimes outside capital crimes were usually not "upgraded". Therefore, the decision of the police to define a violent act not as a capital crime was definite.

The analysis of the geographical factor was based on the assumption that the crime control patterns of the police reflect their urban/rural distribution. We supposed that among other things the following might be significant for the evaluation of violent crimes by the police: firstly, a distinct socio-cultural background of the police with respect to the degree of urbanism and, secondly, distinct degrees of adjustment to a socio-cultural based structure of criminality. The consequences would be that in cities rigid moral values of the population, and therefore a rigid social control, play a more minor role than organizational factors as well as those which have to do with case load and vice versa with respect to rural areas. This means that the urban police could be expected to show a cooler attitude towards violent crimes, especially when they occur within close offender-victim relationships. Consequently, one could assume that non-fatal violent crimes are less often defined as attempted criminal homicides in urban areas than in rural areas since the level of tolerance towards criminality is higher in the former than in the latter. This assumption was partially confirmed because a significant correlation was found between the size of the community in which the police had their permanent seat and the ratio of attempts. (A rank order of communities of eight different sizes was made, from "communities with up to 5,000 inhabitants" to

"communities with more than 500,000 inhabitants" which was Stuttgart alone). This correlation indicated that in the first group 90 % of all registered capital crimes were attempted homicides, whereas in Stuttgart the proportion of attempts was 51 %. However, the categories of cities with more than 100,000 and less than 500,000 inhabitants (Mannheim, Karlsruhe, Heidelberg and Freiburg) deviated from this rank order because they showed numbers of attempts which were quite similar to those in communities of between 5,000 and 20,000 inhabitants. We obviously found two completely different styles of control. One had more to do with the organization of the police offices in big cities; the other had more to do with the assumed urban/rural distribution.Although we continued our analyses along the two different paths, we will discuss only the second path.

The urban/rural distribution pattern became clearer through the construction of two opposite categories, one consisting of communities with up to 20,000 inhabitants and the other of communities with more than 500,000 inhabitants (Stuttgart):

- in small communities the percentage of close offender-victim relationships (family members, close friends) in respect to attempted criminal homicides was significantly higher (47 %) than in Stuttgart (36 %) although the corresponding percentages for completed criminal homicides did not show any differences (32 % in each category).

Two different patterns of non-fatal violent crimes were the consequence of these different definitional practices:

- in small cities more offenses which had occurred between spouses or family members were registered; the motive of the deed was either a long-lasting quarrel or a love affair, and the place of the crime was more often the place of residence of the suspect and/or the victim. In Stuttgart more violent crimes were registered in which the participants were not known to one another; accordingly, the place of crime was a bar or a street, and the motive usually arose from a sudden quarrel.

Two more observations indicated that the above-mentioned differences were concerned with the different levels of tolerance towards criminality:

- in small cities and in rural areas many more cases where the victim was not or not severely injured were defined as attempted criminal homicides (71 %) than in Stuttgart (49 %); in addition, the complainants designated the acts much more frequently as "criminal homicide" in small cities (52 %) than in Stuttgart (35).

The overall result of this stage of our research was a confirmation of the enormous power of the police to define non-fatal violent crimes. This power means that the judicial system does not define offenses as attempted criminal homicides once the police had not previously defined them as such or had overlooked the possibility of considering them as such. This is so because the necessary information is lacking and cannot be independently established. More important is the point that this sorting out of cases is indispensable for keeping the criminal justice system functionings.

2.3 The prosecutor's office

We found that with respect to non-fatal violent crimes, the police have definitional power. At this point the question was if and to what extent the prosecutor will agree to, or is able to, correct the definitions of the police; however, this quesiton already presupposed a certain necessary discretionary power on his part which had to be analyzed before any further investigatory steps could be taken.

Discretion first exists when the prosecutor dismisses a case. If we neglect cases which cannot be brought to trial because the suspect is unknown, is fugative or committed suicide after the offense (14 % of all offenses), then 128 cases (20 % of the remaining cases) were dismissed for various reasons - primarily because of lack of evidence (14 %) or because of minor guilt (after the act had been downgraded to, for example, simple assault and battery). Of the remaining 498 cases brought to trial, almost half of them were brought to lower courts because they constituted a minor offense after the prosecutor had changed the definition of the police. It was established that in no such case had the lower courts redefined the definition of the prosecutor in the sense that the offense was pursued as a capital crime. This means that the prosecutor always has a final discretionary power when he himself negates the suspects intention to kill,and this is true with respect to

attempted as well as completed criminal homicides. This observation can be explained by the fact that each agency of crime control communicates information only to a certain extent; therefore, the range of information cannot be decisively improved by the subsequent agency - in this case through the court.

On the basis of these observations we undertook three steps of investigation - which all had the determination of the suspect's intention to kill as the dependent variable:

- the study of the case load and the urban-rural distribution of the prosecutor's offices in their impact upon the definition of the offense (pragmatic conditions of action);

- the study of the offense-oriented conditions of action (the outcome of the act, the means of attack, the victim's provocation) as opposed to offender- and victim oriented conditions of action (personal characteristics) by using a multivariate analysis (tree analysis);

- the additional bivariate analyses of selected population groups concerning specific categories of suspects.

The geographical distribution was meaningless; however, the same was not true of the (montly) caseload factor. The more criminal homicide cases the prosecutor received from the police in a month, the more prepared he was to downgrade such cases or to dismiss them. This was true exclusively for non-fatal violent crimes which were mostly re-defined as aggravated assaults and batteries. The statistical correlation was by far not so clear as in the case of the police (rank correlation coefficient $R = .34$).

In the center of our studies were the decision-making processes of the prosecutor (irrespective of the case load factor). They were analyzed by using as many offense, offender and victim factors as were found in the files. For this purpose, we chose a tree analysis programm (THAID). Altogether 18 independent variables were taken into consideration and analyzed according to their differentiating power with respect to the dependent variable - thus affirming or negating the intention to kill. On the whole, 493 cases were at our disposal. The most important result was the clear predominance of offense variables as compared

with offender or victim variables. The prosecutor's decision to affirm or negate the suspects intention to kill was most strongly influenced by the outcome of the crime. The program separated two typical factor constellations for both the affirmation and negation of a criminal homicide. For affirmation: outcome of the crime (death or invalidity of the victim), the method used to commit the crime (shooting, stabbing, strangling), the sex of the victim (female) and the nationality of the suspect (German); for negation: the outcome of the crime (serious, slight or no injury of the victim), again the outcome of the crime (slight or no injury of the victim), the offender-victim relationship (spouses, family members, casual acquaintances) and again the outcome of the crime (no injuries of the victim). In as far as the provocation of the victim became important, it resulted in the negation of the intention. The socio-economic status of the suspect was of no significance.

The multivariate analysis could not replace bivariate analysis if specific charcteristics of small population groups should be analyzed. Therefore, a number of offender characteristics were studied separately by taking into account the offense variables which had been found to be more decisive.

We were interested among other things in the following characteristics: his alcohol consumption (according to the German Penal Code § 330 a StGB, a drunken offender who commits a crime will not be punished because of this crime but rather because of his drunkenness - provided that the amount of alcohol in his blood has reached a certain level. The decision about this level should follow scientific criteria which might have to do, among other things, with the offender's individual drinking capacity); and the severity of his previous convictions. When the crime had been committed because of heavy drunkenness (meaning that it should be punished less severely), its definition was again dependent on the consequences of the act. This means that the victim's fate rather than the level of drunkenness decided what the legal consequences would be. As far as the previous convictions are concerned, the intention to kill was much more frequently confirmed when the suspect had served a long instead of a short prison sentence; this significant association between criminal past and actual definition of the crime was associated neither with the outcome of the crime nor with the type

of crime.

As a consequence of the whole analysis of the prosecution's definitional practices, it was possible to observe that the claim to punish is primarily decisive and that it mainly refers, first of all, to the seriousness of the outcome. The more serious the offense is, the more the prosecutor is willing to confirm the intention to kill although the relation between the degree of the victim's injuries and the suspect's motivation is far from being stringent; the decision is a matter of criminal policy. In as far as personal characteristics of the suspect became important, they were also linked to this policy - as could be shown with regard to the importance of previous convictions. (In our context the prior record replaces necessary, but obviously unavailable, evidence and therefore cannot be considered to be a legal factor.)

2.4 The court

The further analyses were restricted to capital crime proceedings. Due to prosecutorial selection, the 266 proceedings which remained were 36 % of the original cases. Thirteen charges were not accepted by the court but were rejected or re-defined so that they had to be neglected in the same way. From the remaining 253 cases, 72 were downgraded during main trial proceedings or the accused was acquitted so that only 181 cases were finally considered by the courts to be capital crimes. These were 24 % of the original cases. 45 % were completed murder or manslaughter cases, 10 % were fatal assaults and batteries, and 45 % were attempted murder or manslaughter cases.

It would have been significant if the hitherto studied factors had been analyzed in the same way in order to complete our picture of the selective strategies within the criminal justice system. However, because of the decreasing number of cases, this was impossible; we particularly had to refrain from bivariate analysis regarding small population groups. On the other hand, it was now important to study the relationship between the definition of murder and manslaughter by the courts - especially under the aspect of the way in which mandatory punishment (lifelong imprisonment) for completed murder was dodged by the courts. Three investigatory steps were taken:

- the study of procedural conditions in their impact upon the sentence (quality and motivation of the prosecutor and the defense counsel during main trial proceedings);

- the study of the differentiating power of offense/offender/victim oriented conditions of action - again by using a multivariate analysis (tree analysis);

- the study of sentencing policy in the case of completed murder as opposed to completed manslaughter.

Pragmatic conditions of action were those which had to do with the main trial proceedings. Our document analysis allowed us to study the impact of the trial prosecutor and the defense counsel. Our suggestion was that the trial prosecutor has a more rigid opinion of the offense and the offender as he himself had investigated the case; the further consequence is that the sentence reflects this rigid attitude. On the other hand, we assumed that the private counsel achieved a more favorable outcome in the proceedings than the assigned public counsel. The dependent variable was the definition of the offense (affirmation or negation of the accused's intention to kill and the distinction between murder and manslaughter) as well as nature and amount of imprisonment. The results confirmed our assumptions in their tendency; if the roles of investigating prosecutor and trial prosecutor were played by the same person, then the judge more frequently followed the definitional content of the charge with respect to the offense than if the role of the trial prosecutor was distinct from the role of the investigating prosecutor. Private counsel contributed much more frequently to the redefinition of the offense in favor of the accused. These discrepancies were particularly clear when the roles of the proceeding participants were combined (investigating prosecutor acted as the trial prosecutor together with court assigned counsel (first category) and other prosecutor than the investigating prosecutor acted together with private counsel (second category)).

Even more obvious was the influence of the participants with respect to the sentence of imprisonment. In addition to this, we could observe that the differing quality of the defense attorneys, as determined by what they accomplished, was of benefit to the offenders according to the latters' socio-economic statuses. Private attorneys achieved the

same results for the accueed regardlees of whether they belonged to the lower or middle class (on the contrary,court assigned attorneys achieved equally little for members of both classes); however, 49 % of lower class offenders as opposed to 83 % of middle class offenders had private counsel. This unequal distribution of private attorneys, therefore, resulted in an unequal treatment of both social claeses.

The multivariate analysis of the judicial decision with respect to offenee-oriented, offender-oriented, and victim-oriented factors, partially diverged from what we found with respect to prosecutorial decisione. The strongest differentiating variable was the method for committing the crime; shooting and strangling favored the affirmation whereas stabbing and beating favored the negation of the accused's intention to kill. The typical further factor constellatione for the affirmation were the outcome (death of the victim, his invalidity or serious injury), sex of the victim (female), and previous convictions. The typical factor conetellations for the negation (besides the method of stabbing and beating) were the recommendations regarding the accused's mental state in the expertise (the fact that he was found to be fully culpable favored the court's negation of his intention to kill) and the sex-specific offender-victim relationship (male kills or almost kills male). The criminal political component predominant in the decisione of the prosecutor, was less observable in the decisions of the court. When further factors were taken into account, two quite distinctly evaluated situations were found. Most rigidly evaluated were quarrels which involved shooting or strangulation, which took place within the family- mainly with females as victims, and in which the victim was killed. Less rigidly evaluated were alterations between males, usually acquaintances or strangers, who fought by means of etabbing and beating; in this case, the definition depended less on the outcome. Although the multivariate analysis only used rough variables, the predominant impression was that the decision-making process of the court was much more differentiated than that of the prosecutor, such that the seriousness of the act did not have an overwhelming meaning for its legal definitions.

As far as mandatory lifelong punishment for complete murder committed by adults is concerned, our tree analysis indicated that the best variable for differentiating between murder and manslaughter is the vic-

tim's contribution to the act (mostly his provocation). The most important variable next to this variable was the nationality of the accused; foreigners, mostly "guest workers", had a much greater chance of being convicted of manslaughter as opposed to murder than Germans. This mainly had to do with the fact that the criminal justice system chose to keep open the possibility of expelling the foreign convict after a certain time (which is much more difficult when he had been convicted to lifelong imprisonment). The distinction between nationalities was so strong that in cases of the victim's provocation (in the broadest sense), two out of three Germans were still convicted of murder; however, the same was true for no single foreigner. The outcome of the deed was meaningless in this context. On the contrary, situational factors were much more decisive; for example, in regard to the offender-victim relationship, the definition of murder instead of manslaughter was much more frequently used when the relationships were either very close (murder between spouses) or did not exist at all (murder in connection with robbery). On the other hand, looser relationships, for example between acquaintances or friends, were much more often defined as manslaughter.

On the whole, one can observe a strong tendency to avoid the mandatory sentence of lifelong imprisonment by evaluating murder as defined in the prosecutor's charge as manslaughter. The consequence of such strategies is that only 6 % of all complete killings which had been registered by the police resulted in the most serious sentence of the German Penal Code.

WHITE-COLLAR-CRIMINALITY AND THE PROSECUTOR'S OFFICE

The Handling of Criminal Proceedings Relating to Business Crimes by the Prosecutor's Offices in the Years 1974-1978 in Light of the Federal Record of Criminal Proceedings Relating to Business Crimes

Friedrich Helmut Berckhauer

1. The Prosecutorial Disposal of More Serious White-Collar Criminality According to the Federal Register

1.1 The Functions of the Federal Register of White-Collar Offenses

The Federal Register is a data collection of the Criminal justice agencies which aims toward achieving an overview of the type and resolution of selected white-collar criminal proceedings. The Register has been centrally prepared and evaluated since 1974 at the Max Planck Institute for International and Foreign Penal Law - Criminological Research Group - on the basis of a decision by the criminal justice administration at the Federal and state levels.

The results should empirically secure the legislative reforms for the fight against white-collar criminality. Furthermore, the German Federal and State Department of Justice assume that the investigation furnishes valuable information about organizational questions which are connected to the processing of business crime cases. Knowledge should be gained on the number, extent and length of the proceedings. This knowledge is of significance for the equipping of the prosecution authorities in the sense of personnel and materials or, in the present case, for a further concentration regarding the prosecution of white-collar crimes.

1.2. The Extent and the Statistical Representativeness of the Federal Register

The data primarily permit conclusions about the processing and disposal of the recorded business crime cases by the prosecutor's office. Con-

clusions regarding the phenomenon of bueiness criminality are possible only with certain reservations.

The Federal Register does not include all the white-collar offenees in a year. It shows, for example, only 2,893 investigative proceedings with 5,065 defendants for the first year of recording, 1974. However, according to the criminal justice statistics, one must reckon with about 16,000 to 18,000 judgements. A correspondingly high number of defendants for the prosecutorial investigative proceedings must be taken into account in regard to the high dismissal rates for white-collar crime proceedings. This fact alone makes clear that the result of the Register do not present the complete picture of white-collar criminality. At first sight, this does not appear to be a considerable deficiency of the Record because the representativeness of the inquiry and the capacity for generalization of its findings are limited. However, one should not overlook the fact that the purpose of the Federal Register is to analyze only serious white-collar criminality.

1.3 Several Basic Facts Regarding the Disposition of Proceedings According to the Federal Register

1.3.1 The Outcome of the Proceedings

The Federal Record is the first data collection which permits conclusions about the significance of various procedural conditions upon the outcome of the proceedings. We inveetigated the following examples of such conditions:

- the number of defendants per proceeding,
- the number of individual cases per proceeding,
- the number of victims per proceeding and
- the amount of the total damage per proceeding.

These four features characterize the magnitude of the procedural subject-matter: the greater the number of single features, the more extensive the investigative proceeding and the more likely a greater expenditure for investigation may be assumed.

With an increasing number of suspects, the relation between the number of charges and of total dismissals (altogether approximately 50 % : 50 %) shifts more and more to a significant predominance of the indictment. It must be noted in this regard that proceedings with a high number of defendants amount to only a small proportion of the proceedings and therefore hardly permit generalization to be made.

With the exception of proceedings with over 100 individual cases (which includes only a very small proportion of cases), the rate of indictments increases with the rising number of individual cases.

There is no connection between the number of victims per proceeding and the outcome of the proceeding as long as one does not differentiate between the kind of victim, on the one hand, and the number, on the other hand. Without such a differentiation, a single, individual victim, for example, receives the same significance as the state in the case of a tax or custom offense in which the state is counted as one victim.

A relation exists, however, between the outcome of the proceedings and the amount of the total damage: the higher the total damage was, the more likely it is that an indictment is filed.

The following results may be noted:

The likelihood that a charge will be filed in court rises with the increasing magnitude of the subject-matter of the proceedings. The larger the subject-matter of the proceedings is, the more often there is adequate evidentiary material. A limit must be drawn only in the upper area of the size of proceedings because the increasing accumulation of evidence is superposed by the rising complexity of the subject of the proceedings.

1.3.2 The Discontinuance of the Proceedings

In addition to the filing of a charge, the Federal Register also shows complete or partial discontinuances of the proceedings.

In regard to the discontinuances of the proceedings to the full extent, the reasons for dismissals for lack of evidence are around five times more frequently offered than those for discontinuances for insignificance.

The proportion of discontinuances rises because of evidentiary and procedural hindrances above the average number of these reasons for discontinuances in regard to larger procedural matters - namely in the situation of three and more defendants, in the situation of eleven and more single cases and in the situation of total damages amounting over 100,000 DM per proceeding. On the other hand, small procedural matters naturally are more likely to lead to discontinuances because of insignificance.

Partial dismissals of proceedings as the primary means toward the concentration of the subject of the proceedings against known suspects show, as expected, a much greater number of discontinuances because of insignificance than is the case for total discontinuances, which include proceedings against unknown suspects.

The number of defendants per proceeding shows itself to be a factor of complexity in the procedural material; this holds true as much for partial discontinuance as for total discontinuance.

The number of individual cases per investigative proceeding is, on the other hand, - at least in the case of partial discontinuances - no criterion for the complexity of procedural matters.

1.3.3. The Length of the Proceedings

The Federal Record makes clear the connections between the length of the proceeding and its disposition. Total dismiseals of the proceedings are ordered primarily within six months. In the case of a greater length of proceedings, the filing of charges predominates. An investigative activity going beyond two years no longer promises the same possibilities for success as a length of between six months and two years.

In regard to total dismissals, one must merely recognize that discon-

tinuances because of evidentiary problems - hopeless proceedings - are disposed of more than average within three months.

2. The Organization of Prosecutor's Offices in Regard to the Criminal Prosecution of White-Collar Crimes: Concentration and Specialization

2.1. The Role of the Prosecutor's Office as an Instance of Social Control through the Criminal Law

It is the duty of the prosecutor's office, in the accordance with the "principle of legality", to research all case facts which could prompt the filing of a public charge. The prosecutor's office, which is therefore commonly characterized as an indictment authority, is in reality more of a dismissal authority. Its main assignment exists in investigating the complaint matters which move to it from the police and third parties on the basis of their capacity and merit for charging. In this regard, the prosecutor's office receives not only the legal control over the activity of the police - when historically seen, this may have been the most important reason for the introduction of the prosecutor's office (Department of Justice) should curtail the police's excess of power (Department of the Interior).

Although demands for a reorganization of the fight against white-collar criminality were primarily raised by the police, the prosecutor's offices have understood to exploit the political situation in order to implement an organizational reform.

2.2 The Reform of Organization: The Introduction of Specialized Prosecutor's Offices

The possibilities for prosecuting white-collar crimes were, on the whole, apparently perceived as intolerable before the organizational reform. Insufficient specialization and inadequate outfitting with materials were responsible for the fact that the prosecutor's offices themselves believed that they were so significantly handicapped in no other area of the fight against the growth of criminal offenses as in the area of the fight against white-collar crimes. Moreover, the prosecutor's themselves did not have overly relevant special competence in

regard to very simple questions on the subject.

Examples to the contrary - such as the outfitting of the prosecutor's office, Stuttgart, in the year 1957 with six employees, trained specially for white-collar crimes, in a special department - appear to have remained praiseworthy exceptions.

The effectiveness of the prosecution of white-collar crimes before the introduction of specialized prosecutor's offices was considered in practice to be very unsatisfactory - not only because of the inadequate conditions of the prosecutor's offices in the sense of personnel and techniques. Therefore, the reform should bring about equal weapons with the offenders in that "efficient organizations" should cause a stronger activity of the prosecutor's office as opposed to the police and experts and a greater intensity of prosecution. The aim of an "effective fight" against white-collar criminality through more intensive, and more rapid clearance existed in a reduction of the length of investigation in the case of a simultaneously good clearance rate.

Particularities in the prosecution of white-collar crimes - as will be recognized soon - demand a specialization of authorities. Since it was not possible to equip all 93 prosecutor's offices of the Federal Republic of Germany in the same manner with specially trained employees, the setup of central offices for criminal prosecution was considered. This kind of central service places for the fight of selected white-collar crimes originated in connection with rationing measures before and after the second World War when one was compelled to protect scarce economic goods from improper seizure.

Selected, particularly serious white-collar criminal proceedings were concentrated (since 1968) at first in Nordrhein-Westfalen at so-called specialized prosecutor's offices. At these prosecutor's offices, business divisions with specially qualified, energetic departments, which were (in practice) exclusively engaged in the prosecution of white-collar crimes were created. These business departments "should - in any case in the majority of situations - be placed without expert guidance in the situation to prosecute white-collar crimes forcibly and suitably and to bring charges with well-prepared evidentiary material which

permits a suitable judgment to be expected".

In the meantime, business divisions have been established in selected prosecutor's offices in all Federal states. Additionally, in the Federal states of Berlin, Bremen, Hamburg, and Saarland, which have only one prosecutor's office, the prosecution of white-collar crimes was concentrated in business divisions through an organizational reform sanctioned from within.

In spite of the setup of specialized divisions, the remaining prosecutor's offices are also responsible for the prosecution of white-collar crimes. In reality, they handle - as may be indirectly recognized from the numbers in the Federal Register as compared to those in the criminal justice statistics - the greater part of white-collar crimes - even if only the smaller part of the more serious white-collar criminality.

The prosecution of white-collar crimes is differently organized at the prosecutor's offices - as may be concluded from the plans regarding the division of activities of these authorities. Cases of petty white-collar criminality are frequently assigned to the general departments. Exceptions are more likely to be found in regard to larger agencies which permit a specialization in the assignment of such matters to certain departments to be recognized. Cases of "enrichment" criminality with business implications are also not always assigned to specialized departments.

2.3 The Units of Organization for Prosecutor's Offices

The hierarchical construction of prosecutor's offices requires a designation of the units and bearers of functions - something which is not federally uniform. Several departments are usually combined in the divisions. In order to avoid confusion between departments and sub-departments and department heads and advisors (particularly business department heads and advisors), the prevailing language is followed. Accordingly, department heads are the prosecutors, whereas certified tradespeople, bank tradespeople, certified economists, etc., who are employed for the support of department heads, are classified as (business) advisors. Auditors are also engaged at a series of prosecutor's offices.

A review of the plans, regarding the division of activities within prosecutor's offices permits to recognize a differently intensive engagement of department heads with investigative assignments of business.

There are department heads who exclusively work on business material without necessarily being active in a business division. These persons can be designated as business department heads. In addition to them, there are special business department heads who do not differ from the business department heads in the area of assignments, but rather only regarding their explicit designation as specialists in the plan which divides activities or regarding their position within business divisions.

A differentiation according to special training and other special qualifications is not possible on the basis of the plans dividing activities.

An analysis of the plans of the prosecutor's offices which divide activities gives an overview of the dispersion of material concerning business crimes over the individual prosecutor's offices. On the average, 22 % of all departments are concerned with white-collar crimes in some form or another. Deviations from this average value are shown by different concentrations of white-collar crime cases within authorities. A smaller proportion thus corresponds to a high concentration within authorities.

The proportion of all department heads out of all departments reveals an essential point about the degree of specialization of a prosecutor's office. The more prosecutors as compared to all experts there are who are concerned exclusively with business affairs, the less specialized the prosecutor's office is. On the average, the proportion of business department heads out of all experts amounts to 11 %. The same consideration holds true to an even greater degree for the experts explicitly identified in the plans dividing activities as special business department heads; their proportion amounts on the average to 10 %.

Finally, different sizes of prosecutor's offices are evident when the plans dividing activities are examined. In reliance upon the classifi-

cation of the Freiburg prosecutor's office investigation, the size may be divided into four claeses:

small prosecutor's office	:	up to 15 departments
medium prosecutor's office,	:	16 - 25 departments,
large prosecutor's office	:	26 - 100 departments,
very large prosecutor's office	:	more than 100 departments.

Specialized prosecutor's offices are usually (88 %) large and very large agencies. On the other hand, small proeecutor's offices are almost never specialized prosecutor's offices.

2.4 The Actual Concentration and Specialization in Regard to Prosecutors

The state criminal justice systems provide basically large and very large agencies for specialized prosecutor's offices. Smaller prosecutor's offices are only by way of exception entrusted with the prosecution of white-collar criminality as a special area of emphasis. A concentration of the prosecution of severe white-collar crimes on the formal aspects follows - namely, their designation as specialized authorities by whom 4/5 of the white-collar criminal investigative proceedings contained in the Federal Register were disposed of. Even larger is the concentration of these white-collar criminal proceedings in large and very large prosecutor's offices - into which 9/10 fall.

The concentration in the sense displayed above corresponds to an intra-office concentration of white-collar criminal proceedings in specialized divisione and departments. In the case of the general authorities, the responsibilities for white-collar crimes in the broader sense are provided for in 3/5 of all divisions, whereas this is the case for specialized prosecutor's offices only in regard to 2/5 of all divisions. Even clearer is this intra-office concentration regarding the size of prosecutor's offices. The smaller prosecutor's offices have distributed responsibilities for white-collar crimes in the broader sense to 89 % of the divisions. This dispersion diminishes with increasing size of the prosecutor's offices; the largest intra-office concentration is achieved with 36 % in regard to the very large prosecutor's offices.

If one measures the intra-office concentration not by the distribution of white-collar crime cases to various divisions but rather to departments, then it may be shown that these criminal cases are about three times more intensely concentrated at the specialized prosecutor's offices than at the general prosecutor's offices. Even clearer is the growth of concentration in regard to increasing size of organization: regarding the small prosecutor's offices, 2/3 of all departments are concerned with white-collar crimes in one form or another, whereas this holds true for only 11 % in regard to the very large prosecutor's offices - meaning that here the intra-office concentration is six times larger.

As a consequence, formal (type of prosecutor's office) and personnel (type of departments) spezialization go along with the intra-office concentration of white-collar crime cases.

If one considers the differentiation of the prosecutorial office's plans for dividing activities, which may be gathered from the subject areas, as a material criterion for specialization, then it may be shown that the structural specialization of the authorities grows with increasing specialization and size of organization. With increasing formal specialization and agency size, not only more different kinds of white- collar crime subject areas are planned for processing in the plans dividing activities, but even more important, qualitative movements toward more serious white-collar criminality are shown: the proportion of the petty crime area of business crimes as measured against the proportion of the departments responsible for violations of food laws and environmental protection laws clearly diminishes with increasing formal specialization and expanding size of organization. Food and environmental protection cases are processed in 11 % of the departments in the general prosecutor's offices, in only 5 % in the specialized prosecutor's office, in around 20 % in small prosecutor's offices and in only 2 % in the very large prosecutor's offices.

The plans for dividing activities thus show themselves to be material indicators for formal specialization - as is indicated in the designation of the prosecutor's office as a specialized agency.

The assignment of different white-collar crime subject areas to the individual departments reveals no striking differences between the kinds and sizes of prosecutor's offices. In the area of varying technical differentiation of the plans dividing activities, almost always the same or related material was assigned to the departments for processing.

Only the number of departments in which a single white-collar crime subject area is to be processed shows itself to be a differentiated feature of specialization. The proportion of departments with a single subject area to be processed increases with growing formal specialization and increasing size of organization. This holds true particularly for the features of specialization of personnel - as expressed in the designation of prosecutors as business department heads and special business department heads. The formal specialization is filled with substance under this aspect.

3. The Penal Law as a Condition of Prosecutorial Social Control of White-collar Crimes

Criminal law lays out, next to the organizational conditions, the external framework within which the criminal prosecution can move. It is made concrete first through formal (law of criminal procedure) and informal rules of applications (every-day theories, "second code", P. Macnaughton-Smith); however, it determines above all what should be prosecuted. It does this sometimes rather vaguely. The extensive commentarial literature is proof of this. On the other hand, the code of criminal law is so far-reaching that the overview of its scope can easily be lost.

In view of a number of more than 200 federal laws concerned with the fight against white-collar crime, this is not surprising. A succession of these laws concerns either only misdemeanors or, in addition to criminal offenses, also misdemeanors. The actual extent of the system for regulation becomes even larger, however, when one considers the endless number of ordinances which were enacted in regard to these laws.

The main areas - primarily in the area of prosecutor's offices - are:

safety provisions for workers, and employment referral, bank, stock-exchange, and corporal law; health and consumer protection; industrial law affairs; trade and foreign exchange regulations; bankruptcy affairs; tax, customs, and monopoly criminal affairs; social security affairs; environmental protection affairs. Furthermore, one may list the violation of public-law regulations which elude a closer assignment to certain subject areas. Finally, a series of business crime cases which may usually be categorized only with difficulty come into question.

The police crime statistics and the judicial administration statistics reflect primarily the process of definition which establishes a certain action as a punishable action.

Within the definitional process, penal law supplies the framework of conditions for the criminal prosecution, whereas the law of criminal procedure and the infra-structure in terms of personnel and material serve for the filling-in of this framework.

It may be assumed that various organizational structures for business capacities differently influence the disposition of criminal procedures. This is valid for the feature, "type and size of the prosecutor's office" as well as for the intra-office concentration and specialization. In view of the deficient practicality of business crime norms which is occasionally complained of, it may be supposed that the drafting of legal regulations had an influence upon the outcome of the definitional process.

3.1 The Structural Specialization and the Substantive Extent of the Proceedings

The actual distribution of white-collar crimes must determine the structure of white-collar criminality at the prosecutor's offices. However, only an offense feature selected through various actors of social control is known to the prosecutor's offices. Due to the "principle of legality", the prosecutor's office is not in the situation to select the procedural material transmitted to it in the sense that it completely shuts out a processing of individual proceedings. Nevertheless, the emergence of the principle of legality permits the guidance of the

work load through full dismissals of proceedings or also through partial dismissals. Moreover, the prosecutors have a relatively broad freedom of judgement regarding the legal subsumption of the case facts conveyed to it. This free area for judgement is allowed through the substantive law; however, its fulfillment is usually guaranteed only through intra-office measures such as submissions to superiors. A further subsumption control through the courts follows only in the case of an indictment. These prerequisites give rise to the supposition that the prosecutor's offices themselves could influence the structure of identified white-collar criminality by way of different legal subsumption.

As a matter of fact, as far as the differing types and sizes of prosecutor's offices are concerned, the (case facts) scope of the proceedings is defined not only in quantitatively different ways but also in qualitative ways, and in such a manner that each prosecutor's office classifies differently frequent circumstances under different case facts. It is indicated in this regard that the structure of the case facts becomes more differentiated with increasing formal specialization and size of the agency organization. The specialized prosecutor's offices take into consideration around five times more different case situations than the non-specialized agencies. According to the agency's size, the following results appear: small prosecutor's offices - 7 different case situations, middle and large prosecutor's offices - 16 case situations, and very large prosecutor's offices - 51 case situations.

Since this result must not necessarily be connected with a different, actual crime structure, it may be supposed that the picture of white-collar criminality, qualified through case facts, could be influenced through organizational conditions at the prosecutor's offices. In reality, a large accordance between the subsumption directives in the plans dividing activities which are at the disposal of the prosecutor's office, as well as the generally accessible legal code, and the picture which results frem the evaluation of the delicts handled by the prosecutors, is also shown. The prosecutors of the non-specialized agencies particularly hold tightly to the given subsumption directions in the plans dividing activities and in the legal codes. The larger speciali-

zation and thus also more extensive experiences of business department heads at the specialized prosecutor's offices leads, on the other hand, to a greater flexibility, although - and this deserves special stress - the plans dividing the activities of the specialized prosecutor's offices are much more differentiated from the outset than those of the non-specialized agencies.

3.2 The Disposal of Proceedings as Connected to the Features of Prosecutorial Organization

The assumption that with increasing specialization of the prosecutor's offices, the success rates, measured on the basis of a rising frequency of indictment, must also expand, has been shown to be unrealistic. The indictment rates decrease with increasing formal spezialization of prosecutor's offices as well as with increasing size of organization. In addition, the frequency of indictment does not increase in the expected sense with increasing intra-agency concentration of white-collar crime proceedings concerning selected department heads. The prosecutor's offices with a small intra-agency concentration show higher indictment rates than the prosecutor's offices with an average intra-agency concentration. Nevertheless, the indictment frequencies in the case of higher intra-agency concentration are much higher than those frequencies of prosecutor's offices with smaller and average intra-agency concentration.

Two explanations are offered for this result: the success rate at the prosecutor's offices with high intra-agency concentration is, therefore, greater than at the other agencies because of particularly specialized and experienced department heads. Furthermore, in the case of the prosecutor's offices with smaller intra-agency concentration, the indictment frequencies are, therefore, comparatively high because, for one thing, simple cases could be the subject matter and, for another, because in the case of these prosecutor's offices, the work load is smaller, meaning that their department heads can devote more energy than the department heads of other prosecutor's offices to the proceedings. A reduction in indictment frequency in the case of increasing work load of the prosecutor's office results as the trend. This tendency is presumably not more clearly expressed because it is further

compensated for by the high indictment frequencies of specialized and experienced department heads of the specialized prosecutor's offices, who for their part are considerably loaded with work.

Results regarding full dismissals of investigative proceedings, as well as regarding partial dismissals, show that the prosecutor's pursue various kinds of disposal strategies. In connection with the differing work loads for each type and size of the prosecutor's office, an increase of reasons for dismissals due to insignificance (§§ 153 ff. and 154 ff. StPO) is shown with growing specialization and agency size. It may be concluded from this that particularly burdened prosecutor's offices reduce the abundance of work directed toward them by means of the code of criminal procedure so as to better overcome the remaining procedural material.

3.3 Substantive Criminal Law and the Outcome of Proceedings

The structural conditions of agency organization which have just been set forth are not the only things of importance for the outcome of the proceedings - substantive criminal law is as well. The comprehension of the objective case circumstances of criminal law norms is shown as particularly significant in this connection. If these norms contain normative case elements which necessitate filling-in, then prosecutors encounter greater subsumption difficulties than in regard to case circumstances which do not contain these kinds of case elements. On the contrary, the comprehension of subjective case circumstances as being less significant retreats as the necessity of a certain subjective qualification only insignificantly impairs the indictment frequency. These results present no contradiction to the difficulty of proof of the subjective case circumstances which is stressed by practitioners because the subjective case circumstances are related to the objective. As a consequence, proof of the subjective side of the offense regarding normative case features is naturally more difficult to achieve than that for case elements not in need of filling-in.

The indictment frequencies in regard to the same factual framework for the prosecutor's office types and sizes are noticeably different. In regard to the overcoming of substantive criminal law, the structural

conditions of criminal prosecution work in the sense that the prosecutor's offices which are less burdened with work exhibit greater indictment frequencies. The results for the intra-agency concentration show the same trend. The indictment frequency of prosecutor's offices with higher agency concentration is smaller than that of those with lower concentration in the case of the same pattern of case circumstances.

4. The Federal Register in Longitudinal Section 1974-78

The data unfolded up to this point concerns an analysis which is supplied through the inclusion of organizational features of prosecutor's offices for the year 1974 of the Federal Record.

It can be supposed on the basis of an in-depth file analysis that data produced through processes can be reflected in a realistic way in the Federal Record.

4.1 General Development of Closed Investigative Proceedings

The number of annual closed proceedings increased steadily up to 1977 according to the Federal Record. A slight downward movement occurred first in 1978. The same holds true for the number of defendants and the amount of the total damages. On the contrary, considerable fluctuations appear in regard to the number of single cases and the victims. The structure of the case circumstances remained very constant over the years with the exception of tax and custom offenses in which the growth is attributable to costs of the vastly sub-divided class of "other offenses". About one-sixth falls to fraud, one-twentieth to breach of trust, about 3 % to embezzlement, one-fifth to one-fourth to bankruptcy offenses, and one-fifth to one-third to tax and custom offenses.

4.2 Legal Forms and Business Areas of Victimizing Enterprises

A constant increase of particular legal forms among the enterprises of defendants is striking. This holds true for the corporations with limited liability (1974 = 19 %; 1978 = 30 %) and in the case of limited liability companies for the complex legal form of the GmbH & Co. KG (1974 = 5 %; 1978 = 9 %). This increase is also doubtful because both

forms of companies are over-represented in the Federal Register three or four times more as viewed against their frequency in business life. The preponderance of joint-stock companies is still greater even though only 2 % of the cases in the Federal Record belong to this form of enterprise. In absolute terms, around 31 % of the proceedings fall to individual enterprises; however, they are much more significantly represented in business life, meaning that individual enterprises are actually not so outstanding according to a criminological view of business.

In regard to individual lines of business, various frequencies are shown according to the Federal Record: building and real estate dealings (24 %), trade (23 %), manufacture of goods (12 %), transportation and travel dealings (4 %), bank and credit dealings (3 %) and insurance dealings (1 %), and to other branches fall 17 % (to the class "no information" 15 %). Opposite to frequency in business life, the following are striking through over-representation: bank and credit dealings (4 fold), building and real estate dealings (3 fold), and below average are trade, insurance dealings and manufacture of goods.

4.3 Termination of Proceedings through Indictment

The disposal of proceedings shows over the years different indictment rates for the number of defendants, the number of single cases and the amount of damage. If one weighs the indictment rates for the number of defendants (with three-fourths), for the number of single cases (with one-eighth) and for the amount of damage (with one-eight), then the following indictment rates result: 1974 = 40 %; 1975 = 41 %; 1976 = 49 %; 1977 = 47 %; 1978 = 48 %). In spite of an increasing number of cases, a greater success of the activity of the prosecutor's office may be established on the whole.

The concentration upon the core areas of white-collar criminality, such as is recognizable in the decline of "other delicts", points to a greater effectiveness in the prosecution of white-collar crimes. On the other hand, no acceleration of the proceedings may be established. This is actually not to be expected in view of the quantitative increase and the thus connected work load of the prosecutor's offices.

4.4 Dismissals of Proceedings

With the exception of the year 1977 more single cases were "settled" through total discontinuance of the proceedings than through partial discontinuances besides filing of charges. In the case of total dismissal, evidentiary difficulties or the fact that no criminal offense exists are clearly in the foreground (67 % - 92 %); reasons for insignificance stand in the background (4 % - 21 %). In the case of partial dismissals, reasons offered because of insignificance are in the foreground (42 % - 92 %), accordingly, smaller rates (5 % - 48 %) fall to evidentiary problems or to the non-existence of an offense. The large width of fluctuation is, in addition to the actual changes in the dismissal policy, primarily attributable to a method of recording modified in the meantime (see 1974/1975, on the one hand, and 1976/77/78, on the other hand). The results should, therefore, not be over-interpreted.

5. Concluding Remarks

Even if the German example of an organizational reform in regard to the prosecution of white-collar crimes through the prosecutor's office is mentioned in international discussions as a possible example for the combating of white-collar criminality, it should not be forgotten that consequences which run contrary to the original goal creep in through the back door of such a reform. Equal treatment of white-collar crimes with the so-called classical criminality exhausts itself in the formal aspect that is investigated. Viewed in terms of contents, several criteria which are not consistent with equality before the law exist in regard to the prosecution of white-collar crimes - it seems as if one would like to bring influence to bear on a special law for business activity. This would contradict the given goals of our legal policy.

The reform of business criminal law has closed gaps in criminal liability and rounds off even more the legal set of instruments for the combating of white-collar criminality. Further areas of white-collar criminal activity remain, on the contrary, established as ever in the sphere of misdemeanors. In contrast to property criminality, where attempts at decriminalization are more likely to be considered cautiously, as the example of shoplifting shows, wide areas of commerce and business criminality are characterized through a legislative decrimina-

lization. In regard to the exceedingly frequent commerce crimes, this decision of the legislators is in accord with the legal policy considerations for the dealing with mass criminality. A preference shown toward misdemeanors needs special grounding for white-collar crimes since the argument of the separation of the criminal justice system from mass delinquency finds no basis here.

In conclusion, a total conception of social control for "enrichment" criminality still stands out - as already demanded for many years - in the Federal Republic of Germany.

CRIMINAL PROSECUTION OF WHITE-COLLAR CRIMES IN THE FEDERAL REPUBLIC OF GERMANY

Friedrich Helmut Berckhauer

1. Aims of the Study

In Germany, there are no extensive representative criminological studies on the criminal prosecution of white-collar crimes. Previous studies mostly proceeded from a concept of economic criminology different from the basis of this study. The main concern in the present study is not to uncover weaknesses in the prosecution of very concrete white-collar crimes and their causes, but rather to integrate the actual practice of prosecuting of economic crimes into the total system of penal social control. Both approaches are legitimate and important even though they pursue different aims. The more etiologically oriented approach aims towards the goal of improving the prosecution and penal legislation concerning certain economic crimes which, in the practice of public prosecution offices and courts, cause difficulties in terms of facts (evidence) as well as in terms of law (boundary between legality and illegality of an act). Such studies which deal with exceptional and boundary cases are particularly significant and worthwhile under the perspective of economic penal law, legal doctrine and legal theory.

System-oriented approaches - as the one followed here - are in a wider sense also important for legal theory because they try to examine empirically the realization of justice. However, their value lies more in the fact that they endeavored to illustrate the routines or normality of penal prosecution. System-oriented approaches are also an instrument of legal policy for the control of decisions related to criminal policy. Representative studies are able to present conclusive evidence as to where quantitative problems in prosecution exist, and whether they really do exist. In this way, such studies carry over criminal policy decisions as to how and where penal prosecution can be improved. From this point of view, it seems questionable whether prosecution suffere more from the fact that some extreme, but very infrequent cases do

not lead to prosecution because of legal gaps, or from differences in prosecution, depending on organizational or legal conditions which raise doubts as to equality before the law. This study analyzes six selected, frequent offense groups by way of the records of criminal procedure, as well as the results of white-collar crime preceedings, from the point of entry into the public prosecutor's office up to the court's judgement.

2. Selection of Dossiers and Comparison of the Sample with the Universe of Cases

2.1 Selection of Files on Criminal Cases

Access to registered serious economic criminality is possible only by way of the "Federal Register of Business Crimes" ("Bundesweite Erfassung von Wirtschaftsstraftaten nach einheitlichen Gesichtspunkten"). It is not always possible to draw samples from the registers of prosecution offices since economic offenses are not regularly noted as such in the registers. From the offense groups contained within the Federal Register, the six most frequently occurring groups were chosen for dossier analysis. They were: fraud, breach of trust, bankruptcy offenses, illegal advertising practices, tax evasion, evasion of customs duties, and non-payment of national insurance. For each offense group, 80 files were to be analyzed from the 1974 Federal Register (stratified sample). In the event that an offense group contained more than 80 files, the files to be studied were selected randomly. By means of the known prosecutorial file numbers the prosecution offices from which dossiers were to be requested for analysis were determined.

2.2 The Entry of Penal Proceeding Dossiers

Of the 480 files which were requested, a total of 407 were analyzed. Therefore, 15.2 % were eliminated. The main reason for the elimination of files was that the cases had still not been closed. Another large part of the files was still needed by legal authorities in connection with other proceedings.

2.3 Comparison of Data Between the File Analysis and the Federal Register, 1974

In order to ascertain the representativeness of the stratified sample for the total material of the Federal Register, several parameters are available. As far as results are concerned the Federal Register offers a reliable representation of the "file reality" of process-produced data such as the number of suspects, accused, and individual cases involved - with the exception of length of proceedings. In contrast, the pre-process data such as the number of persons affected by the crimes and the amount of damage are recorded only approximately. This circumstance can be explained by the fact that the precise values of these data are not of procedural significance and, therefore, are not precisely investigated.

2.4 Comparison Between the Data of the Stratified Sample and the Files not Analyzed

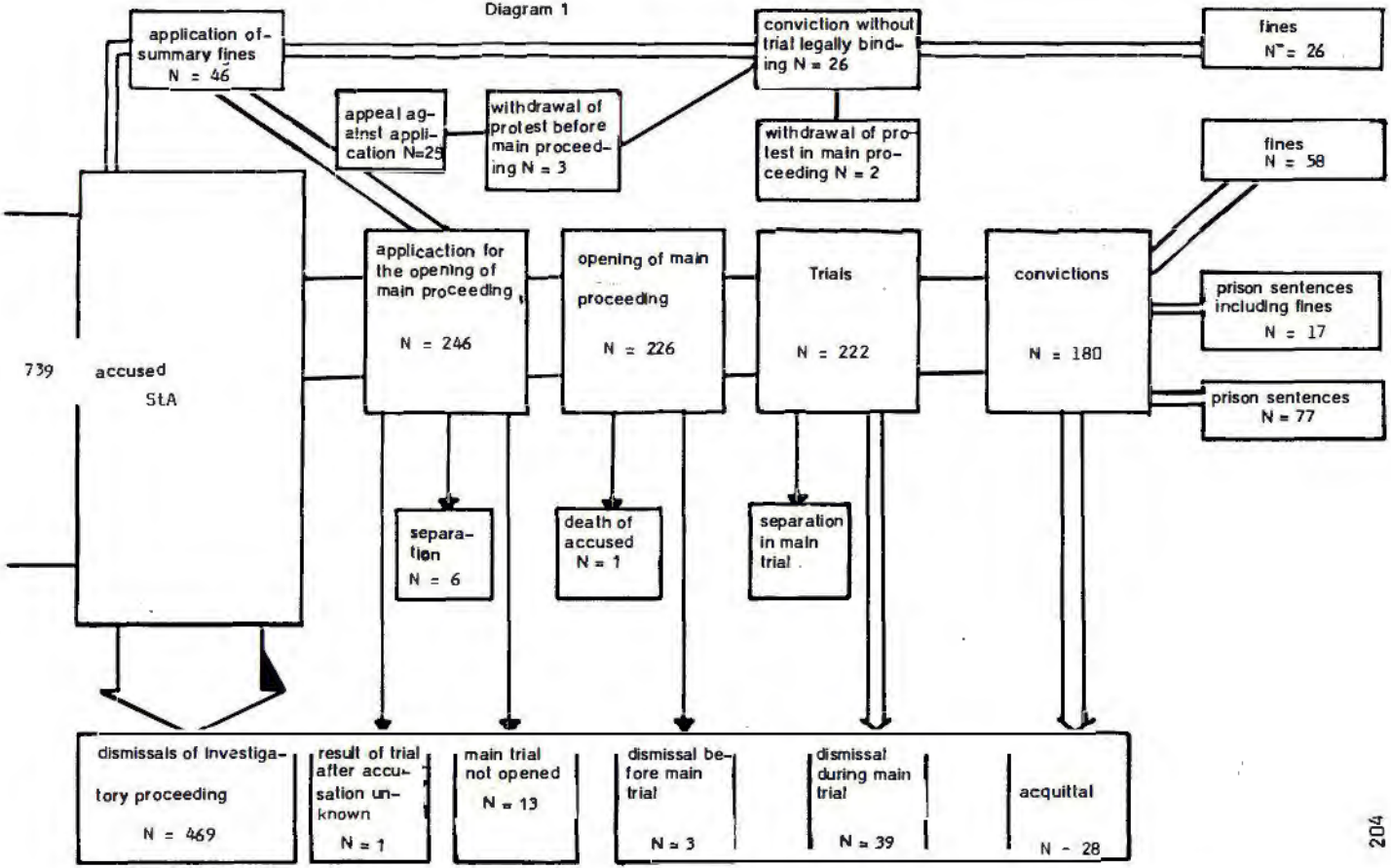
The availability of only 85 % of all requested files resulted in a slight over-representation of minor cases. Since this bias is of some importance, especially in the field of court proceedings, the data must be interpreted carefully.

3. Overall View of Case Proceedings

A compressed summary of the selection procedures during the criminal proceedings from economic crimes is shown in diagram 1.

In the 407 analyzed cases, investigations were conducted against 739 suspected parties. Of these, 469 (= 63.6 %) investigative proceedings were terminated by the public prosecutor's office by indictment. In the upper part of the diagram, the procedural course of the "summary fine" (Strafbefehl) proceedings are presented. A total of 26 (3.5 %) of the original summary fines motions became legally binding. Pretrial proceedings were requested against 246 accused (33.3 %). Main proceedings against 226 accused persons (30.6 %) were actually opened. Trials were carried out against 222 defendants (30.0 %). In the cases of 40 indictments (5.4 %), proceedings were separated or terminated during trial, so that finally only 180 sentences (24.4 %) were passed. Twenty-eight of the accused (3.8 %) were acquitted; the rest of them had to pay fines (58 convictions = 7.8 %) or were sentenced to imprisonment

Diagram 1


application of-summary fines N = 46
conviction without trial legally binding N = 26
fines N = 26
appeal against application N=25
withdrawal of protest before main proceeding N = 3
withdrawal of protest in main proceeding N = 2
fines N = 58
739 accused StA
applicaction for the opening of main proceeding N = 246
opening of main proceeding N = 226
Trials N = 222
convictions N = 180
prison sentences including fines N = 17
prison sentences N = 77
separation N = 6
death of accused N = 1
separation in main trial
dismissals of Investigatory proceeding N = 469
result of trial after accusation unknown N = 1
main trial not opened N = 13
dismissal before main trial N = 3
dismissal during main trial N = 39
acquittal N = 28

(77 = 10.4 %) or to imprisonment coupled with fines (17 = 2.3 %). In total, therefore, only a quarter of the originally accused were convicted by the courts. Since only 40 of the 94 persons sentenced to imprisonment (42.6 %) did not receive probation, a sentence to imprisonment was carried out for only 1 in 20 suspects (5.4 %). If one relates the 40 executed prison terms to the total number of sentences (180 main trials + 26 legally binding summary fines = 206), the rate of executed prison terms - approx. 19 % - is far above the result for all offenses. In general, the criminal justice system statistics show the imprisonment- rate to be about 7 to 8 %.

4. Offenses

With the exception of fraud, the individual sections of the criminal code describe the offenses in sufficient detail for criminological purposes. Therefore, it is only necessary in the case of fraud to differentiate in greater detail between individual types of offenses.

From a legal point of view, fraud is a sort of residual category which is also shown by the fact that fraud was investigated in connection with 428 suspects. However, there happen to be multiple investigations for various forms of fraud involving one and the same accused person. Therefore, it would not be correct to state that about three-fifths of the accused could be connected to fraud. The following groups of fraud are listed according to the frequency of occurrence: monetary fraud (145 accused), goods and service fraud (66), credit fraud (79), fraud with public works (31), goods credit and service credit fraud (29),real estate and construction fraud (24), and other forms of fraud (3). As individual offenses the following forms of fraud are particularly frequent: service fraud (65 accused), fraudulent competition and sales fraud by continuing education companies (57), fraudulent obtaining of credit (29), fraud with public works in the civilian sector (28), deferred payment fraud (27), fraudulent obtaining of money and other valuables to the disadvantage of individuals (22); other individual offenses were committed by less than 20 accused persons.

Compared with the number of individual offenses committed by the accused (for convenience simply called individual cases), fraud with 740 individual cases in no way heads the list of the investigated offense

groups. A total of 1.541 individual cases fall within the breach of trust category, 624 individual cases within the illegal advertising practises category, 621 individual cases within the bankruptcy combined with other punishable acts category, 338 individual cases within the tax evasion and evasion of customs duties category, 214 individual cases belong to the offense group of non-payment of social insurance contributions, and 140 individual cases of plain bankruptcy (without other additional criminal acts) occurred.

The significance of cases within the individual offense groups can also be evaluated by the amount of damage. However, the damages were spread relatively unequally as is shown by the wide gap between the mean values and median values for the individual offense groups. Less significant in view of damages were those fraud cases which involved illegal advertising practices (with an above-average group of "outliers" within the class of total damages comprising more than one million DM), as well as tax evasion and evasion of customs duties. Non-payment of insurance contributions figure in the medium range of damages, while breach of trust and bankruptcy offenses are in the upper range.

5. Suspects and Victims of White-collar Crimes

5.1 The Suspects

Female suspects were more strongly underrepresented in white-collar crimes (about 13 %) than is the case with total criminality (about 18 %). Foreigners were slightly over-represented (9.4 %) in comparison to their proportion within the population (1974: 6.7 %).

In regard to social classes, there is a slight bias especially towards the upper-middle class. The lower frequency of members of the lower class within the sample was to be expected since the Federal Register usually includes corporation-related criminality. Only as far as fraud and breach of trust are concerned were members of the lower class represented above-average. Tax evasion seems to be the typical offense of the lower-middle class. On the other hand breach of trust was a more typical offense of the middle-middle class, but especially of the upper class. Plain bankruptcy offenses, as well as the withholding of premiums, were to be found in the upper-middle class.

Corresponding to the social class membership of the accused, their educational standard is average to above-average (with offense-specific differences). Legal and economic advisory occupations were over-represented particularly among persons suspected of breach of trust - which is to be expected.

For most offenses the frequency of requests for information on previous convictions by the public prosecutor's office was related to the actual frequency of previous convictions among this group of suspects. Delinquents of fraud and breach of trust who had also committed other offenses had an above-average number of previous convictions. Those suspects within the offense groups of breach of trust, tax evasion, and bankruptcy offenses together with other offenses stood out as multiple offenders. Special attention is to be given to the difference in the number of previous convictions between offenders of plain bankruptcy and those bankruptcy offenders who simultaneously committed other crimes. In the first group are offenders who could not cope with economic risks in an appropriate way, while the second group consists more of offenders who intentionally made use of bankruptcy for their criminal ends.

Another investigatory proceeding was pending besides the investigated case for approximately 20 % of the suspects. About four-fifths of these proceedings concerned a comparable offense. Civil proceedings were conducted against one-seventh of the accused. This proceeding had a material connection to the current proceedings of the public prosecutor's office. Those persons who had been harmed by breach of trust or serious bankruptcy attempted to reclaim the damages they had suffered through the means of civil law more than did those persons who had been harmed by other offenses.

5.2 The Victims

In only about one of every eleven cases information on the victims could not be ascertained. In cases of fraud of trust, and tax evasion usually only one victim was present - in cases of tax evasion the state obviously is the only victim. On the other hand, more than one victim per case were recorded more frequently than average in connection with bankruptcy offenses and cases of non-payment of national insurance contributions.

Offense-specific differences were present for the type of collective victims. For tax evasion offenses, the state was naturally the only victim. Communities were damaged more than average by fraud, corporations under public law by bankruptcy offenses together with other offenses, as well as by withholding of social insurance premiums, and competitive corporations by illegal advertising practices - as expected.

Individual victims who themselves are not active participants in the business world, were affected by the different offenses in varying frequencies. Only in the case of fraud victimization of an individual victim is more frequent. Cases of breach of trust and illegal advertising stood out due to the high rates of victimized individuals.

The third largest group of victims consisted of harmed corporations. Individual employers were harmed more frequently than average by fraud, breach of trust, and illegal advertising. On the other hand numerous corporations were victimized more than average by bankruptcy offenses.

5.3 Offender-victim Relationship

Between suspects and victims of white-collar crimes a certain parallelism is recognizable. This concerns the characteristics of sex, age, and educational standard.

Personal contacts and relationships between the suspect and victim took different forms in the various offenses; they naturally did not include tax evasion and non-payment of national insurance premiums which only damage the state and other collective victims. Otherwise, personal contacts between the offender and victim occurred more frequently in connection with fraud and breach of trust. The manner of contact between the offender and victim was not important for the initiation and the outcome of later proceedings.

6. Initiation of Proceedings

In classical criminality, one can assume that approximately 90 % of the offenses processed are reported by the public to the criminal justice agencies. In economic crime, this is not the case, even though there are offense-specific differences.

Slightly more than half of all suspects were denounced by private persons (53 %). The remaining proceedings were activated partially by the authorities and partially by interest groups.

Most frequently bankruptcy offenses were investigated upon official initiative when bankruptcy judges, when opening bankruptcy proceedings, routinely checked to see whether there were indications for criminal acts. About 63 % of the bankruptcy cases, therefore, were opened after the judge who handlee bankruptcy cases, forwarded the information to the prosecution. The same was true for tax evasion and evaeion of cuetoms duties of which 66 % were initiated by the finance and customs authorities.Concerning withholding of premiums, the initiative for prosecution originated in the majority of cases (about 60 %) with social security representatives. The opening of proceedings of the initiative of private parties was rather high for fraud (74 %), breach of trust (73 %), and illegal advertising practices (79 %). The police and the public prosecutor's initiated only 12 % of the proceedings (police, 8 %; public prosecutor's office, 4 %). The police opened an above-average proportion of cases of breach of trust, withholding of premiums (in this case probably because of special actions aimed against dishoneet companies), and for more serious bankruptcy cases. It is significant that a substantial part of tax evaeion and evasion of customs duties cases (27.5 %) were initiated on a private baeis. The whole material contains 95 (= 13 %) (anonymous) hints to public prosecution authorities.

7. Investigative Proceedings by the Public Prosecutor's Office

Of a total of 739 suspects, charges or summary fines were filed against only 270 persons. Therefore, the rate of dismissals amounted to 63.5 %.

7.1 Indictments

The individual offenees of the study showed differences in the frequency of indictments. This depends on whether one analyzes the offense groups as a whole or rather the number of individual cases within the offense group. The highest rates of indictments are observed for the tax and custome offenses (pre-selected by finance and custome administration), followed by breach of trust and withholding of social insur-

ance premiums, fraud, bankruptcy offenses, and, finally, illegal advertising practices.

The more individual offenses a suspect had committed, the more conclusive was the evidence against him and the indictment rate was also higher. The amount of damage was similarly related to the outcome of investigative proceedings. The duration of the offense could also be seen as an indication for the evidence situation. The indictment rate for offenses which lasted only up to half a year, was only half as large as for offenses which lasted longer.

Women, who are only moderately represented in general criminality as well as that of the study, also showed the tendency to be less frequently indicted than suspected males. Foreigners or stateless persons were indicted less frequently than Germans. Here the special evidence situation played a role in the offenses of suspected foreigners.

The educational level of suspected persons had a considerable significance for the outcome of the investigative proceedings. Suspects with a discontinued education were indicted twice as often as suspects with university education. Suspects with completed occupational training or with completed secondary schooling took the middle position in regard to indictment rates. Regarding the position of the suspect in the corporation, there was a preferential treatment for both lower-level employees and self-employed suspects. The criminological experience that a previous conviction is of special significance for the outcome of the public prosecutor's investigative proceedings was confirmed. In cases of previous convictions, the indictment rate came to about 65 %; however, when a previous conviction was absent, this rate amounted to only 54 %. If the accused was involved in a further proceeding, then indictment was, as expected, higher than otherwise.

There was no definite relationship between the outcome of investigative proceedings and the number of victims. A definite relationship existed between the number of victimized corporate third parties and the outcome of investigative proceedings: the more corporations were affected, so much higher was the indictment rate.

Interesting relationships were present between the form of contact of

the suspect with the victim and the outcome of the investigative proceedings. This seemed to be connected primarily to the evidence situation of the case. Of minor evidentiary value were telephone calls (the indictment rate amounted to only about 18 % for this type of contact situation). Especially fruitful were contacts in writing which naturally by way of documentary evidence can be introduced into the process (here the indictment rate amounted to 41 %).

The value of defense counsel to the suspect in the investigative proceedings is hard to prove. Suspects who were assisted by defense counsel were more often indicted than accused persons who were without defense counsel. The reason for this is the fact that usually those accused persons who were heavily incriminated protected themselves through the support of legal counsel.Since the number of individual cases and the total amount of damage correlated positively with the indictment rate, the results were in the expected direction.

7.2 Case Dismissals

In view of the Federal Register, it has been stated correctly that the numbers given for dismissals because of insufficient evidence are not necessarily valid. The Register records both cases in which - for legal reasons - no criminal act was committed, and those cases in which the evidence on objective guilt (actus reus) or subjective guilt (mens rea) view was not sufficient for an indictment.

Because of the file analysis, it can now be stated that in dismissals occurring because of the absence of "sufficient reason to initiate an indictment" (§ 170 II StPO) the following reasons for dismissal apply: 88 suspects because of no offense (23.5 %), evidentiary difficulty regarding actus reus for 197 accused (52.7 %), and evidentiary problems regarding mens rea for 89 accused (23.8 %). At the same time the study made clear that, mainly, the difficulties regarding actus reus resulted in dismissals because of evidentiary problems. In regard to the number of individual cases - objective evidentiary problems (with 61 %) also outweighed the subjective evidentiary problems (with 39 %).

In dismissals because of insignificance (§ 153 StPO), which occured in 53 cases and amounted to a total of 81 individual offenses, it was re-

corded why the public prosecutor's offices considered the guilt as minor and stated why it negated the public interest in prosecution. The public prosecutor's office, then, suggested that the guilt was minor when the "degree of violation" was minor (50.6 % of the individual cases), or because of the behavior of the accused after the act, especially reparation of damage (18.5 %), as well as because of the way the act was committed and the effects of the act (18.5 %). In comparison the reasoning concerning lack of public interest was less differentiated - this reason was given in 77.8 % of the individual cases: the time elapsed since the commission of the act played a role in 12.3 % of the individual cases; and views of general deterrence ("defense of law and order") are mentioned in 4.9 % of individual cases. The dismissal after fulfillment of prosecutorial orders as provided by § 153a StPO was applied in the case of only one suspect.

The remaining possibilities for dismissal of the German criminal law procedure were applied regarding 64 suspects; in the foreground were dismissals according to § 154 StPO which included a partial waiver of penal prosecution when more than one offense had been committed (44 accused).

Other findings also reflect quite well the inadequate evidentiary situation when considered in regard to the already mentioned dismissal ground of § 170 Abs. 2 StPO. Dismissals according to this rule are particularly frequent when only a single offense is the subject of the proceedings, when the amount of damage is not stated, and when the duration of the offense amounts to only one month.

The dismissals because of insignificance according to § 153 StPO can also be analyzed regarding the number of individual cases and the amount of damage. Cases were dismissed because of insignificance more than average when 1 to 10 individual cases were present. Dismissals in 11 to 20 individual cases occurred far above-average; dismissals because of a minor offence did only occur when there were 20 individual cases. Above average were dismissals because of insignificance in cases with damages up to 20,000 DM. However, 7 cases with damages of from 20,000 to 100,000 DM were dismissed for this reason, and 8 times for damages of more than 100,000 DM. This signifies that the public prosecutor's office perceives high damages because of white-collar crimes as

routine and, therefore, the measure of minor guilt shifts. With the average amount of damages totaling several hundred thousand DM, this is understandable and to be expected. The prosecutor of economic crimes is dealing with quite normal dismissals except that the figures are much higher.

Dismissals because of insufficient evidence for suspected females were above-average; they occurred very rarely for foreigners. A special qualification of the suspect leads to a higher dismissal rate because of insufficient evidence. Manager and self-employed suspects received dismissals because of insufficient evidence relatively more often than suspected lower-level employees. As was to be expected, the absence of previous convictions in cases of dismissals because of insufficient evidence was especially high; in cases which were not suited for prosecution, no further necessary ascertainments of facts were attempted. In cases, however, in which criminal records were requested, previous convictions played a role at least for those cases which were dismissed because of insufficient evidence. On the other hand, previous convictions were of no significance for dismissals because of triviality.

If the accused committed further similar offenses during the proceedings, which applied to one out of 10 persons, then dismissals because of insufficient evidence were relatively rare. The same also applies to the situation in which investigations were carried out in a proceeding other than the one under study. In this respect, prevailing suspicion seemed to be somewhat strengthened on the part of the investigating prosecutors.

Taking into consideration the evidence situation on the victim, it appears that dismissals because of insufficient evidence were above average, as expected, in cases with an indeterminate number of victims or for only one victim. Dismissals because of insufficient evidence are also less frequent in cases with written contact between the suspect and the victim.

Dismissals because of insufficient evidence were remarkably high when the public prosecutor's office investigated alone. Dismissals were particularly rare when the police and the prosecutor's office conducted investigations together on an equal basis. On the other hand, dismis-

sals because of insignificance were rare if the prosecutorial offices led the investigations on their own. This is particularly true in the more serious cases in which the prosecutorial offices led the investigations alone.

7.3 Primary Investigative Authority and Outcome of Proceedings

In contrast to the legal concept presented by the code of criminal procedure, investigations are usually conducted by the police and not by the prosecutor's office - except for the more serious crimes of criminality. The more serious cases include white-collar crimes. A shift of the investigative activities from the police to the prosecutor's office are obvious; in only 28.1 % of the cases was the emphasis of the investigation clearly with the police (as far as tax offenses were concerned the emphasis lay on the finance authorities), in 47.4 % of the cases the police and public prosecutor's offices shared the work, while in 24.5 % of the cases emphasis lay within the prosecutor's office. Naturally, offense-specific differences are found here. The public prosecutor mainly investigated in cases of fraud and bankruptcy alone. The police, on the other hand, had heavier investigatorial responsibilities in cases of breach of trust and illegal advertising practices. As expected, investigative emphasis lay with the finance authorities in cases of tax evasion and evasion of customs duties (about 72 % of these cases).

Consideration of the outcome of the proceedings and the emphasis of investigations reveals some surprising facts. Cases in which investigational emphasis rested with the public prosecutor show the smallest indictment rate (25.4 % as opposed to an average of 36.5 %). Average indictment frequencies point to those cases which mainly were investigated by the police or finance authorities (35.6 % as opposed to 36.5 %).

Indictment frequency is greatest when the police and the prosecutor's office share the investigative responsibilities equally. However, two kinds of cases must be differentiated. Cases, which originated with the police and in which the public prosecutor's office later called for further investigations by the police, have an above-average indictment rate (29.3 %). On the other hand, should the investigative proceeding have begun within the public prosecutor's office and it asked the po-

lice to investigate further, then the indictment rate reached the highest value with 49.6 %. It is likely that the technical investigative capacity of the police is paired with the proper legal classification to the case in an ideal way.

When considered altogether, there exists a relationship between the total number of investigational measures and the indictment frequency. The indictment rate remained below the average for only one or two investigational measures, but rose for three or four measures to 42.1 %, and rose for five or more to 56.8 %.

8. Trials

After the opening of the main proceedings, there were trials against 222 indicted persons. There was a separation of proceedings within the trial for one indicted person; the case was dismissed for 39 indicted persons.

Decisions were made by: the single judge of the lower Court regarding 10 defendants, the court of lay assessors regarding 129 defendants, and the criminal division of the District Court regarding 69 defendants.

8.1 Convictions

Of the 222 defendants, against whom a main trial had been conducted, 152 (= 68.5 %) received a sentence. It is clear from this average that the results for the individual offense groups deviate from one another significantly, but not as much as in the prosecutorial investigative proceedings. The sanctioning rate is smallest in cases of fraud, simple bankruptcy offenses, and illegal advertising practices. It is frequently above-average in cases of breach of trust, tax evasion, and the nonpayment of national insurance contributions, as well as in bankruptcy offenses in which ohter offenses were committed simultaneously.

The extent of the cases measured by the number of single cases is related to the conviction rate which increases from 56 % for one single case to 90 % for more than 20 single cases.

The recognized connection between the amount of damage and the rate of sanctioning may be further observed in main proceedings: convictions are slightly above average when information about the amount of damage is given (missing information in regard to the damage, however, are very rare at this stage). Also the conviction rate has the tendency to increase with increasing damage.

Also confirmed were the results in regard to the offense duration and the outcome of the proceedings. Far below average were convictions in which the offense being tried had lasted only up to one month. They were above average when the offense had lasted from one month to two years; a further increase, on the other hand, cannot be seen for an offense duration of more than two years - in this case, the evidence situation may rather reverse itself.

The slight preferential treatment of women which exists already in the investigative proceeding continued in the main proceedings (sanctioning rate for men: 70.8 %, women: 51.9 %). Furthermore, the preferential treatment within the investigative proceedings of accused persons who possess a business education occurred again within the main proceedings.

If the previous convictions of the accused received a greater significance in the prosecutorial investigative proceedings, then this characteristic no longer played a role in the court proceedings. A differentiation in the situation of previous convictions showed some further connections. The conviction rate rose slightly when the number of registered previous convictions rose. The kind of previous convictions is connected with the outcome of the main proceedings: defendants who were previously sentenced to imprisonment were convicted more often than those who had only been fined. Whether the previous conviction was for a similar offense generally played no role. The number of pertinent previous convictions was once again connected to the outcome to the main proceedings.

If the characteristics of the victim proved significant for the outcome of prosecutorial investigative proceedings, then such characteristics received no further significance in the main proceedings. Only the number of individual victims not engaged in economic enterprises proved to

be significant under the studied relationships.

Some connections between the type of primary investigative authority and the outcome of the main proceedings were revealed. Cases which were investigated primarily by the public prosecutor's office as well as those which were legally the most difficult, showed the lowest sanctioning rate of 54 %. The cases which were primarily investigated by the police or by tax and custom authorities showed a very high sanction rate of 78 % in the main proceedings. However, one has to consider that of these cases about one third fall within the tax and custom offenses which had been pre-selected twice by the tax and customs authorities and the public prosecutor's office. When this outcome situation is considered, the sanctioning rate of 70 % for situations which were investigated equally by the public prosecutor and police in the investigative proceedings indicates how successful a balanced cooperation between the police and public prosecutor's office was during the investigative proceedings.

Otherwise, there existed a connection between the outcome of the main proceedings and the investigative activity which had been previously developed by the prosecutor's office. With the exception of prosecutorial applications for submission of files by courts, the sanctioning rate grew sharply due to the judicial measures applied for through the public prosecutor's office. Possibly the strictness of this measure correlates with the evidence secured by it. This proved to be correct by the court sanctioning rates which show the following order: examination of witnesses by the judge (53 %), interrogation of suspects by the judge (61 %), search (70 %), confiscation (71 %), and warrant of arrest (94 %). With the warrant of arrest, however, one must not exclude the possibility that the high sanctioning rate is not only based on the possible attainment of evidence but also on the fact that warrants of arrest are only applied for in cases which appear to be especially promising.

Some interesting facts turned up in regard to the relationship between the outcome of the main proceedings and the number of witnesses examined during the main trial. The sanctioning rate amounted to 67 % for one examined witness, it decreased for 2 to 3 witnesses to 49 %, and rose for 4 to 10 witnesses to 76 %; it reaches its peak for more than

10 witnesses at 95 %. However, this result may overlap with the general extent of the case due to the fact that when the latter increases, the sanctioning rate also rises.

A very significant means of evidence was the confession of the accused. When the accused did not confess, then a conviction resulted in only 58 % of the cases; the conviction rate rose to 84 % when accompanied by a partial confession and even to 93 % by a full confession.

8.2 Motions by the Public Prosecutor's Office and the Defense and the Sentence

There exists a great deal of accordance between the motions of the public prosecutor and the decision of the court. The court followed the petitions of the public prosecutor in the case of 178 of the 222 accused persons (= 80 %). Only 3 accused persons (= 1.4 %) received a more unfavorable decision than had been applied for by the public prosecutor's office.

In the 152 cases in which the public prosecutor's office had moved for conviction and in which a conviction resulted, a high degree of accordance between the motions of the public prosecution office and the sentence of the first instance (N = 101 = 66.4 %) was revealed. Differences between the motion of the prosecution and the sentence usually are in favour of the accused (41 cases = 27.0 %; greater severity, on the other hand, only in 10 cases = 6.6 %).

Especially high is the accordance in the area of fines. Here the courts in 52 of 53 cases (= 98 %) followed the motions of the public prosecutor's office. Concerning prison terms with probation, a high degree of accordance could be ascertained (17 of 19 cases = 89 %).

As could be expected, the accordance between the motions of the accused, in other words, his defense counsel, and the sentence was less. The degree of accordance is sometimes difficult to ascertain because often no motion or no definite motion is moved for on the side of the accused (this was the case for 60 defendants). The decision whether the accused was to be sentenced revealed an exceptionally high accordance when the absence of motions was not regarded (80 out of 154 cases =

52.0 %). In regard to the sentence, the degree of accordance was more limited.

8.3 The Award of Punishment in White-collar Crime Proceedings

The framework of the award of punishment is defined by the individual constituent facts of the penal code and other penal laws. In several sections of the criminal code the court has no choice between a fine and imprisonment. When the possibility to chose does exist - as is the rule - the extent of proceedings is decisive for the choice of sanctioning style. Convicted persons who were sanctioned with imprisonment are responsible on the average for 10.4 individual cases while those persons who were sanctioned with fines had committed only 1.6 individual cases. Under legal aspects as well, the cases of those who were sanctioned with imprisonment are more complex than the cases of those who were sanctioned with fines. For imprisonment cases, there are, on the average, 2.18 different sections of the criminal code cited in the sentence; however, for cases of fines, there are only 1.60 different sections.

In addition to the legislators' evaluation of seriousness, which finds its expression in the lower and upper limits of the sentence, and the seriousness of the case as measured by the number of individual cases as well as the legal complexity, damage amounts also play a role for the choice of sanction. The form of sanction tends to increase with rising damage.

Considering the extent to which the judges approach the lower (0 %) or upper (100 %) limits of the legally prescribed sentence, it can be noticed that the courts, in accordance with previous criminological findings, prefer to stay at the lower limit. When the court had a choice between a fine or imprisonment, the court imposed fines in the order of 13 % of the legally prescribed sentence. In the case of imprisonment, the average sentence amounted to 28.5 % of the legally prescribed sentence. On the other hand, when the court was legally bound to impose imprisonment, it stayed even closer to the lower limit possible (9.3 %).

In the case of prison terms the extent to which the sentence exhausts

its legal limits neither with the number of individual cases nor with the number of case facts which were the basis for conviction. The same applies to fines for the number of case facts, but not for the number of individual cases where with an increasing number of cases, the average exhaustion of the legal limits rose.

Regarding characteristics of convicted persons, it appears that when the sanction is chosen, the more highly educated convicted persons were favoured by being given shorter prison terms.

There exists no relationship between a previous conviction and the conviction itself, but a previous conviction was of some significance regarding the penal measure. While 45 % of those persons who had not been previously convicted received fines, the same was true for only 16 % of those who had been previously convicted (of the 15 accused persons in whose cases an ascertainment of previous convictions was dispensed with, 80 % received fines). If previous convictions are pertinent, then the rate of imprisonment is higher than in the opposite case. Fines are still imposed for one and two pertinent previous convictions while only imprisonment is imposed in cases with three and more relevant previous convictions. In regard to the frequency of previous convictions, a decrease in the rate of fines can be established with increasing frequency of previous convictions. In the case of more than 6 previous convictions, no fines at all were imposed. The highest penalty of previous conviction was connected to the penalty in the present proceeding. Those accused persons who were fined before, received a fine again in 36 % of the cases, while persons who were sentenced to imprisonment with probation received fines in only 17 % of the cases. Accused persons who were previously sentenced to imprisonment without probation never again received the lesser penalty, namely, a fine.

8.4 Probation

For the granting of probation, the scope of the case seems to be important. Probation is less frequently granted as the number of individual offenses increased per convict. In regard to the amount of damage, similar observations may be made. For damages of up to 250,000 DM, the rate of probations amounted to 70 %, while for damages above 250,000 DM it dropped about to 39 %.

The number of previous convictions proved to be important. If the convicted was previously convicted, the probation rate came to only 46 %, while when previous convictions were absent, it rose to 69 %. Convicted persons whose previous convictions were based on white-collar crimes received probation more frequently than accused persons whose so-called classical criminality was the subject of the previous conviction. These findings could strengthen the hypothesis which states that white-collar crime is looked upon as a "gentlemen's crime" more often than those offenses which cannot be classified as white-collar crime.

A certain criminal abstinence, which is revealed by the time between the last conviction and the present court proceedings, is also significant for granting of probation. If the year of the last convictions were between 1972 and 1974, then only 25 % of those who had been given sentences of imprisonment were placed on probation; when the last convictions were between 1969 and 1971, the rate rose to 33 %; when all of the previous convictions were before 1969, all persons were put on probation.

The highest penalty in a previous conviction is also related to the imposition of probation also: previously convicted persons with fines obtained probation in three-quarters of the cases, but only 30 % of defendents who were previously sentenced to imprisonment with probation, and those previously sentenced to imprisonment without probation in only 20 % of the cases.

9. Appeal Procedures

The results of the file analysis in regard to appeal procedures are only a kind of secondary result which cannot claim to be representative since, a somewhat significant number of files were not included in the study due to the fact that the cases were not yet closed.

A total of 86 cases of appeal could be aecertained. Of these 55 were closed. This was more than average in cases where the sentence of the first inetance was a fine, and the subject matter of the case was neither especially eerious nor extensive. Sixty appeals (= 69.8 %) were applied for by convicted persons; in 8 cases (= 9,3 %) the public prosecutor's office applied for an appeal simultaneously, whereas the pub-

lic prosecutor's office applied for an appeal alone in the rest of the 18 cases (20.9 %). Appeals applied for by the prosecutor's office were frequent when the accused was acquitted. To the contrary, an appeal by the accused was frequent if he was sentenced to imprisonment.

Forty-nine percent of the appeals were petitions, 43 % revisions, and only 7 (8 %) of the appeals were not classified.

Appeals were filed more than average against acquittals and fines. Revisions, on the other hand, were applied for in cases of sentence of imprisonment.

Because of the low number of cases, the "success" of the appeals can only be ascertained in tendency. The public prosecutor's office as the initiator of the appeal "improved" its position in 3 out of 11 cases. The accused "improved" his position in 18 out of 36 cases and did not diminish it in the remaining 18 cases. In connection to the filing for an appeal by the public prosecutor's office as well as by the convicted persons, the accused was never worse off, better off in one case, and in 6 cases his position was unchanged.

10. Summary of the Results

The study of the files illustrates - while simultaneously taking into consideration the findings of the studies of the organization of the public prosecutor's office - the extent and reasons for the selection procedures within white-collar crime legal proceedings.

Only a quarter of all accused persons are punished - even though to different extents. On an individual level, there are offense-specific as well as offender-specific differences; rules of penal law themselves also have an effect on the organization of penal prosecution. Various types of control in connection with the initiating and processing of cases are already responsible for their results. The assumption of a social class-specific criminalization cannot be verified in proceedings against white-collar criminals, even though because of the wide range of offenses, members of all social classes are distributed quite evenly among the suspects. The popular thesis according to which economic crimes are committed primarily by the upper social classes, cannot be

verified for the practice of German criminal justice. If one would - contrary to practice - restrict the concept of white-collar criminality and limit it to especially socially dangerous behavior, a clear tendency towards higher social classes would result. In consequence, the sanctioning rate would increase. The sanctioning program of the police, the public prosecutor's office, and the court usually proceeds according to factually substantiated criteria, as on the one side given by the legislator and whose realization is allowed by formal procedure. Indictment and conviction rates mainly reflect the evidence situation which results from the actual form of the case: the number of individual offenses, the amount of damage, the number of victims (and therefore possible witnesses), the kind of contact between the suspect and victim, the duration of the criminal act - all of which are significant for sanctioning. Offender-specific characteristics must be differentiated. Characteristics such as the educational level of the suspects have an effect on the prosecution: furthermore, the "discrimination" against less educated persons or against manual workers can be factually explained. The commission of the act is often so simple that indictment seems more likely than dismissal. What appears to be more problematic, on the other hand, is the offender-specific characteristic of the ascertainment of possible previous convictions. Previously convicted persons in all stages of the proceedings are worse off than persons not previously convicted.The prosecutor also considers that a previous conviction is an indicator for the evidence situation - such as when the accused commits further offenses during investigative proceedings or further investigations are made against him in a different context - facts which appear to be unproblematic.

Sentencing is legally pre-programmed by the prescribed sanctions but the court has, first, the choice between alternative penalties (fine/ imprisonment), and secondly, a wide latitude to decide on the severity of the punishment. In choosing the kind of sanction, act-specific factors (damage etc.) carry a larger weight than factors relating to the accused. In determining the severity of the penalty, however, the courts are more likely to focus on offender-specific facts. As a rule, they stay within the lower quarter of the legally prescribed sentence.

The often supposed preferential treatment of white-collar criminals, as

opposed to offenders of traditional criminality, does not exist so much under quantitative points of view. In both situations, the public prosecutor dismisses most cases anyway. In both cases, the proportion of executed prison terms is very minor. The point of contention lies much more in the case of offense-specific settlement practices; for example, in the difference between a sentence for shoplifting of a given damage and the case with the same damage being dismissed because of insignificance for commercial fraud. This has to do with the frequently presented although not examined social-psychological evaluation of white-collar criminality and with the well-meant specialization of the prosecutorial organizations. The everyday occupation with criminal acts whose average amount of damages lies between a half to a full million DM inevitably displaces the measures for insignificance and therefore for punishability. The concentration of white-collar criminality on specialized prosecutorial authorities also has a consequence. Behind the legal reasons for dismissals, the real reason for dismissal often hides the deficient prosecutorial capacity. Although they cannot be proved, similar assumptions can be supposed for the overburdened economic crime divisions. If these courts had a greater capacity, or if there were more of them, then the court of assizes with its more limited jurisdiction would not be left with the responsibility for sanctioning the largest part of serious white-collar criminality.

THE FINE IN THE GERMAN PENAL SANCTIONING SYSTEM*

Processes of penalty assessment and fine collection as well as the subsequent legal behavior of both offenders sentenced to imprisonment and those sentenced to paying fines

Hans-Jörg Albrecht

1. Introduction

The purpose of this investigation of the fine as a penalty in the West German penal sanctioning system is to define and explain the processes that make up penalty assessment and fine collection. Furthermore, this analysis compares the subsequent legal behavior of both offenders sentenced to imprisonment and those sentenced to paying fines.

When seen quantitatively, the West German penal system today principally employs fines. Prison sentences, therefore, have been reduced to a position at the bottom of the scale of penal measures. In 1978, the fine was inflicted in more than 82 % of all offences processed, whereas prison sanctions were imposed in only 17 %. This high ratio of fines imposed is a result of the First Penal Law Reform of 1969, which gave fines priority over prison sanctions for less severe and intermediate criminal offences. This reform reduced discretionary power of the judiciary in the sentencing process. Finally, in 1975, the total reform of the fine sanction was expanded upon and completed through the introduction of the day rate fine system.

In the Federal Republic, extensive empirical investigations into the assessment and enforcement of fines have not as yet been conducted. An analysis of the efficiency of fines compared to prison sanctions with respect to the goal of general and specific prevention also does not

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exist. Therefore, an examination of these problems is justified not only by the academic, but also practical policy relevance of the existing unanswered questions and lack of knowledge in this field.

On the one hand, one must consider the various aspects of the concept of "social control", for which not only actions taken by the complainant, police and public prosecutor are of importance, but also in which judicial decision-making, as the final phase of the control process, plays an essential role. Although the fine is of great quantitative importance, hereto no studies have ever been conducted on the criteria for its application and assessment.

On the other hand, one must analyse the functional and practical relevance of penalty assessment as well as the reform of the system of fines and its influence on these two factors. This investigation is of importance to criminal policy since it could expose the basis for a further development of the system of criminal sanctions.

2. Random samples and collection of data

Our investigation was conducted on the basis of two random samples: the criminal records of persons on whom sentence was passed in Baden-Württemberg in 1972 and 1975. The first sample comprised 1823 cases (1972) and the second 451 cases (1975). These individuals were sentenced with a fine or to imprisonment for traffic offences, property offences, offences causing financial damage or bodily harm, and offences falling under subsidiary penal law.

In addition, data regarding problems concerning the assessment and enforcement and the introduction of the day-rate system was collected through semi-standardized personal interviews of three random sample groups: judges, prosecutors and general administrators of justice in Baden-Württemberg.

The last step of our investigation was the collection of data regarding the subsequent legal behavior of those subjects convicted in 1972. Reconvictions were examined, which occurred during a period of five years after the actual fine or prison sentence was inflicted.

3. Judicial penalty assessment before and after the introduction of the day-fine system

The cases dealt with in our investigation were basically those for which either a fine or imprisonment could have been imposed. The offences treated, therefore, were frequently registered and could be classified as "mass-criminality". For the most part, they were dealt with through so-called written proceedings, i.e., by means of summary sentences. In general, this category is composed of traffic offences, property offences and offences causing financial damage.

An analysis was made, therefore, of the structure and density of information shown in the criminal records. It was recognized in this investigation that investigative authorities collected (and consequently documented) the information containing not only the factors that were necessary for the process of subsumption, i.e., factors of which the punishable act is constituted, but also the factors that play a major role in the selection of the type and gravity of the sentence.

The findings were as follows:

(1) in general, the security or criminal police, in their capacity as "assistants to the public prosecution", alone furnished the factual information that was relevant to both the process of subsumption and the process of sentence, selection, and

(2) the investigations were limited to information that could be drawn from the routine questioning of suspect, witnesses or victims with police questionnaires and from routine reviews of the suspect's record of previous convictions.

Consequently, complete information exists as the basis for judicial decision-making with respect to:

(1) the elements of the definition of the crime,
(2) the suspect's identification (name, place and date of birth),
(3) the suspect's biographic data registered by the authorities (previous convictions, disciplinary punishments),
(4) the material consequences of the criminal act (financial and material damage caused).

Contrarily, considerable information deficiencies exist with respect to:

(1) the accused's personal and economic situation,
(2) possible motives for the act,
(3) effects and consequences of the act, i.e., the accused's/defendant's behavior after committing the act.

These findings also were supported by the fact that approximately 70 % of all judges questioned stated that sufficient information as to the financial situation of the offender, which is of significant relevance to determining the amount of the fine, was either never or rarely ever available to them in summary proceedings.

The normative complexity of punishment assessment, as required by law, therefore, is limited to the findings of a functional investigative procedure with the result that only very selective information on the offender and the offence committed is incorporated in the decision-making process.

The function and application of § 47 German Penal Code - StGB - become particularly evident when considering the information documented here. Previous convictions, i.e., previous convictions for the same type of offence, differentiated most distinctly the decisions as to the type of penalty imposed. Persons convicted previously for the same type of offence are more often sentenced to imprisonment than to fine. This finding is true for all types of offences dealt with in our study. In the cases of property offences and offences causing financial damage, however, two other factors played an equally important role in judicial decision making. These factors were the "amount of damage caused" and the judicial definition or qualification of the act as a "planned action". Furthermore, the findings showed that unmarried and unemployed persons under the age of 30 were over-represented among those persons sentenced to imprisonment. In connection with the results of previous research, this combination of characteristics has been interpreted as a concept for social differentiation of the "world" in which "criminals" live and, at the same time, as a concept for the differentiation of both types of sanctions, imprisonment and fine.

A stereotype could be reconstructed from the information collected through interviews of judges and prosecutors. When asked to name the typical characteristics of persons convicted to a short term of imprisonment they responded, in addition to: "frequent previous convictions", with: "persons belonging to marginal groups of our society", "persons without social ties" and "young persons without an educational background and/or vocational training". However, an analysis of the written grounds for sentencing showed that judicial decisions were almost exclusively based on the element of "previous convictions". The imposing of a prison sentence, therefore, appears to be based on a pragmatic criterion, in that the information on the offender's previous convictions is easily available, utilizable, and a legitimate and convincing ground for sentencing.

The decision as to the amount of fine, on the other hand, is not differentiated by the charge of previous convictions. No criterion similar to "previous convictions" in the decisiveness of its role on the type of penalty imposed could be found concerning the amount fined. The following relevant elements or combinations of elements all proved to be differentiating factors for this decision:

(1) The assessment of fine was influenced by the degree of alcohol concentration in the blood of that group of offenders sentenced in accordance with §§ 315c, 230 German Penal Code - StGB - (drunken driving).

If, however, the motive of going out to get drunk was present in cases of drunken driving in which no damage was caused (§ 316 German Penal Code - StGB -), the fines were generally higher.

The amount fined, in cases of leaving the scene of an accident (§ 142 German Penal Code - StGB -), depended upon the damage caused. If, however, the offence comprised not only leaving the scene but also drunkenness, higher fines were imposed.

The amount fined in cases of automobile accidents resulting in bodily injury depended to a large degree on the seriousness of the personal injury.

(2) An interdependance between damage caused and amount fined in cases of "classical criminality" for property offences and offences causing financial damage. Although other elements were reviewed, significant correlations were not observed.

(3) Characteristics such as the personality and social background of the offender, family status, age, and professional position, were of no relevance to the determination of the amount fined.

A correlation between the level of the convicted individuals income and the amount of fine, indeed, did appear to exist when the entire random test was analysed. This correlation, however, disappeared when the offences were treated individually. The observed correlation, therefore, was to a great degree accidental. Only in cases of drunken driving did a relatively high interdependence between fine and income exist.

A multivariate analysis of the differences in the amount fined for individual offences, under consideration of a number of variables, showed different rates of explained variances, none of which proved to be satisfactory. Differences existing, therefore, generally remain unexplained. Consequently, the assessment of fines appears to be dependent on factors other than those relating to the offender or the offence committed. In this respect, regional differences in the determination of fines, especially the observed North-South-variation, seem to be important for both the theory and the dogmatic of penalty assessment.

The above findings indicate that a theory of penalty assessment should begin with recognition of a pattern of equivalences. One could reasonably assume that training for this purpose should take place in the initial stages of their legal activity. The interviews reveal that principally two basic processes of learning exist. The first process, which can be considered active learning, involves collecting information by discussing pending actions with colleagues (judges, and prosecutors). The second and more passive process, concerns the judge's orientation toward the proposal of punishment made during trial.

The above findings reveal the necessity of tackling precisely this prob-

lem of learning when developing the dogmatic of penalty assessment.Here, we are not concerned with the legitimate use of justification for imposing certain penalties, but rather with the determination of concrete penalties (amount of fine or duration of imprisonment) according to existing criteria or combinations of criteria.

Furthermore, when seen as a whole, the findings of the present investigation of the decision-making process in criminal procedures show that a "black-box"-model for the determination of punishment for less severe and intermediate offences is not necessarily without meaning to the existing variance in decisions as has been maintained in other investigations. It goes without saying that the existing limits of this concept cannot be ignored. Nevertheless, the fact remains that the distribution of penalties is oriented to a large extent to criteria which consistently ascertained during the course of the proceedings, e.g., previous convictions, extent of damage caused. Contrarily other criteria, e.g., social class of the accused, appear to correlate with the imposed penalty only because they are highly dependant on the above mentioned factors. This correlation is dependant even though other empirical analyses have shown that these criteria, although in their normative evaluation inadmissable at trial, are in fact considered by the authorities of criminal social control. The problem of including such criteria, of course, may have been shifted to other phases of the control process. If, however, previous convictions and professional position are found to be correlated then this connection must have been justified at some time.

In the phase of decision as to sanction, the group of accused persons is already so structured that only a few criteria, legitimated by the normative system, are sufficient for allocating the sanction without violation of the formal principle of equality. The variance of factors such as "social class" and "professional or social position" in the fictive cases did not influence the distribution of type or amount of punishment.

4. Sentencing after the introduction of the day-rate system

The aim of the evaluation of the criminal records of 1975, as well as the random interviews of judges and prosecutors, was to investigate the

day-fine system assessment model in regard to its practical application and effects on decision-making.

In this respect, the most essential finding was that the introduction of the day-rate system led to an increase in the imposition of high fines. A comparison between the amounts fined in 1972 and in 1975 showed that there were considerable differences in regard to the frequency of high fines, i.e., amounts of 1,500 DM or more. The data show that a remarkable shift toward the imposition of high fines has taken place: in 1975 twice as many fines of 1,500 DM or more were imposed as in 1972 (1972: 8 %; 1975: 16 %). A plausible interpretation for this shift could be that since the introduction of the day-rate system, those offenders who dispose of larger incomes are treated more fairly than they were under the total amount system. The assessment of a day rate that more closely corresponds to the level of the sentenced person's income, would result in higher total fines for individuals with larger incomes and thus in an increase in the amounts fined in general. This interpretation also is supported by the findings of a comparison made between the number of days of imprisonment inflicted as an alternative to the fines imposed in 1972 and the number of day rates sentenced for the same offence in 1975. In fact the judicial evaluation of the offence itself remained unchanged in terms of day rates of fine and of alternative periods of imprisonment.

As of 1975 data was available on the structure of imposed sanctions which permitted a direct comparison between imposition of fines and prison sentences. The findings showed that fines, measured according to the daily rates imposed, were employed in nearly 90 % of all cases of less severe criminality i.e., crimes for which a maximum of 6 months imprisonment is prescribed. The prison sentence on conditional release was imposed in 60.8 % of all crimes for which between six and twelve months imprisonment is provided. The prison sentence without conditional release was used only for crimes for which at least one year's imprisonment is required (in 88.5 % of all such cases). These empirical findings correspond to the normative stipulations in §§ 47, 56 German Penal Code - StGB - in which these levels of punishment are legislatively provided.

For the majority of the cases no information was available in the crimi-

nal records as to the economic situation of the accused/defendant. This information, therefore, cannot be included in a "transparent" decision. However, when the public prosecutor and the court are informed as to the defendant's monthly income, this information is used as a basis for determining the amount of the day-rate fine imposed. If monthly income is unknown to the authorities, the day rate fine is set according to professional status. This method of fine setting was substantiated through a comparison made between cases in which the defendant's income was and was not known according to professional group.

Other personal and social characteristics of the accused did not influence the assessment of the daily-fine rate. The criteria decisive for penalty assessment in the strict sense, i.e., the assessment of the number of days the fine rate must be paid, were identical to those criteria employed under the total amount system.

The results obtained from interviews held with judges and prosecutors showed that the day-rate fine system and the relevant normative regulations as to the range of its application were accepted. Approximately the inverviewees stated that they proceeded according to the law reform in decisions in which fines were imposed, and four-fifths of them assumed that this practice was followed in general. Of particular interest, in light of the investigated criminal records, therefore, was the problem of estimating the defendant's personal income. We found that about one-third of the respondents considered the profession of the accused person to be the most essential factor for determining level of income. However, when concrete rates were assigned to particular professions, the estimation of corresponding day-rate fines turned out to be problematical.

The interviewees had both exact and identical conceptions concerning the incomes of unskilled workers, day labourers, skilled workers and employed individuals, which led to assurance in decision-making and to only few variances in the assessment of daily-fine rates. On the contrary, they were fully uncertain as to the incomes of individuals in higher professional classes. This lack of adequate information resulted in a high factor of uncertainty in decision-making and, consequently, in considerable variances in the assessment of daily fine rates and,

thereby, in the total amount of fine imposed. Certainty and uncertainty in the decision-making process also can be traced back to the judge's and prosecutor's opinion as to whether the accused was honest or dishonest. They differentiated between "poor, but honest and respectable people" and people who "tried to hide something and wanted to veil their income-situation". In addition, the accused's indication of income could be evaluated as trustworthy or not trustworthy from certain social characteristics such as, occupation, residence, and presumed standard of living (seize of apartment, type of motor-vehicle).

Fourty percent of the judges and prosecutors,however,felt that the day-rate fine system, when seen in its entirety, led to more equity in the assessment of fines.

5. Collection and enforcement of fines

A survey of fine collection, covering the period from final conviction to completed penalty execution showed that about half of all fines imposed were paid immediately. In these cases collection even in their mildest form, i.e., reminder of overdue payment, were not necessary. In the remaining group, 63 % were allowed to pay their fines by installment or were granted a delay of payment. 70 % of these individuals then either paid punctually, or paid after receiving one payment reminder. 50 % of those fined, who neither paid immediately nor were permitted to pay by installment nor granted a delay of payment, paid their fines after one reminder of overdue payment. In 10.6 % of all cases, in which a fine had been imposed enforcement or seizure proceedings were initiated and executed. The fines could be collected in approximately one-fifth of these cases. In 15.3 % of these cases, an alternative prison penalty was ordered, but in only one fourth of the cases ordered was the prison sentence actually served. In particular, we found that married debtors over 30 years of age had to be dunned less frequently than those younger, unmarried or divorced debtors. Of those individuals receiving a reminder of overdue payment, the married and not previously convicted persons with higher professional positions paid sooner than those previously convicted, unmarried/divorced debtors with lower professional positions. These characteristics have been interpreted as indicators of social and economic stability. They, therefore, are also indicators of

the type of individuals from whom fines can be collected easily.

A differentiation of those cases in which an alternative prison penalty was ordered, revealed that fraud and offences falling under subsidiary criminal law were over-represented in the group of cases in which the alternative period of imprisonment was not served. Theft and offences involving bodily harm, on the other hand, were over-represented in the group of cases in which the alternative prison penalty was served. Although groups of individuals having below average economic means, such as students, apprentices, and pensioners, are not overly represented among the group of individuals who served an alternative prison term, this fact does not hold true of individuals who are unemployed. According to the criminal records, less than 2 % of all persons fined were unemployed but they represent 16 %, i.e., eightfold, of those having served alternative terms of prison. Furthermore, those individuals who had had more contact with criminal justice coercive measures, in terms of a previous record of prison sentences received and served, either with or without conditional release, and sentenced fines, more often than other individuals, served prison sentences as an alternative to fines imposed. A correlation also existed between serving an alternative prison penalty and having a lower professional status (especially with respect to unskilled workers and day laborers).

We made a profile-analysis comparing individuals sentenced with fines who served an alternative penalty of imprisonment with those individuals sentenced to imprisonment with or without probation, and individuals sentenced with a fine which they paid. This analysis revealed that the first three groups mentioned were similar in regard to several important social and personality variables (e.g., marital status, criminal record, and professional position in particular), whereas the group of individuals who paid their fines were essentially different in these respects.

The investigation of payment by installments showed different frequency of application depending upon type of proceeding. In cases decided through summary sentence, the quota of payment by installments was 24 %. This quota was more than 50 % in cases decided through a full trail proceeding. The quota of payment by installments increased as the amount of fine increased, regardless of whether the conviction resulted from

a summary proceeding or a trial. In general, the request to pay a fine by installments was readily granted. Only 5 % of the petitions for payment by installments were rejected which meant that one-third of all fines were paid in this manner. Seen as a whole, the authorities responsible for collecting fines showed a rather reactive pattern of behavior, i.e., the authorization of intallments depended greatly upon the initiative of the debtor (in cases in which no trial took place). These findings, which were obtained by analyzing the relevant documents, also were confirmed by interviewing law practioners concerning their practical experience with the collection of fines. More than two-thirds of the interviewees stated that they informed debtors about the possibility of installment payments only when they were asked. They based the passivity of their behavior on their opinion that "making an application for payment by installments was the exclusive concern of the convicted person".

The average collection for fines imposed was slightly more than six months. Differences herein depended upon the type of offence committed. The average collection period was almost five months in cases of subsidiary criminal law violations and nearly one year in cases of fraud. In those cases in which alternative imprisonment was served, the average period required for complete enforcement was about 14 months. If, however, we exclude "cases difficult to execute", i.e., cases in which an order to execute alternative imprisonment was given, the average payment period is reduced to only four months. Payment by installments, as expected, delayed procedure. This delay did not depend on the amount of fine but rather on the number of approved or actually paid installments.

Investigations conducted concerning fine collection in both the total amount system and the day-rate system showed no significant differences within the first year after the fine system reform took place. Since no new difficulties in punishment execution arose, the day-rate system can be seen positively. In particular, the quota of imposed and served alternative penalties of imprisonment appeared to be the same. Difficulties presented in fine collection, such as the issuance of payment reminders and execution orders, neither increased nor decreased.

Penalty execution, which is subsequent to the judgement of punishment,

represents the conclusion of criminal proceedings. This investigation, and the analysis thereof, focussed on the collection of fines. One significant discovery was that the group of individuals who served an alternative term of imprisonment showed almost identical characteristics to that group of individuals who were convicted to imprisonment. This similarity could indicate a quasi-correction of the determined penalty in the fine collection phase. Some individuals who, according to the normative patterns of decision, were not candidates for a prison sentence, were filtered out of the group of fined persons in that they served an alternative prison term.

Consequently, this so-called correction is directed by criteria which are very similar to those relevant in the penalty assessment phase of the criminal proceedings, viz., previous criminal record (and, thereby, "professional status" and "age"), unemployment, and type of offence (mainly theft). Here, the use of the word "directed" is not intended to imply any directed effort by the authorities responsible for executing penal sentences, but rather a coincidence of certain social characteristics with characteristics relevant to the system of criminal social control. This coincidence entails certain effects, such as the serving of an alternative prison term, independent from any manipulation that could be undertaken by the authorities.

If "unequal treatment" is practised here, it is structurally established in criminal procedure, substantive criminal law, and in the continuity of existence of the above-mentioned constellation of characteristics.

The results of the analysis of the sanctioning process confirmed the results obtained in the empirical investigation of the activities and functions of police and public prosecutor, viz., that any unequal distribution, regarding social class characteristics and their influence on actions taken by the authorities during crime investigation, is intensified by the public prosecutor and the court only to a negligible degree. The determination of the seriousness of a sanction is oriented toward factors, which, when considered statically, (as they are considered in the individual case) do not indicate the existence of unequal treatment in the respective decisions.

6. Comparison of the subsequent legal behavior of individuals convicted to paying fines and those convicted to imprisonment

The present investigation was made through an ex-post-facto analysis of reconvictions of individuals sentenced in 1972 to paying fines, serving terms of imprisonment on conditional release and serving prison terms. This type of analysis is faced with certain limitations that affect the possibilities of interpretation. These limitations result from:

- the choice of the criterion of efficiency (which excludes the so-called socially reconditioned)
- the methodology and single testing, which lead to disregarding certain variables that, when considered with the variables obtained through the documentary analysis, could explain differences in subsequent legal behavior.

If, however, all possible variables of disturbance were to be excluded from this analysis of the legislator's experiment of 1969, i.e., the First Penal Law Reform, so that the effects of the sanctions on the subsequent behavior of convicted persons could be isolated, it would require testing (in the form of randomized allocation according to different sanctioning means), on which for normative, ethical and financial reasons could not be conducted here. Therefore, we have investigated only the effect resulting from sentencing the person convicted to a particular type of sanction.

Analysis of the five year period following showed, as expected, great differences in the rates of recidivism for the different groups of convicted persons. Here each new conviction was defined as a case of recidivism. 25 % of those who had been fined were reconvicted at least once after five years, whereas 55,3 % of those who had been conditionally released and 75,4 % of those who had served a prison term were reconvicted.

Since judicial decision-making, and therewith the assignment to a particular type of sanction, was so consistent, it was impossible to establish parallels using the variables that were likely to influence the fixing of punishment. Therefore, it was necessary to continue our in-

vestigation with an analysis of covariance, which in the form of a statistical experiment, permitted the exclusion of certain variables that differentiated the groups of sanctions.

Consistent with our above-stated findings, it appeared in the case of traffic offences, that the judicial decision between a fine and a prison term depended on the variables of the defendant's "previous convictions" and "degree of intoxication". Moreover, distribution tests showed that age and professional status were characteristics important to differentiating the group of individuals sentenced with a fine from the group sentenced with a prison term. The group of offenders sentenced to imprisonment tended to be younger and of lower professional status. In cases of theft and fraud, the decision as to sanction was based on the variables "previous convictions" and "amount of damage". The variables "professional status" and "age" were distributed as in the traffic violation cases. Based on these findings, we are assuming that the sentencing of a fine, imprisonment on conditional release, or imprisonment, depends on the above variables and, furthermore, that the three types of sanctions can be distinguished by the frequency of exactly these variables. In addition, we are assuming that these variables influence the offender's subsequent legal behavior. Consequently, a comparison of subsequent legal behavior must consider these differences, i.e., eliminate their influence on reconvictions.

The mean number of reconvictions in the group fined, was .5, in the group released on probation 1.1 and in the group imprisoned 2.0. These figures show a difference of .6 (fine - probation) and 1.5 (fine - imprisonment). These differences were reduced to .3 and .86 respectively when the variables "previous convictions", "age" and "marital status" were held constant. In the case of traffic offenders, when these variables were held constant the actual differences in mean reconvictions were reduced from .27 to zero (fine - probation) and from .86 to .18 (fine - imprisonment).

In general, we may conclude from the results attained that the probability of reconviction is the highest for individuals with a previous criminal record. These findings indicate the existence of a "vicious circle" in that the seriousness of previous convictions influence the ser-

iousness of new sentences and the seriousnese of the sentence, in return, influencee both the probability and the seriousness of a subsequent reconviction. This point is also supported by another result found within the scope of our investigation. Persons convicted with severe sentencee in the past, regardless of the type of offence committed, who were recenvicted of an insignificant offence to a fine, showed the same rate of recidivism as those offenders who, although eimilar to these persons in certain important characteristics, were reconvicted and sentenced to another prison sentence for the commission of a more serious crime. However, these findings also demonstrate that the principle of proportionate means which never should be neglected in sanctioning, is strictly adhered to in judicial decisions. On the basis of the results attained above, we can conclude with certainty that the fine as a penalty, when considered on the basis of five years of subsequent legal behavior, is neither less nor more effective as a specific crime prevention measure than prison terms with or without conditional release.

7. Criminal policy conclusions and alternatives to fines

7.1 Extension of the application of the fine as a penalty?

Within the scope of the discussion relating to the reform of the fine system, extending application of the fine as an alternative to sentence of imprisonment between one and two years has been proposed.

What opinion can be formed concerning this proposal in light of the empirical findings attained in our study?

Two aspecte must be considered in evaluating this problem:

- practical application (through judicial decision-making) and
- potential problems in fine collection.

The realization of criminal policy reforms depends to a great extent on the cooperation of the public prosecutor and judiciary who are responsible for the application of existing normative regulations. The results of our investigations of the application of the fine as a penalty, in particular according to the day-rate system, revealed that the fine is

employed as an alternative to prison terms of up to three months. Thus, the normative model contained in § 47 German Penal Code - StGB - appears to be applied in practice. The fine has replaced short term prison sentences (up to 6 months) and thereby the imposition of short prison terms has become rare. § 47 German Penal Code - StGB - unlike other normative sentencing regulations, however, is characterized by its limitation on judicial discretion to two criteria.

Fines exceeding 180 day-rates are practically non-existent and are applied only in exceptional cases. This phenomenon is perhaps the result of a certain "reservation regarding high fines". This reservation, however, is understandable. The imposition of 360 day-rates of fine, even in cases of below average income, entails a total sum that could be paid only through the reduction of the average person's standard of living to a minimum for an extended period of time. This period of time would probably even exceed length of prison term being replaced by days of fine. Furthermore, it is questionable whether such high fines exceed the limitations placed on state intervention by the principle of proportionate means. Consequently, this proposed reform could easily fail through the lack of its practical application.

In addition, the collection of fines of this amount would present the following problems:

- the work load for the authorities responsible for executing punishment would increase because of an increase in payment by installments and, thereby, a probable increase in the average collection period;

- the quota of alternative prison terms served would increase regardless of the total amount fined.

The first point is plausible, when one considers the total amount of fine that would result from day rates corresponding to one to two years of imprisonment. Higher total fines would result in a higher quota of payment by installments, an increased number of installments, and, consequently, a longer period of collection. The authorities' work load would increase accordingly because of the necessitated increase in "paper work" (payment by installment petitions, installment receipts, etc.) and the extended period in which a part of the penal files remain with-

in the punishment execution system.

The second point is related to the problem of the execution of an alternative prison penalty and, thereby, to the population affected by an eventual increase in the range of application of the fine. We have found that serving an alternative prison penalty correlates highly with several variables, viz., previous convictions, lower professional status, type of offence etc. These variables show a characteristic frequency similar to that shown for the group of individuals sentenced to imprisonment. If,however, the frequency of these variables is changed,through the inclusion of part of the population otherwise convicted to prison, then, in all probability, the quota of alternative prison terms served would increase. An increase in the quota of frequently reconvicted, unemployed, individuals with lower professional statue within the group of individuals fined would necessarily increase the potential of an individual fined to serve an alternative prison term. For this group of individuals, imposition of a fine, in all probability, would be nothing other than the execution of a disguised prison term for which the possibility of conditional release would even be excluded.

One argument in favour of an increase in the quota of served alternative imprisonment, as a result of extending the application of fines, can be deduced from the following results of our empirical investigations:

In about 70 % of the cases (N = 77, 70.6 %) in which a prison sentence was suspended, the court ordered the offender to pay penalty fees as a part of the condition for his release. The mean value of the ordered penalties was approximately equal to the average amount of imposed fines. In this respect, fine collection can be compared to penalty collection. The function of the alternative prison term with respect to the fine as a sanction is similar to the revocation of conditional release and the execution of the imposed prison term. Of those persons who had been released conditionally, 34 % were threatened with the revocation of their conditional release, and 16 % actually experienced revocation because of delays in regularly ordered payments or total nonpayment of the amount sentenced. A sixteen percent revocation of conditional releases, however, is four times the amount of alternative prison sentences served for non-payment of fines. These results are relevant

not only to the question of whether the use of fines should be extended to apply to some of those criminal acts which are presently punished with imprisonment, but also to any discussion concerning the purpose of imposing monetary penalties as a condition for release from imprisonment. Even if conditional release were cancelled in one out of every 10 cases only because of penalty non-payment, it would still seem reasonable to consider the use of alternative measures. On the other hand, it seems quite doubtful that an alteration of this type would have any practical relevance, when one considers the findings of our investigation of judicial decision-making and the process of selection used today, according to which the offender is sentenced to imprisonment or to fine payment. Therefore, an extension of the application of fines does not seem recommendable unless the existing framework with respect to the alternative prison penalty is changed.

7.2 Alternatives to the fine

The new General Part of the German Penal Code (StGB), which came into force on 1/1/1975 introduced the so-called "warning with suspended fine". Simultaneously, another law was enacted, which provided for case dismissal under conditions of release (§ 153a German Penal Procedure Code - StPO -).

Both measures can be considered alternatives to fines and are intended to be applied to minimal criminal offences. Under the section regulating "warning with suspended fine", legal proceedings are held, but penal sanctions are dismissed. Under § 153a German Penal Procedure Code - StPO -, even court proceedings are avoided.

Statistical analysis of the frequency of application of the warning with suspended fine from the time of its introduction revealed that it is rarely employed. On the one hand, this lack of application may be the result of the extremely restricted formulation of this provision. On the other, it could be the product of the judiciary's negative attitude toward this type of sanction, which was revealed through interviews with judges in Baden Württemberg.

Judges interviewed gave the following reasons for not considering the "warning with suspended fine" an appropriate measure:

(1) No alternative measures are needed between the scope of § 153a German Penal Procedure Code - StPO - and the fine as a penalty, since these two measures overlap. The imposition of warnings is, therefore, superfluous. The potential cases in which a warning might be ordered are covered by § 153a German Penal Procedure Code - StPO -.

(2) The warning as a penal measure is not practicable because it involves too much paper work. When court procedures are closed, the dossiers remain in the hands of the administrative authorities until the period of reserved penalty has elapsed i.e., one to three years, entailing an increased work load.

(3) This type of provision, according to which sanctions, in the form of monetary penalties or other requirements, are not imposed expressly, is an appropriate measure for juvenile offenders but not for adults.

Case dismissal under conditions of release also entails a great expenditure of time and work for the administrative authorities for the following reasons:

(1) a petition must be submitted to the court requesting dismissal approval,

(2) the offender's consent must be obtained,

(3) the offender's consent must be submitted to the court,

(4) the payment of the fine or the fulfillment of other conditions must be supervised, and

(5) the case can be dismissed finally only after these conditions have been fulfilled.

Contrarily, case processing is less time consuming and, therefore, more rational for the public prosecution, when the offender is fined through a summary sentence.

Thus, within the existing system of sanctions, the "warning" hardly can be considered even partially as an appropriate alternative to the imposing of fines. The alternative "§ 153a", on the contrary, is normatively subject to broader conceptual interpretation and is intended to exclude "bagatelles" from the penal control system. In this sense, "case dismissal under conditions of release" can be seen as a criminal policy diversion strategy. In light of the goal of "destigmatization", this alternative can prevent the injurious side effects of conventional sanctioning strategies by eliminating registration of previous convictions. Since formal registration ensures that previous convictions will be brought up in subsequent criminal proceedings, non-registration in avoiding placing this stigmatism, could affect the individual's decision to begin a criminal career. When a criminal procedure is closed under § 153a German Penal Procedure Code - StPO -, the accused/defendant is not considered in the criminal records as previously convicted. Consequently, in any subsequent proceedings, in which he is involved, punishment is determined as it would be for a first offence. In accordance with the findings of our analysis, the least serious degree of sanction usually is imposed in such cases.

The substitution of fines for the prison sentence as the dominant sanction in criminal law is certainly not representative of a final form of legal development. The growing importance of methods alternative to the fine, as even the first ten years after its introduction on a large scale reveal, indicates that its partial replacement is both feasible in practice and rational in policy. This development in criminal policy, which was first manifested in the introduction of the fine, and which now exhibited in the utilization of measures applied at an earlier stage of the control process, reveals an effort, whether intention or unintention, toward abolishing the dialectical process of repressive actions and reactions in which the system of crime and punishment as a prototype thereof was and is enmeshed.

PROGNOSES OF CRIMINALITY IN JUVENILE OFFENDERS

Problems arising from prognosis research in the field of criminology with an investigation of the setting-up of prognoses by juvenile court judges and prosecutors

Rudolf Fenn

The present study deals with the prognoses made by juvenile court judges and prosecutors of juvenile criminality. Our investigation and the issues raised therein, is developed on the basis of the present etatus of prognosie research. One must recognize the fact that prognosis research has gained increasing importance for criminal law, whereas it has lost its former saliency for criminology. In this respect it has undergone the same decline in importance as the "etiological paradigm", i.e., analysis focusing on the offender's personality.

The decline primarily results from the fact that previous studies did not fully realize the dependency prognosis research has upon the planning and realization of criminal law norms. Contemporary prognosis research is almost completely limited to distorted characteristics relevant to officially labled recidivists, which are determined by the social control agencies. Prognostic considerations, however, at least implicitly seem to play an essential role in judicial decisions in juvenile courts. If the criteria for these decisions are not examined in their empirical-criminological relevance, the danger will persist that prognosis will be based upon factors, which, although determined through the decisions of social control agencies, in fact may have no relevance to recidivistic behavior. Therefore, the theoretical gain to be made from existing prognosis research at leaet seems doubtful. Advancement in thie field cannot be made with more sophisticated statietical analyses alone, but rather is dependent upon the determination of an entirely new theoretical model. As has been shown in comparative studies relevant hereto, the predictive value of prognosis methods is not increased through more sophisticated statistical analysis. The more recent research efforts, which primarily were aimed in this direction, therefore,

are not particularly informative.

A new orientation in prognosis research not only must place emphasis on the determination of a theoretical model, but also must evaluate decisions made by the institutions of social control. Our study concentrates on this latter approach. It considers the utilization of prognostic findings in the practice of criminal law and the actual decisions relevant to prognosis formation. It is surprising that the relevant literature contains only very little information on the criteria and strategies used to form prognoses in the practice of criminal law. However, one can at least deduce therefrom that judicial prognoses and decisions probably are influenced by methods of collecting and processing information, by personal opinions of factors causing criminality, by attitudes toward criminal policy, and by problems of judicial organization.

It seems plausible, however, to assume that these decisions largely depend upon the offenders' legal-biographical characteristics. Therefore, four questions are of central interest to our study:

- What degree of importance do the already existing prognostic devices have in juvenile law practice?

- Are the juvenile court judges and prosecutors willing to use those devices in the decision-making processes, and on what does their willingness depend?

- According to which criteria and strategies do juvenile court judges and prosecutors construct legally prescribed criminological prognoses?

- What similarities and differences exist between the assumptions regarding criminal theory, which are basic to the formation of prognoses, made by judges and prosecutors, on the one hand, and those made by criminologists and the general public, on the other hand?

Hypotheses have been formulated for each of these lines of questioning.

2. Methodology

These questions were made operational through two empirical methods:

First, questionnaires were sent to all juvenile court judges and prosecutors in Baden-Wuerttemberg. The names of those questioned were furnished by the president of the district courts (Landgerichte) and the directors of public prosecution. The participants consisted of 139 trial court judges (Amtsgericht), 65 district court judges (Landgericht) and 51 prosecutors (N = 255).

After two reminders had been sent, we received N = 162 completed questionnaires and N = 22 refusals. The rate of returned questionnaires was 72.1 % and the rate of interpretable questionnaires 63.5 %.

Second, a cross-section sample of the Freiburg population was randomly selected for oral interviews. N = 233 subjects were contacted and N = 137 persons actually participated in our interviews, resulting in an analysable quota of 58.8 %.

Questionnaires were also sent to a third group consisting of N = 20 experts involved in empirical criminological research work. This group consisted of lawyers with an educational background in criminology and social scientists (mainly psychologists and sociologists) from various research institutes and universities. For this group we cannot indicate a possible quota of non-participation.

In order to determine the representativeness of the penal lawyers and population investigated, several tests were conducted. Although we could not find any significant differences in essential variables between the total sample and the actually evaluated random sample of judges and prosecutors, we could conclude, through a comparison of answers given by early and late respondents, that those who refused to participate in our inquiry were probably less conscious of the problems arising from judicial prognosis during the sentencing process. In our random sample of the population, the 21-60 years old individuals with higher educational backgrounds were over-representend with respect to the total population.

We must point out that most of the questions posed related to the ex-

pression of mental attitudes. In accordance with the present state of knowledge, one cannot assume that a linear correlation exists between expressed attitude and actual behavior. The findings of this study, therefore, are only relevant in regard to mental attitudes.

3. Results of the investigation

3.1 As expected, existing prognostic methods were not employed in the actual practice of juvenile courts. None of the judges and prosecutors stated that they had used the statistical prediction tables in choosing the appropriate sanction. The majority of judges and prosecutors were uniformed as to the reasons for the prognoses made by experts on juvenile crime and assistants to the juvenile courts. This ignorance exists regardless of the currently available information on criminology and juvenile delinquency. Only four respondents indicated that juvenile court experts and assistants used prediction devices.

The above findings show that penal jurists are neither aware of the problems arising from forming prognoses nor of the empirical evidence therefor.

3.2 About 30 % of the judges and prosecutors questioned stated their willingness to use prognostic devices regularly in sentencing decisions. More than half of the respondents, however, said that they used such devices only for serious offences. This reaction indicates that criminal law jurists are more oriented toward the type of offence committed than the prevention thereof. The somewhat positive attitude expressed toward the use of prognostic devices may convey a distorted picture with regard to their social utility. This assumption is supported by the fact that the interviewees in general, when responding to open questions, expressed only indistinct and vague ideas as to the consequences prognostic devices could have on sentencing. It is significant that those judges and prosecutors who tended to think more in an "utilitarian" and less in "offence-related" manner more often stated their willingness regularly to make prognoses based on statistical procedures. The investigation also revealed that as judges' and prosecutors' attitudes became more "offence related" their estimation of the preventative effect their de-

cisions have on recidivism increased.

The application of Luhmann's conditional guidelines regarding the process of criminal legal decisions, according to which judges are freed from any criticism for the consequences of their determinations, would in all probability lead to an over-estimation of the preventive efficiency of sanctions imposed. Contrarily, the more judges and prosecutors make "utilitarian" sentencing decisions, the more they will be confronted with difficult and complex considerations and the more cautious they will become when judging the preventive results of their decisions. In this context we also must mention that those judges and prosecutors who consider themselves capable of establishing prognoses without psychological and psychiatrical expert assistance are less willing to use statistical prognostic methods in their decisions. Further bivariate analyses of the acceptance of prognostic devices showed that the judges and prosecutors questioned tended to be especially sceptical about the practical application of predictive methods in cases in which generally harsher sanctions or more impersonal relations with the juvenile offender are probable. These findings certainly refute the traditional picture that juvenile court judges have of themselves.

In a multivariate analysis (regression analysis), the variables "offence-related thinking" and "duration of judicial activity" proved to be the most predictive of willingness to accept prognostic methods in decision-making. According to this analysis, those judges and prosecutors who tended more toward "offence-related thinking" and who had been judicially active for a longer period of time most resolutely refused to resort to prognostic devices in routine sanctioning.

A factor analysis was made for the purpose of describing the dimensions of judges' and prosecutors' attitudes toward prognostic devices and in general toward the importance of prevention-orientated decisions. The findings showed that the clearest answers were obtained to questions related to the practice of harsher sanctioning in an attempt to achieve a higher level of crime prevention. Translated into criminal theory this finding means that judges and prosecutors voiced their opinions most clearly when asked to tackle the problem: to what degree can sanctions oriented toward the level of the offender's guilt be exceeded upon in an effort to secure crime prevention.

3.3 Only the most essential findings of the main part of our empirical investigation are included below.

3.3.1 As expected, the respondents indicated the most confidence in their prognostic judgements concerning juvenile penalties in criminal cases. The greatest uncertainty was expressed with respect to the use of short term detention which is questioned in the criminological literature as to its preventive effect.These findings indicate that judges base their decisions in juvenile cases on prognoses more often to prevent review than to insure the selection of the most appropriate disciplinary measure.

The strategy applied by juvenile court judges and prosecutors in their search for information concerning methods of juvenile crime prevention focus more on the legal structure and organization of criminal procedure than on the empirical-criminological importance of the relevant sources of information. For example, reports written by juvenile court assistants and probation officers receive more attention from judges than from prosecutors, and prior criminal records are used more often by district court judges than by trial court judges as a source of information on elements of prognosis.

The more the criminal jurist is informed on juvenile crime and criminology, the more willing he is to consult psychiatrical and psychological experts on crime prognosis. One can conclude therefrom that increased education in these fields could be a possible means of securing the use of special preventive sanctioning methods.

3.3.2 In the evaluation of the answers to our question concerning which criteria are the most important for a positive or negative prognosis of the juvenile defendant, one must differentiate between the answers given by judges and prosecutors to multiple choice questions and these given to open questions.

Judges and prosecutors spontaneously listed internal behavioral causal factors as bases for negative prognoses. Drug abuse, alcoholism, unde-

sirable family situation, and unemployment were named most frequently.In cases of frequent recidivists penal jurists tended to base their decisions on moral or pathological evaluations. The most important factors given for a positive prognosis of a juvenile offender were primarily those variables that indicate the capability of successful integration in society and of useful employment, which necessarily include education and vocational training. In addition, an intact family relations and close personal ties are factors important to a positive prognosis.

Particularly noteworthy was that judges and prosecutors, who were asked to evaluate the predictive value of given individual factors, gave the most weight to factors relating to the offender's previous criminal career. It is also possible that the respondents consider previous convictions and recidivism rates not only as relevant to a prognostic decision but also to the question of guilt. If so, they are acting contrary to the expressed intention contained in juvenile criminal law. These same judges and prosecutors weighted those factors indicating the offender's repentance, admission of guilt, and willingness to amend as the most important indicators of a positive prognosis.

We used a factor analysis in an attempt to determine the dimensions essential to juvenile crime prognosis by judges and prosecutors. The first factor consisted entirely of indicators of the possibility of social integration. The second factor comprised specific aspects of the offender's motivation for committing the criminal act and the circumstances under which he committed it. The third factor clearly included elements of the offender's previous criminal career. Unfavourable conditions of socialization formed the fourth factor. The last two factors concerned indicators of refractory behavior. One of them involved offences committed against "official discipline". The other comprised an evaluation of the parents' care and guardianship. The empirical determination of these prognostically relevant dimensions, however, does not provide information as to the importance and weight judges and prosecutors attached to them in reaching a prognosis.

3.3.3 This section of the investigation ends with an analysis of intervening factors, i.e., variables which are likely to influence the

estimated predictive value of any given factor. Of those variables representing individual attitudes, "offence-related thinking" exerted the greatest influence upon the prognostic value attributed to the 78 factors. The more judges and prosecutors tended toward "offence-related thinking", the more they considered the general seriousness of the offence in their prognostic considerations and the less they considered factors relating to the offender's educational and vocational socialization.

Furthermore, it was possible roughly to identify a certain type of juvenile court judge and prosecutor, who because of their optimistic evaluation of their sanctioning practices, generally stressed prognostically favourable factors in their decisions. Those judges and prosecutors,however, who indicated that they had received further education in criminology, considered both positive and negative prognostic factors to be less predictive than their colleagues without special training. With increasing practical legal experience, (which naturally correlates highly with age, judges and prosecutors weighted morally evaluative factors and factors indicating refractory behavior more heavily. Prosecutors tend to accentuate negative prognostic factors more than judges and initially consider the offender's negative characteristics in making a prognosis. District court judges considered both positive and negative prognostic factors to be of more predictive importance than did trial judges. It appears probable that a covariance exists between an increasingly negative selection of offenders and judges' and prosecutors' tendency toward more extreme prognostic decisions.

Our findings indicate systematic differences exist between judges and prosecutors in their prognoses of juvenile criminality. These differences can be attributed to their position within the judiciare system, which encompasses types of activity, as well as formal and informal public expectations.

3.4 In the final stage of our investigation, we compared the opinions of penal jurists, criminolgical experts and a sample of the population regarding a number of factors relevant to prognosis. A first review indicated a high general consensus between the three groups compared. From

this consensus one can assume that the answers were not given arbitrarily, and that the criminological multi-factor approach is largely in accordance with common sense. A closer comparison of the three groups, however, revealed a number of differences which are of statistical importance and which must be considered in connection with the results achieved in the preceeding part of our investigation. The most salient finding of our comparison was that greater differences existed in the prognostic evaluation of certain factors between judges/prosecutors and criminological experts than between the latter group and the general population. The judges and prosecutors accentuated almost all of the factors, regardless of their nature, more than their counterparts, i.e., they considered them to be of greater predictive value for both positive and negative prognoses of future criminality than did criminologists or the general population.

Judicial and prosecutorial cognizance which is affected by constant association with a very negative segment of the population, as well as by the duty to make and legitimize decisions regarding this segment, may lead to a distorted perception of reality. This interpretation is supported by the fact that juvenile district court judges, who generally deal with more serious offences, as well as prosecutors strongly accentuate prognostic factors in decision-making. If the population sample is subdivided and the different sub-groups compared, important parallels can be seen in the estimation of prognostic factors. The more highly educated population groups and the group of criminologists generally agreed in their evaluation of these factors. The less educated groups generally agreed with penal judges as to the predictive value of the different factors. As age increases, the general population and the judges and prosecutors attribute greater importance to the prognostic value of the given factors.

Based on these findings, we can assume that values, stereotypes, and biases exert an influence upon "theories of recidivism". This assumption seems plausable and justifiable through the discovered differentiating power of the variable "attitude toward capital punishment", which is highly indicative of an authoritative, conservative and rigid viewpoint. Advocates of the death penalty weighted all factors, regardless of whether they were positive or negative for crime prognosis, more heavily than non-advocates.

Conclusions

Our investigation established, for criminological prognosis research, evidence of the fact that those factors, which have been determined through traditional multi-factor analysis as indicative of criminality, are also considered by judges and prosecutors as important to the prognosis of an offender's future tendency toward crime. This finding is generally independent of the level of knowledge these jurists have of criminology or juvenile criminality.

A comparison between "theories of recidivism", expressed by the population, penal jurists and criminological experts, indicated that those factors considered in the criminological literature as important to the prognosis of criminality highly correspond to "common sense". If, in view of these findings, one considers the largely unsuccessful efforts to increase the predictive value of prognostic devices through more sophisticated statistical techniques, then one must come to the conclusion that their employment in the practice of judicial sanctioning should be abandoned.

The criticism, based on the low success rate of short term detention and conditional release, that statistically derived prognosis indices should be employed more in sanctioning decisions overlook the fact that these decisions are rarely made on the basis of mistaken prognoses but rather in the absence of alternative measures. As long as prognosis research is restricted to determining the probability of recidivism in the individual case, which practice not only vague but also often exaggerated, it can offer little assistance to juvenile court judges and prosecutors. Stated more extremely, we found that judges and prosecutors, depending on their theoretical viewpoint, make the same correct or incorrect diagnoses as these obtained through multi-factor analyses but without the same consequences. Usually, penal jurists perceive the probable rate of recidivism to be lower than that estimated by statistical predictive analysis. This perception might be the result of a certain scepticism by the juvenile court judges and prosecutors regarding predictive analysis. On the other hand, increased judicial emphasis on prevention could lead to harsher sentencing practices. In such case, the goal of preventing recidivism could be frustrated completely. Evidence of this danger

is also found in juvenile court judges' and prosecutors' tendency toward individual-psychological "theories of recidivism" rather than toward more recent criminolgical theories on the correlation between stigmatization and recidivism. In this respect, improved training seems necessary for judges and prosecutors dealing with juvenile offenders.

The findings of our investigation demonstrate that judges and prosecutors, who are more competent in criminology, as well as experts in this field, tend to view the predictive value of prognostic factors on a relative scale. This tendency could indicate that selectively distorted characteristics of deviation would lose their significance for sentencing decisions if penal jurists were provided with a better education. For this reason we should continue to demand improved education for our juvenile judges. The expected consequences of improved education, however, should not be over-estimated since juvenile court judges intervene relatively late in the selection process. On the other hand, judicial decisions in juvenile cases have an indirect influence on the selection process in that the associated organs of social control are oriented toward previous juvenile court decisions.

The genesis and structure of judicial "theories of recidivism" should be investigated in future criminological research. Their influence on decision-making, also should be analysed more specifically. If this influence exists, it could be of value to consider how judicial and prosecutorial "theories of recidivism" could be changed to correspond to the present state of criminological knowledge.

This proposed approach seems more promising for the practice of juvenile criminal law than the continual search for methodological improvements of statistical prediction tables.

THE JUVENILE JUDGE - CONCEPTION AND REALITY

Harald Hauser

1. Introduction - investigational framework, problems and theoretical approach

In previous research and literature, the question of how the ideal image of juvenile judges, who are characterized as "educators" and compared to the Roman "pater familias", is expressed in judicial practice, i.e.,what juvenile judges do and how they do it, has remained unanswered.

This gap is unfortunate since the structure of juvenile criminality and the analysis of juvenile offenders are decisively influenced by the application and administration of juvenile law. Therefore, in order to recognize or understand juvenile delinquency, one must become familiar with the system of controls applicable thereto.

The theoretical approach which focuses on neither the offender nor the offence but rather on the judiciary and its criminal legal reaction to the offence will be designated as the "social reaction approach".

During trial proceedings, the juvenile defendant is confronted by the judiciary. This confrontation determines whether the defendant will accept or reject the legitimacy of the judicial claim to exercise justice. If its legitimacy is rejected, the defendant probably also will reject the judgement and fail to follow the advice, recommendations and instructions offered. However, if the juvenile offender understands the judicial proceedings and finds the judgement to be plausible and fair, the juvenile justice system can contribute to the socialization of young individuals.

From an abstract point of view, we investigated the juvenile judge's position in the total process of the treatment of norm deviation. From a concrete point of view, we studied juvenile judge's role, his mode

of action during the trial, and his relationship to the juvenile delinquent and to the juvenile court assistant. We attempted to compare the judiciary in its actual practice of juvenile criminal law to the image existing regarding the juvenile judge.

In order to accomplish this goal, we contrasted the juvenile judges' self-image with the image formed about them by juvenile delinquents and juvenile court aides. Through this analysis we attempted to demonstrate the extent to which conception and reality, or ideal and real image of juvenile judges, deviate. In the case of deviation, we considered the resulting effect upon juvenile offenders. In particular, we were concerned with the question of whether the educational principle stressed in the JGG has a meaningful application in juvenile court practice, i. e., whether current juvenile court proceedings are oriented toward the legislative intent expressed in the JGG. The need for further investigation here is obvious in light of the inadequate amount of empirical information relating to our topic of research.

Previous research endeavors essentially have investigated and discussed only partial aspects of the subject matter of the present investigation. Legal sociology also rarely has undertaken any empirical analysis of the social control processes regarding juveniles. Investigations concerning the juvenile judges' self-image and concept of his role duties are lacking completely. An evaluation of juvenile judges by juvenile court aids is also non-existent. The following hypotheses clarify our research interests, specify the relevant questions and necessitate individual evaluation. They were developed from the problems, knowledge, and research available in this field.

2. Hypotheses and methodology

1. Most juvenile judges are not educationally prepared for their duties. A better education, or further education, therefore, is generally advocated.

2. The jurisdiction of the juvenile court is seen as self-understood. This attitude indicates strong ideological inclinations to overestimate the role of the juvenile judge, who generally is seen as pedagogically superior, wise and just.

3. No specific differences exist between the relationship juvenile judge and juvenile defendant in juvenile proceedings today and judge and defendant in criminal proceedings against adults.

4. "Proportionality", viz., imposition of a sanction relative to the severity of the act and degree of blameworthiness, as opposed to "education" is predominately the basis for judgements in juvenile cases.

5. Current juvenile court proceedings increase the chance of producing or intensifying a tense relationship between juvenile offenders, the judicial system and society in general.

6. A difference exists between the first offender's and the repeat offender's evaluation of the judiciary and trial proceedings.

7. Juvenile judges, juvenile defendants, and juvenile court aides advocate that infractions, traditionally handled in one-judge proceedings, be assigned to the Guardianship Court and that they be dealt with through voluntary jurisdiction.

8. Ideal and reality, self-image and popular image of the juvenile judge differ extremely.

Since almost no empirical information was available on the subject of our investigation, it was planned and carried out as an "information gathering study aimed at initial orientation". The investigation included juvenile judges active in the four district courts in Freiburg, Offenburg, Rottweil and Konstanz and included the directors of the juvenile courts of lay assessors. Thirty-three juvenile judges at 29 local courts and 46 juvenile court aides were questioned. The researchers participated as observers in one of the proceedings held by each of the judges involved. The juvenile defendant was interviewed before and after the trial proceedings concerning his impressions. Because this goal could not be realized in five cases, only 28 juvenile offenders were questioned. The selection of the juvenile offenders occurred randomly. To avoid delict specific differences and facilitate comparability, we included only those offenders, who had been charged with a theft.

The main instrument used in our investigation of the juvenile judge's self-evaluation, his evaluation by juvenile offenders and juvenile court

aides, was verbal inquiry through a standardized questionnaire. The so-called non-participatory observation of juvenile court proceedings and file analysis were employed as investigative methods complementary to the interviews.

3. Competence, selection, education (and further education) of the juvenile judge - from the viewpoint of the juvenile judge

3.1 Competence of the juvenile judge

In contrast to adult criminal law judges, juvenile judges assume that particularly human qualities can be expected from them. The majority of juvenile judges also believe that they possess these additional personal qualities:

73 % (24) of the juvenile judges attributed unlimited empathy, 79 % (26) understanding for the needs of youth and 52 % (17) love of youth, to themselves.

88 % (29) of the juvenile judges considered themselves to be talented in their association with young people; 91 % (30) expressed an interest in juvenile court activity; 84 % (28) felt a personal inclination toward the profession of the juvenile judge; 78 % (26) believe themselves to be the "right" age for this task, and 53 % (17) had had the desire initially to be a juvenile judge.

A clear deficit appeared, on the other hand, regarding the juvenile judge's knowledge of youth: 69 % (23) of the juvenile judges stated that they had no extensive knowledge regarding juvenile education and psychology; 88 % (29) regarding legal sociology and 66 % (22) regarding juvenile criminology. Only 30 % (10) of the judges maintained that they had had adequate practical experience in juvenile development. Furthermore, 69 % (23) of them admitted that they were not active in any type of youth organization. Nevertheless, 52 % (17) of the judges maintained that they personally fulfilled the postulate of § 37 JGG without limitation and further stated that they were capable of educating and had experience in juvenile education.

3.2 Selection of juvenile judges

Contrary to the guide-lines of § 37 JGG, personality related professional prerequisites are not significant for the distribution of activities within the judicial structure according to the view of most juvenile judges. Inner official and technical administrative considerations rather than professional qualifications and personal inclinations are of primary importance for the selection of juvenile judges.

It is clear that the selection of juvenile judges in no way relates to the criminal policy significance of jurisdiction over juveniles. It is clear, therefore, that § 37 JGG presents no danger of juvenile courts being filled with first-class specialists.

3.3 Education and further education of juvenile judges

Most juvenile judges complain about their deficient professional training and consider a better basic education and more advanced further education to be urgently necessary. They unanimously agreed that university education, legal apprenticeship, and advanced study curriculum are deficient in providing one with the qualifications and experience necessary for disciplining juveniles. They demanded that those sciences which deal with youth and social problems (particularly juvenile criminology, developmental psychology, pedagogy and sociology) be offered in the law school curriculum and that practical experience within the juvenile judicial system be included in the legal apprenticeship period.

These results, which have been derived from the views of juvenile judges confirm hypothesis 1. This hypothesis states that most juvenile judges are not educationally prepared for their duties and that better and further education are advocated.

4. Profile of the juvenile judges

4.1 The juvenile judge's self-image

The juvenile judges self-evaluation of their behavior during trial includes very positive qualities and behavioral patterns. They designate their manner of conducting the proceedings as friendly, encouraging,

very calm and very relaxed. They evaluate their attitude toward juvenile delinquents as trusting, lenient, accepting and very understanding. They consider their pattern of action to be "partnerly", fatherly, good-natured, personal, objective, mild and very just.

The next question becomes whether this self-image is in accordance with the image received by juvenile court aides and juvenile delinquents.

4.2 Outside education of juvenile judges by juvenile court aides

The attitudinal and behavioral patterns which are indicated by judges are essentially confirmed by juvenile court aides. Juvenile court aides generally attribute these qualities to juvenile judges to a lesser extent than do the judges themselves. In the case of several personality characteristics, viz., the judge's empathy, friendliness, partner relationship, and calm and relaxed manner of conducting the proceedings, juvenile court aides clearly evaluate judges lower than the judges themselves.

4.3 Evaluation of juvenile judges by juvenile delinquents

4.3.1 Profile of juvenile judges as viewed by juvenile delinquents

It appears that first offenders are particularly afraid of their encounter with the juvenile judge and rarely possess any knowledge about the trial, how it proceeds and who is present. Almost two-thirds (61 %, 17) of the youth believe that the juvenile judge cannot and will not help them to overcome their problems. First-offenders as opposed to multiple offenders, however, more clearly are inclined to view the juvenile judge as a source of help.

In the evaluations of the judge's behavior during trial, clear differences of opinion exist between first and multiple offenders. First offenders describe juvenile judges in a positive way, comparable to the portrayal offered by juvenile court aides. First offenders, however, generally attribute fewer positive qualities to the judges than do the court aides.

On the other hand, multiple offenders conclude from their experience

that the juvenile judge's understanding is in no way adaquate. They express a strikingly negative social attitude toward the juvenile judge in which they evaluate his conduct toward them as unsympathetic, unrelenting and critical; his pattern of action as authoritarian, unfatherly, impersonal and subjective; his manner of leading the proceeding as discouraging, and his judgement as strict and unjust.

These findings make it clear that the role of the juvenile judge, as well as his style of action during trial, must be more dispassionately viewed than necessary according to the image presented in statutes and the juvenile judge's self-evaluation. In fact the wide gap which, according to the views of multiple offenders, separates the judicial ideal from judicial reality gives reason for re-evaluation. These findings essentially confirm hypothesis 2.

5. Bilateral behavior between judge and accused - as viewed by juvenile delinquents

5.1 Atmosphere and style of proceedings

From the viewpoint of the accused juveniles, the juvenile judges never succeed in their efforts to loosen up trial atmosphere. Many juveniles think that the courtroom atmosphere is too stiff and formal. Only 25 % (7) of the accused juveniles find questioning during trial similar to a conversation, as intended by the juvenile judges. On the contrary, the overwhelming majority find communication with the judge similar to an interregation. 75 % (21) of the juveniles have the impression that they may speak in the court room only when asked. They perceive trial proceedings to be pre-determined and think the only alternative available is an answer of "yes" or "no". Even in cases in which they wanted to make a comment, most of them were afraid to address the judge without being asked.

5.2 Juveniles' problems in understanding juvenile court proceedings

The majority of youth (54 % = 15), primarily first-offenders, have considerable difficulties understanding proceedings before the juvenile court. Particularly criticized are the excessive use of legal terms by the judge and prosecutor, and the inadequate explanation of these terms.

5.3 Routine treatment by the judge

Two-thirds (64 %, 18) of the youth find that the judge is not sufficiently informed concerning their personality, life style and surroundings to form an accurate impression. They explained that the judge either did not ask about such things or only superficially touched upon them.

Similar comments were made regarding the juvenile judge's interest in the reasons behind the offence. The majority (54 % = 15) stated that the judge was only interested in the legal facts of the case and not in the actual causes for, and personal background behind the act.

Finally, 21 (75 %) of the 28 youth questioned have the impression that their case is only one of many for the judge. They see the trial as impersonal and routine. Only 25 % of the juvenile defendants stated that the judge was concerned with their personal problems.

One thing is clear, viz., limitations exist regarding the assumption that the relationship between the juvenile judge and juvenile defendant is essentially different, as is necessary from a disciplinary point of view, from the relationship judge and adult criminal defendant. In fact, from the point of view of the questioned juveniles, this assumption has little basis in reality. The often expressed demand that juveniles should understand the value of the legal order through their trial experiences and feel understood and accepted in a climate of benevolent objectivity is in no sense sufficiently realized in juvenile court practice.

Hypothesis 3 is hereby confirmed. It maintains that the relationship between juvenile judge and accused juvenile in current juvenile court proceedings does not differ specifically from the relationship judge and defendant in adult criminal proceedings.

6. Sanctioning practice in juvenile courts

6.1 Purpose of juvenile court sanctions - from the viewpoint of juvenile judges and juvenile court aides

From the viewpoint of juvenile judges, sanctioning practices must help in the implementation of the educational goals of the JGG. They find that the purpose of juvenile criminal law is not finding a sentence measured according to the type of offence and level of guilt nor exercising measures oriented toward preventive deterrence and social protection, but rather exerting an educational influence on the offender.

According to the experiences of juvenile court aides, the conflict between educational and penal goals in the actual administration of juvenile law is not resolved clearly in favor of educational sanctioning. For the juvenile court aides the sanctions are often retributive and measured according to the type of offence and level of the defendant's guilt.

6.2 Purpose of juvenile court sanctions - from the viewpoint of juvenile delinquents

The gap between idea and reality regarding the appropriate application of juvenile sanctions becomes clear when one examines the actual effect these sanctions, which are supposed to be educational, have on the convicted juvenile. In fact, the judge's efforts toward realizing an educational goal are realized only to a limited degree.

Only 2 (7 %) of the juvenile delinquents found the judge's measures to be an important personal assistance to their problems and future life. The majority (14 = 50 %), particularly multiple offenders perceived the juvenile judge's reaction to be a purely unjustly rewarded retributive punishment rather than a measure toward socialization. Forty-three percent (12) of the youth attributed both elements to the measure.

6.3 Evaluation of the sanctioning behavior of juvenile judges on the basis of non-participant observation

A certain standardized treatment of juveniles is apparent from the

judgements made in juvenile courts. The manifold reaction possibilities contained in the JGG rarely are exhausted. Quite a few of the judicial opinions contain no reference to the goal of socialization to be fulfilled through the disciplinary measures employed although according to § 54 I JGG the opinion must contain, among other things, an assessment of the offender, the reasons for criminal behavior, and an evaluation of the appropriate rehabilitative measures. From the judicial order of disciplinary measures (§ 9 JGG) is not apparent which socialization defects are responsible for the criminal behavior and whether the measures ordered are designed to eliminate these defects. This type of evaluation, however, is essential to every judgement made in juvenile cases.In many juvenile court judgements educational and disciplinary measures are combined (§ 13 JGG) although the rehabilitative reasons for this combination are not given. In juvenile criminal law principles other than those applicable in adult criminal law, which limit the judge's options in responding to a criminal act, must be followed in the selection and proportion of consequences for the juvenile offence. The primary concern in selecting a sanction for juveniles is not as in adult criminal law sanctioning, retribution for a single blameworthy act, but rather rehabilitation suited to the individual offender.

It is clear that regardless of the contradictory intentions contained in JGG, the juvenile judge's sentencing practices exhibit only limited differences from those employed in adult penal law. They include elements which do not correspond to the goals of the JGG, which is oriented toward the education and rehabilitation of juvenile offenders. These resocializational goals are last through the emphasis placed on criminal legal principles, i.e., gravity of the offence, amount of punishment, goal of retribution; blameworthiness of the actor.

It is apparently difficult for the juvenile court judge to divorce his opinion from the guiding principle in criminal law of retribution for a blameworthy act in favor of offender oriented rehabilitation measures.

This manner of sanctioning, however, does not appropriately and effectively implement expressed legislative objectives. In addition, from the viewpoint of young offenders, juvenile court measures are not aimed sufficiently toward re-socialization. They find these measures to be

based on the concept of punishment rather than on personal assistance and fail to see the actual educational goals contained therein. Juvenile court sentencing practice therefore, cannot be evaluated as corresponding to the legislative intent expressed in the JGG. From the juvenile offender's point of view hypothesis 4 can be confirmed.

7. Influence of juvenile court proceedings upon juvenile delinquents

The multiple inter-dependencies among those individuals responsible for exercising social control indicate that the effects of juvenile court control practice upon the concerned delinquents cannot be determined clearly. The results which have been obtained generally indicate that the attitudinal and behavioral make-up of the young law-breaker is influenced through the application and administration of juvenile criminal law by the juvenile court.

7.1 Possibilities available to the juvenile court in the realization of juvenile criminal law goals - from the point of view of juvenile court aides

Juvenile judges generally orient their actions toward increasing the offender's degree of social adoption. They fundamentally differentiate, however, between the degree to which first and multiple offenders may be influenced. They evaluate the juvenile court's possibilities of realizing the goals of juvenile criminal law optimistically with respect to first offenders. They state that juvenile proceedings often end meaningfully in the case of first offenders, that they can fulfill their educational responsibilities in such cases, that they can offer the young offender the necessary assistance in re-socialization.

To the contrary, they maintain that the juvenile court does not have much flexibilities in decision-making, and that the possibility for exercising an influence is limited when serious deficiencies in socialization exist, particularly in the case of multiple offenders. In these cases, judges see a clear shifting from socialization which is particularly important here. In these cases, the juvenile court frequently is unable to identify the juvenile's personality problems or is able to establish socialization defects but not correct them through the means available. The judges do not exclude the possibility that such

control can lead to personal and social alienation and can encourage deviant behavior on the part of multiple offenders.

In contrast to juvenile court judges, the majority (30 = 65 %) of juvenile court aides often see no meaningful conclusion in juvenile court proceedings. According to their experience, the social-educational endeavors, which should establish and secure educational, social and welfare oriented goals in juvenile criminal proceedings cannot be realized. They find that educational intervention in place of criminal law reaction, is lacking. According to their opinion, this criminal law reaction does not have a negative effect on first offenders because its consequences do not significantly burden the offender personally or socially.

However, in relation to multiple offenders, juvenile court aides evaluate the influence of the juvenile court more negatively. According to their opinion, juvenile court proceedings contribute significantly in strengthening the offender's socialization defects and oppositional attitudes toward the legal system and society. Their repeated culpability continually results in stricter punishment and thereby negative stigmatization and not in urgently needed social-educational and therapeutic assistance by the juvenile court. The juvenile court aides find the reasons for this treatment to be the formulation of the JGG, which attributes considerable significance to crime control, the practical application of the JGG by the parties involved in the proceedings, as well as the deficiencies in professionalization and organization of juvenile court aids.

7.2 Administration and effect of juvenile court control - from the viewpoint of juvenile delinquents

Finally, when one evaluates the effects of juvenile court control practices from the viewpoint of the concerned delinquents, it becomes obvious that juvenile proceedings do not implement the rehabilitative concepts contained in the JGG. According to the statements of most of the young offenders (20 = 71 %), juvenile proceedings more often intensify rather than reduce their negative attitudes toward the legal system and society. Apparently the relationship either produces tension or intensifies an already existing potential for conflict. Defensiveness,

opposition, and apathy are the unintentional products of juvenile court proceedings. In this connection, we found a basis for the assumption that the more frequently and intensively a juvenile offender has contact with the representatives of formal control, here the juvenile court, the more tense his relationship toward the legal system and society appears to be. In the case of multiple offenders this development is particularly pronounced. Seventy-five percent of the offenders in this group also perceive the sentence passed against them as unjust and in most cases as too strict.

However, particularly striking, and in contrast to the opinions of juvenile judges and juvenile court aides, is the occurence of an intensification of negative attitudinal patterns by the majority of first offenders, although 69 % of them consider the judgement passed against them as just.

Particularly first offenders view juvenile penal intervention in the form of a complaint and formal trial as a procedural over-reaction. This viewpoint is not astonishing when one considers that the juveniles often find the deviant acts to be of minor importance, that the accused persons often have been willing to make a signed confession, and that the sentenced juveniles find the time period between the commission of the act and judgement to be too long to justify a trial.

It is clear that the juvenile court is not prepared to handle juvenile legal conflicts in a manner acceptable to the youth involved, nor capable of sufficiently advancing the social integration of juvenile offenders. In contrast to legislative expectations, the juvenile judge, as a consequence of his professional training, is often fixated upon his role in the judiciary. Organizational deficiencies and inadequate juvenile court aid qualifications pose difficult limitations on joint action. The cooperation necessary between judge and juvenile court aide seldom exists for a thorough personality investigation of the juvenile defendant involved. If one assumes that juvenile court control can meet the responsibility to rehabilitate juveniles only when the goals, actions, and effects of this control are acceptable by young offenders, then the functional capability of juvenile criminal law must be negated. In this respect, hypothesis 5 is also confirmed.

The findings of this investigation also cover hypothesis 6, which assumes that first and multiple offenders evaluate the judge and trial differently. The entire analysis supports the conclusion that the selection process within juvenile criminal law often leads to a significantly greater aggregation of negative impressions and socialization problems for multiple offenders than for first offenders. With respect to many single aspects of the problems discussed we established that different attitudinal patterns exist for first offenders than for multiple offenders in that multiple offenders tend to be more negative in their evaluations than first offenders.

8. Reform endeavors in juvenile criminal law

Although in the 1960's juvenile criminal law was still designated as one of the best and most modern of legal systems, more recently it has become the topic of debate. The propriety of juvenile criminal law strategically and the effectiveness of its sanctions for re-socialization have been disputed. Increasing criticism has been directed toward the inadequate distinction between juvenile and adult criminal proceedings regardless of whether this inadequacy results from the legislative formulation of the JGG or the administrative practical application thereof. It has been emphasized that the compromise made in juvenile criminal law between punishment and rehabilitation will never lead to satisfactory results either in behavioral control or re-socialization. Reconsideration of the common socialization goals of the juvenile court and welfare laws has led to increased support for a re-modeling of juvenile criminal law along the lines of treatment and rehabilitation. Models of reform are being discussed although no definite decision has been made.

However, one chooses to evaluate these reform endeavors, the necessity for increased attention to the problems of juvenile socialization and education, as well as the increased use of child welfare organization and guardianship judges within the juvenile justice system, may become more urgent in the future.

The degree of importance of the form of juvenile proceedings is shown by the fact that 89 % (25) of the juvenile offenders disapprove of the present juvenile criminal court system. They would prefer guardianship

courtroom proceedings in which formalities are not stressed and the offence and treatment measures are discussed jointly. This type of proceeding appears to them to be "normal" and more suitable for discussing their problems with the judge.

Although 55 % of the judges disapprove of re-placing the juvenile court with the guardianship court for reasons of juvenile behavior control, a new trend seems to be developing among judges in general. At least 45 % of all juvenile judges and the majority of juvenile court aides, find that the transfer of non-serious and minor juvenile offences to the guardianship court is more likely to guarantee the realization of rehabilitative goals. Hypothesis 7 is confirmed with the exception of those juvenile judges who are over 45 years of age and those who are not specially professionalized.

9. Ideal and reality of the juvenile judge's control

The purpose of this investigation was to obtain additional information on the formal social control exerted by the juvenile court. We wanted to determine how juvenile court actions, according to purpose, implementation and effect, are understood and experienced by juvenile court judges, aides and juvenile offenders.

The increasing criticism of the juvenile court's jurisdiction and debates on reform led to the basic assumption set out in hypothesis 8 that the self-image and popular image, as well as the ideal and reality of the juvenile judge, strongly deviate from one another. The results of the investigation essentially confirm the suspected discrepancy between legislative demands and legal reality. The results presented indicate that current juvenile court proceedings do not realize expressed legislative intent.

The information obtained reveals that the leading reasons for the unexpected course taken by juvenile criminal legal control lie in the deficient execution and structural weaknesses of the existing JGG. On the one hand, the rehabilitative interests and juvenile-specific possibilities contained in the JGG are not exhausted in practice. In addition to its need for improved organization and increased personnel, the juvenile

court also particularly lacks qualified professionals who have been and continue to be educated for their responsibilities. Courtroom proceedings should be refashioned such that they are more appropriate for juveniles, and the application of justice should occur with less delay. The juvenile criminal legal measures available should be employed more purposely, and the juvenile delinquent's personality should be reviewed under the collaboration of juvenile court aid and judge.

On the other hand, certain structural deficiencies in the JGG constrict the juvenile court's freedom in decision-making. The current legal formulation overemphasises behavioral control as a factor relevant to the judgement in a juvenile case. Lacking are effective, legal provisions for developing juvenile proceedings into a process of cooperative conflict resolution and individual case aid. "More" of the juvenile offender's personality should be considered in the proceedings. Juvenile court decisions should entail a well-balanced, integrative relationship between measures of rehabilitation and punishment. In this way both the goals of re-socialization and legal maintenance may be achieved.

10. Legal and criminal policy conclusions

We have pointed out appropriate and necessary means of reducing, if not eliminating, the problems involved in juvenile criminal legal decision-making. The JGG should not be abolished, its possibilities should be expahded upon and exhausted. Our investigation has shown that the realization of the goals of the JGG is hindered largely by difficulties which do not have legal-technical origins. The need for a partial reform of the JGG also can no longer be ignored. Of particular importance is the orientation of juvenile criminal law toward the goal of juvenile assistance. The measures employed should be designed to achieve this goal. The juvenile judge also should not suffer a total work overload and the personality and problems of juvenile offenders should be understood and evaluated. A strenghtened, coordinated strategy of juvenile assistance within the juvenile criminal legal system appears to be the most appropriate means of separating juvenile and adult criminal legal jurisdictions. At the same time this strategy is appropriate for solving the problem of behavior control and meeting the demand for greater openness and preparedness to employ rehabilitative measures. Once more, we

would like to point to the necessity of devoting more attention to juvenile criminal law administration. New solutions should be employed step by step so that juvenile criminal law may be reformed in an empirically controlled manner.

THE COURT AID IN THE CRIMINAL JUSTICE SYSTEM

Ute Renschler-Delcker

1. Overview of the research plan

1.1 Scope

The purpose of the present study is to learn more about the significance of the court aid for adults in current criminal legal proceedings.

During the entire criminal law process, not only the application of legal norms but also the evaluation of the offender's personality should be of prime importance. In order to understand correctly, assess justly and suitably judge the offence, the decision makers should have the most extensive knowledge available on the character, background and social circumstances of the individual concerned. The court aid, who is responsible for researching the offender's personality, provides this type of information.

The court aid, a position which originated out of legal necessity and which after more than 50 years of active existance was legally established on January 1, 1975 in § 160 Abs. 3, 463d StPO, directly serves important legal interests through making an objective determination of the offender's personal characteristics and social circumstances.

The court aide's primary responsibilities during a criminal investigation and trial are to research the adult defendants, development and surroundings, in order to establish facts which can be of significance for the pronouncement of sentence and the determination of legal consequences. Furthermore, court aides are consulted during the preparation of decisions following a verdict as well as in affairs relating to pardon and legal privileges.

The court aides become involved in criminal proceedings through request

by the prosecutor's office, the judge or the pardon board. His findings are then summarized in an official report.

In our investigation of actual occurences in Baden-Württemberg we attempted to determine the extent to which court aids fulfill their responsibilities within the procedural framework given. Their responsibilities include delivering data on the defendant's personal and social circumstances thereby assisting in the determination of a fair and appropriate sentence. This data is not only relevant for analyzing the given situation, but also for formulating present and future court aid reports.

1.2 Present state of knowledge

A survey of the literature makes it clear that this institution of criminal justice care has drawn the attention of those individuals involved therewith since its origin in 1915 (founder: Privy Councillor Bozi). This field, however, has scarcely been researched empirically and certainly not analysed extensively.

The empirical investigations which exist, such as the study by Deimling-Triebel, are either obsolete or partially contradictory. They offer no general overview concerning the court aids' practical achievements through the duties assigned to them. Their material contribution consists primarily in information regarding the departmentalization of court aids, their duties and work methods, their official reports, their role during criminal investigations and trials, and the procedural difficulties confronting them.

One major criticism with regard to these investigations is that they have not been conducted using methods of empirical social research, and therefore, do not permit the forming of generalizations.

The research work which has been done, however, was undertaken by individuals who critically analyse their work. A series of investigations employ no empirical material but do investigate theoretically the legal-dogmatic aspects of the court aid's position, responsibility, and procedural role.

Inquiries into how court aides and the individuals employing them view their work are completely lacking. Because of this deficit in information, it was impossible up until now to answer the question concretely whether the court aid actually assists the justice organs in the determination of an adequate decision.

The foreign investigations available give us a valuable insight into the problems existing beyond the national level. Since, however, organization, activity and position of the court aid in proceedings in foreign countries particularly in the Anglo-American states, are regulated differently, the results are not necessarily applicable in the Federal Republic of Germany.

The analyses of the juvenile court aid also offer information concerning the work of the adult court aid. One example thereof is the danger of distorting the offender's personality through deficient court aid reporting. This distortion could attach a stigma to the defendant which is difficult to revise during trial.

The lack of research available in this field necessitates an investigation of some of the unexplained questions regarding court assistance in Germany.

1.3 Current research approach

More and more court aid positions are being established or developed within the prosecutor's office in the individual states of the Federal Republic. As explained, we have some information on the responsibilities and methods of the court aid. We have only fragmentary information, however, on how the court aid functions in practice. It was, therefore, obvious that our research should include an examination of the present value which the court aid has in the criminal justice system.

From an abstract point of view, we want to examine the significance the court aid has for adults during the entire criminal process. We will contrast the attitudes of court aides and these of the responsible judicial organs in order to make a comparative analysis. From a concrete point of view, we are concerned with the question: to what extent do

court aides, through the performance of their duties, actually assist the responsible judicial organs in the determination of a just an appropriate legal response and what does this assistance look like?

Our investigation concentrates on the various duties of court aids' within the criminal justice system whereby the following points will be stressed:

- The participation of the court aid during investigation and trial is the focal point of our analysis. Empirical data is unavailable regarding the work load of the court aid and the type of case in which the court aid is employed. Moreover, little is known about how the prosecutor's office and the court utilize the court aid's report, how frequently the court aide is present during trial, how the trial proceeds when the court aide is present, etc. Many court aides find they are not involved in trials often enough. Therefore, it appears necessary in this respect to question those individuals responsible for their utilization. This question concerning the criteria for employing the court aid will offer information regarding the judiciary's attitude toward, and expectations of the court aid's work and also on the extent to which these expectations are fulfilled. This type of approach is of great importance since it provides information on how the court aid's contribution and procedural position can be improved.

- Contrary to our original plan of examining only the court aid's participation in the investigatory and trial phases, we also will investigate his activity during post-trial proceedings. Previous studies of court aids are directed primarily toward their activity during the criminal investigation. This orientation is particularly difficult to understand since court aids are employed primarily in proceedings after trial. Although some information exists on the role of the court aid during trial, no information is available on his contributions after sentencing. Of primary interest are the criteria for employing the court aid as well as the significance of the court aid's findings for decisions made.

The following hypotheses, which concern the court aid's participation in criminal investigations, clarify the object of our investigation and

specify the questions relevant thereto. They have been developed from the problems, information available, and unresearched questions in this field.

No working hypotheses can be formulated concerning the participation of the court aid during post-trial proceedings since the problems here have never been discussed in the available literature, and the existing facts therefore, are unknown. Here we are primarily interested in developing such hypotheses rather than testing them.

1.4 Hypotheses

1. Although the institution of court aid is established statutorily, its utilization is still relatively unfamiliar to the judiciary. For this reason, the court aid is employed, particularly during criminal investigations, too infrequently.

2. The individuals responsible for employing the court aid, to the extent that they are not bound by other legal directives, usually attach considerable weight to personality research during criminal proceedings and openly confront the ideas of the court aid.

3. The court aid is usually first called upon after it becomes apparent that the offender's personality requires special attention.

4. The court aid usually participates in the investigation after the indictment. The prosecutor, therefore, cannot base his decision on information gathered by the court aid, and although this information is available before trial, the judge's time is too limited to use it sufficiently.

5.1 The court aide's presence during trial is dependant on his personal interest in the case.

5.2 When the court aide is present during trial, some judges react conventionally and others unconventionally. In general, the judge's reaction cannot be predicted. The presence of the court aide, however, is usually positive.

6. The extent to which information on the defendant's personality and

social situation, which is contained in the court aid's report, is introduced during trial depends upon the particular problems surrounding the defendant's case, as well as the quality of the court aid's report. The extent to which the report is used also depends upon the judge's attitude toward the institution of court aid.

7. To the extent the court aid's report is utilized, it provides information on the defendant's personal situation which would not be provided otherwise in a trial. In this way, the defendant's personality, background, and future developmental tendencies can be comprehended more easily. The circumstances illuminated by the court aid more often prove to be exonerating for the accused.

8. To the extent judges make use of the court aid's findings, they perceive them to be of valuable assistance in the elucidation of personal facts and the determination of necessary decisions. The court aid's report furnishes important information on possible legal consequences particularly regarding the question of conditional release.

9. When the court aid's report actually contains recommendations for particular legal consequences, they usually correspond to the decisions actually made.

10. Utilization of the court aid can expedite criminal proceedings.

These hypotheses are not equally amenable to an empirical examination within the framework of this investigation. For example, hypothesis 9 shall be tested only through examining the agreement existing between the court aid's recommendation and the actual sentence passed. The degree of influence on the decision made, which is exerted by the court aid, however, can and shall not be measured. This type of examination would entail a complete investigation of criminal sentencing practice and the innationalities involved therewith.

2. Investigational methods

Two factors were decisive initially in the formulation and implementation of our study as a so-called "pilot study". First, little empirical material regarding the subject matter of the investigation was avail-

able. Second, because of limited time and economic means, the number of questions, technical investigative possibilities and size of the sample investigated were reduced.

The investigation, therefore, was not intended to be a representative study. Its purpose was not to obtain quantifiable results but rather to establish within a particular time period and geographic area, through the use of acquired qualitative material, the plausibility of the hypotheses formulated with respect to the criminal investigation and to formulate new qualitative usable hypotheses with respect to post-trial proceedings.

Description of the investigative phases

The following research methods were used in our investigation: document analysis through the interpretation of statistical material relevant to the court aid and data collection through interviews.

2.1 Document analysis

We made a secondary analytical interpretation of court aid statistics to obtain an impression of their work load in Baden-Württemberg.

The 1978 statistics compiled by court aides in Baden-Württemberg were placed at our disposal at the end of March 1979. Further inquiries were made at the Baden-Württemberg Statistical Office and Ministry of Justice. The entire material was interpreted from April to June, 1979, and the results were subsequently summarized in a preliminary report.

2.2 Data collection through interviews

Our main instrument in examining the court aid's participation in criminal investigations and post-trial proceedings was oral interviews with court aides and the individuals responsible for utilizing their services. The interviews were structured with partially closed and partially open questions. The questions for both court aides and the individuals utilizing their services were harmonized to the extent possible to facilitate a comparative analysis of the collected data.

2.2.1 Questioning of court aides

The purpose in questioning court aides was to learn from their perspective more about the individuals responsible for employing them and the type of cases they become involved in. Furthermore, we wanted to determine which tasks court aides view as essential during the various stages of the criminal proceedings in which they are active. Finally, we wanted to determine the court aide's opinion of the use made of his report and his experiences during those criminal investigations which resulted in his presence at trial.

As provided in the research plan, all of the court aides active in Baden-Württemberg, viz., 22 at the time of our investigation, could be questioned. We conducted our interviews between the end of October and the beginning of December, 1979.

2.2.2 Questioning of individuals responsible for employing court aides

The purpose in questioning these individuals was to learn more about the utilization of court aids and to determine the expectations of and experiences with their services. We expected to find information on where the court aide is called upon, whether the information desired on the personal and social circumstances of the defendant is actually provided by the court aid, how this information is utilized, whether the utilization of court aids is of assistance in decision making, and what this assistance looks like.

Since the public prosecution is usually the individual requesting court aid services, our original plan to question only judges was abandoned. In addition to prosecutors, we also interviewed judicial administrators concerned with matters of execution and pardon because of our investigational inclusion of post-trial proceedings.

In view of our need to limit the number of interviews because of time and cost restrictions, we could not feasibly obtain a representative sample. Therefore, the district court regions of Heilbronn, Heidelberg and Ulm were selected from the 17 district court regions in Baden-Württemberg. The main criteria for this selection were:

- various utilization of court aids during both the investigation and post-trial proceedings
- participation of court aides in the trial.

In these three district court regions, we planned to question all prosecutors involved with adult criminality, all judicial administrators concerned with matters of execution and pardon, the presiding judge of the main criminal court ("große Strafkammer"), the judge of the lay assessor's court ("Schöffenrichter"), who sits on both the local and district court benches, and the state attorney general.

With few exceptions, based on sickness and professional hindrance, all persons took part in the investigation. In the three district court regions, 36 prosecutors, 13 criminal judges and 23 administrators were interviewed. Three state attorney generals were informally questionned. The interviews were conducted between the middle of March and the beginning of May, 1980.

3. Empirical findings

Our evaluation of the statistical materials gathered on court aid led to the following conclusions:

- Since the establishment of the first court aid position in Ulm in 1968, the utilization of court aid services has been expanded continually. At the time the institution of court aid was statutorily established (1.1.1975), eight of our 17 public prosecutors already had their own court aides. Today, only the court aid position at the Rottweil prosecutor's office remains unoccupied. A total of 22 court aides are actively employed.

  The statutory goal of generally introducing the institution of court aid, has almost been achieved in Baden-Württemberg.

- The increasing tendency in the practice of criminal law administration is to involve the adult court aid in criminal proceedings. With the exception of a retrogressive quota between 1970 and 1972, court aids have received more assignments each year. In 1978, the year of our research, a total of 2.831 requests were made for court aid reports.

- In spite of this tendency, court aid participation during criminal investigations is limited in percentage. A comparison of criminal law statistics revealed that in 1978 the court aid was involved in only 1.6 % of all criminal cases judged.
- Earlier, court aids were employed mainly during post trial proceedings. Since 1975 and the statutory enactment of the institution of court aids, a change gradually has taken place. Today, the court aid is employed during the investigation equally as often as in the post-trial proceedings.

Reliance upon the court aid during the investigation and post-trial proceedings varies greatly in the different district court regions. In approximately half of these regions, particularly in the Württemberg area, the majority of court aid assignments involve the investigation phase. In the other district court regions, more of these assignments involve proceedings relating to the execution of sentence and granting of pardon.

- The court aide's workload varies greatly according to district court region. Approximately half of the court aides active in Baden-Württemberg receive more than the optimal monthly case load of 15 assignments, while the other half still receive less than this number.
- The primary employer of the court aid for adults is the public prosecutor. Of the 2,831 assignments granted to court aids in 1978, 2,208 (78 %) came from the prosecutor's office, 619 (21 %) from the courts, and four (0.1 %) from the Ministry of Justice acting in its capacity as pardon board.
- The court aid receives in greatly varying frequencies, assignments for every type of criminal case. These assignments are concentrated more on serious and average serious criminality.
- The court aid receives the most assignments for property crimes (of the total 2,831 assignments in the year 1978, 1106 (39 %) involved property offences).

The court aid, however, is involved in criminal investigations percentually most often in cases of violent criminality (approximately 19.3 % of the investigations concern robbery and blackmail and 25.8 % concern crimes endangering life).

The results obtained from our document analysis do permit some speculations regarding the frequency of particular events. The data are not differentiated enough for a detailed examination of the hypotheses relating to the participation of the court aid during criminal investigations. They did furnish, however, information which is important to the development of interviews directed toward empirical research in this field.

V. SANCTIONING/SENTENCE EXECUTION

CRIMINAL LAW AND GENERAL PREVENTION

Hans-Jörg Albrecht

1. Introduction

The general preventive function of criminal law is an essential component of current normative theories on punishment and sentencing. These theories incorporate the ambitious demand not only for retribution of the offender's guilt and rehabilitation of his moral character, but also for the deterrence of potential criminal offenders and the maintenance and confirmation of legal norms in society.

The purpose of this investigation is to examine some of the aspects of the complex of "general prevention" and to make an empirical evaluation thereof available.

Subject-matter of the investigation was:

1. the function of criminal law as a "reinforcer" of social norms in its continual elucidation and confirmation of social rejection of certain behavior through codification and sanctioning,

2. the fear or anxiety generated through criminal law sanctioning and the extent it influences the decision not to deviate from a social norm.

In addition, data were recorded on the general knowledge of criminal law sanctions (particularly fines) and the attitudes toward the fine as a penal measure. If punishment is to emphasize social rejection of particular behavior, then the question, e.g., whether the fine, which is imposed in four-fifths of all criminal cases, is recognized as an appropriate legal response, is directly relevant for determining the realizable "functionality" of current sanctioning practice.

The increased interest at the end of the 1960's in empirical theories on "general prevention" or "deterrence" did not arise only from the desire

to determine the efficiency of criminal law sanctions but, rather, from the independent interest to find a new theoretical determination of the conditions of human socialization. The emphasis on consensus, to the disadvantage of conflict-oriented approaches, in the explanation of social behavior, primarily typified the endeavors of the American social sciences in the first half of the 20th century. American social theoretical analyses were based in particular upon the idea that successful socialization results in identity between social demands and personal needs and desires. If socialization is successful, this identity eliminates the potential for conflict and obviates the need for social control through criminal law. Under this theory, non-deviant behavior was explainable as the natural assimilation of values norms and, therefore, as conformist behavior. As a consequence, theories of criminality were conceived as explanations of pathological phenomena, which occured during association and socialization processes, or of the individual's inadequate or non-adjustment, which was caused by structural social pathologies, unusual family situations, or specific personality deficits. Criminal policy programs, logically grew out of the assumption that conformity and deviation could be directed through internal personality controls obtained through the course of socialization. The concepts of resocialization and rehabilitation assumed that the correctability of mistakes occuring during socialization and the introduction of supplemental socialization processes could function to avoid criminality and support conformity.

The social sciences generally cover a broader field than normative theories of general prevention since they are not limited to the study of criminal legal norms and sanctions alone, but also are concerned with the control and compulsion resulting from these sanctions and the effect therefrom on conformity and the maintenance of "social order".

Therefore, the present investigation includes not only those actions which are covered by criminal law norms but also those which could be evaluated as infractions or mere deviations from so-called social, non-codified, norms.

2. Presently available research

Previously conducted investigations of general prevention on deterrence hypotheses in part show the tendency to include only "deterrence variables" and to exclude other variables, which are derived from theories of crime and conformity. The relevance of these latter variables to the occurrence of deviant or conformist behavior is recognized in another connection (Minor 1978, p. 29; Tittle 1980, p. 169). In spite of several early attempts to integrate theories of deviance and deterrence, the empirical-theoretical research on general prevention developed essentially into a self-sufficient complex. The exercise of state and social force as a complement to the use of internal controls to guarantee the observance of norms was considered in the control theory of deviant behavior (Hirschi 1969). The labeling theories also emphasized the significance of formal social control in the development of deviant sub-cultures and behavior models. Only recently, however, has an intensified examination of more complex theories occured in this direction (see Tittle 1980).

Investigations regarding general prevention were conducted particularly on the basis of the "utility theories". Bentham's classical theorem of "deterrence", which stressed the individual's hedonistic essence, apparently still has lost none of its attractiveness. The concept of conformity and deviance as a function of utility was primarily the basis for the so-called economic theories of deterrence (see Heineke 1978; Vandaele 1978; Landes 1979). The economic theories basically assumed that an individual acts with the goal or motive of maximizing gains. Therefore, before he undertakes or does not undertake a certain activity, he rationally weighs the advantages and disadvantages that are likely to result therefrom. Since decision of this kind always includes several criteria which are either unknown or not known with absolute certainty, the negative consequences of the action, i.e., punishment, according to the economic deterrence model, must be increased in order to increase clearly the disadvantages of the action and thereby influence behavior in the direction of conformity.

Similarly constructed are a series of social psychological and sociological attempts to explain the effects of the threat of criminal law sanctions upon behavior, which, being derived from general behavior

theories, largely are based on the individual's rational calculation of his actions (see in this regard Peuckert 1975; Wiswede 1976). The processes of weighing utility, however, are not explained in these approaches. In this regard, Beyleveld (1979, p. 219), although assuming that deterrence is the result of a process in which an individual decides that the personal gains to be obtained by not engaging in a deviant action exceed those to be obtained from engaging therein, still stressed that an empirical identification of deterrence would be impossible until one could explain exactly how individuals regard utility, i.e., how they weigh the advantages of different actions (see in this connection also Andenaes 1975, p. 14 f.).

Another theory, which sought to explain the deterrent effect generated by the threat of criminal law sanctions and to incorporate this explanation in a general theory of criminality, is the above mentioned control theory. Here, the attempt was made to integrate theoretically both the criminality and deterrence theories. Tittle and Row (1974, p. 461) emphasized the significance of such an integration in their reference to the possibility of developing a consistent and complete theory of deviant behavior through the addition of the variable "fear of punishment" as an explanatory factor. Minor's control theory (1975, 1978) is based on Hirschi's assumptions (1969). Three independent variables are included: "attachment to conventional others", "belief in legal legitimacy", and "fear of punishment". The intention here was to include the three essential, theoretically important dimensions of behavior. "Fear of punishment" represents rational, cognitive behavior; "belief in legal legitimacy" represents congruency between personal values and actual behavior; "attachment to conventional others" represents a measure of the degree of "social solidarity".

"Situational influencee" upon behavior are excluded in these, as well as in all other existing theoretical approaches (see, regarding their significance, e.g., Short, Strodtbeck 1965). Specific situations, e.g., the group situation and its effect through processes relating to status and adaptation on the development of deviant and conforming behavioral styles, function independently from variables of internal and external behavioral control. Although their significance is recognized, their influence could not be measured adequately and they, therefore, could ne-

ver be incorporated as an explanatory factor.

When we consider the results implicit from past reeearch deterrence hypothesis, a considerable number of partially contradictory statements become apparent. Accordingly, the deterrence hypothesis, in its narrow sense states:

The greater the probability, severity and rapidity of eanctione for deviation from criminal law norms, the lees frequently such deviations occur.

Following the orientation model suggeeted by Tittle and Logan (1973), we can classify the empirical findings relating to thie hypothesis into the following:

1. those concerning the type of norm,
2. those concerning the characteristics of deviant/criminal behavior
3. those concerning the characteristics of an offender/non-offender
4. those concerning the characteristics of a sanction/sanctioning practice .

The differentiation between behavior "mala per se" and behavior "mala quia prohibita" (Andenaes 1966, p. 357) must be considered in relation to the type of norm. This differentiation is the basis for the following assumption. In cases of congruency between legal and social norms (mala per se), formal law supports the moral values and social behavioral codes, or vice versa. Therefore, general prevention is not, or seldom, necessary. In the remaining cases (mala quia prohibita), norm observance can be achieved only through the threat and imposition of sanctions since it is not, or at least not entirely, incorporated into the moral value system of society. Research here are various and inconsistent even in cases of similar or identical offences (Teevan 1976; Waldo, Chiricoe 1975; Silberman 1976).

The differentiation between "instrumental" and "expressive" offences, (e.g., Chambliss 1967) which must be considered in relation to behavioral characteristics does not indicate which activities can be influenced through "deterrence", as is the hypothesis for "instrumental" acts, and

which should not be influenced through criminal law sanctions (Thomas, Williams 1977). Jensen, Erickson, and Gibbs (1978) found the capacity for differentiation to be well confirmed in a modified form and under consideration of the interaction between the type of act and the degree of binding to the norm.

In a considerable part of the research, an attempt was made to identify the characteristics of potential offenders for whom deterrence was required, and of conforming individuals, for whom deterrence was not required, with the goal of differentiating between these two groups. The variables that are empirically relevant to this identification differ depending on the investigative approach. Meier (1979) determined that the group of conforming individuals, who attributed their conformity to the threat of sanctioning, i.e., the fear of punishment, did not differ from other groups of individuals in respect to age, sex, race, marital status, and profession. Jensen (1978) discovered that women differ significantly from men in their evaluation of perceived "costs" of criminal behavior, i.e., effects of sanctioning (similarly Anderson 1977; Tittle 1980). Graemick (1976) established a connection between age and the influence of perceived probability of prosecution for traffic violations. Furthermore, the following variables were identified as ompirically relevant for the explanation of conforming behavior: the degree of "attachment to relevant others" (e.g., parent, teacher, employer, family or friend) "attachment to the conventional value system", and, contrarily "attachment to deviant/delinquent value systems", as well as,strength of motivation to act deviantly (see, the investigation by Hirschi 1969; Hindelang 1973; Silberman 1976; Tittle 1977; Meier 1977).

The most consistent results are available regarding the characteristics of a sanction/sanctioning practice. In an overwhelming number of existing empirical investigations, a negative correlation was found between the objective, or subjectively perceived, probability of prosecution and the officially registered or self-reported frequency of criminal behavior, or subjectively perceived willingness to engage in criminal behavior. In other words, the greater the likelihood of prosecution, the less the likelihood of criminal behavior occurring. It was also established with similar consistency that this correlation is not dependent on the objective, or subjectively, severity of the sanction (Silberman

1976; Peck 1976). In other empirical investigations, e.g., Erickson, Gibbs 1977, merely a weak connection between the objective, or subjectively perceived, probability of prosecution and the crime rate was established. This correlation, in fact, disappeared when the variable "social rejection of criminal behavior" was introduced. Anderson, et al., 1977, considered other variables relating to the sanctioning system: these are "informal sanctions", although in reliance on Durkheimian thoughts about "mechanical solidarity" an interdependence between formal and informal sanctions is assumed. Normative social values are strengthened through formal sanctions in that informal social contempt for deviation is mobilized and intensified. An investigation of the influence of subjectively perceived formal and informal sanctions, viz., through family, friends or so-called relevant others, upon deviant and conforming behavior revealed the empirical relevance of both variables. In Tittle's investigation (1980), however, informal sanctions were more relevant to the prognosis of future deviant behavior. In this regard, one can state with certainty only that the severity of punishment, regardless of how it is ascertained, has no influence upon the rate of crime, self-reported frequency of criminal behavior or self-perceived willingness to engage in criminal behavior.

Generally, the objective or subjectively perceived probability of prosecution took on greater relevance when it was introduced into more complex models, which included "extra-legal" factors. Alcorn (1977) examined various behavior models, which were derived from theories on social control, social learning, and deterrence and found no empirical confirmation for the model derived from deterrence theory (similar hereto, Meier 1977). This finding is also confirmed in Minor's research (1978, p. 40). The coefficients derived therein reveal a relatively weak connection between the independent variable "fear" and the dependent variable "criminal behavior".

3. Methodological problems of investigation

The empirical investigations regarding general prevention ultimately do not differ in their investigative methods. The question, however, remains how the dependent variable, i.e., behavior, should be measured.

Multiple aggregate data on registered criminal offences have been used often in comparisons of geographical units, which vary according to sanctioning practices, and of time periods, which vary according to changes in sanctioning practices. However, since the use of such data presents validity problems, data from victimization surveys have been used increasingly in recent years to construct indices for the probability of prosecution, the probability of punishment and the frequency of criminal offences (see in this regard, e.g., Smith 1978; Goldberg 1978). A further attempt to measure the variable "behavior" adequately, led to data collection through self-reported delinquency surveys (Anderson, Chiricos, Waldo 1977; Peck 1976; Silberman 1976). Although validity problems exist with respect to the application of data gathered in surveys of victims and offenders, these data are nevertheless more relevant here than those obtained from official crime reports.

Perceived behavioral preparedness, or an individual's subjective assumption concerning his future behavior, also has been used frequently as a measure of the dependent variable (see Stewart, Hamsley 1979; Tittle 1980). Of course, the question arises here as to what extent are an individual's views, attitudes or perceptions adequate indicators of behavior (see as summary Benninghaus 1976).

A considerably greater problem is presented, however, regarding criterium of "general prevention". Conventional "deterrence variables" generally have been defined in terms of the probability and severity of punishment. The probability of prosecution is a product of the relationship between criminal complaints, which were actually filed, and criminal actors, who were either discovered officially or through surveys of unreported crime. The probability of conviction is a product of the relationship between the number of crimes investigated and the number of individuals sentenced. The severity of punishment is a direct result of the severity of criminal sentences. The objection raised against the validity of officially released figures on investigation and sentencing, i.e., objective data, is based on the argument that deterrence, when defined as the production of fear, is a psychic process and, therefore, can be measured only through an individual's subjective assumption concerning the probability and severity of punishment, as well as his personal evaluation of the severity of the sanction. This argument

is plausibel, since official figures regarding the probability of prosecution or severity of sanction are not usually known publically (see in this regard Erickson, Gibbs 1977, p. 254; Parker, Grasmick 1979). According to Gibbs (1975), "deterrence" only exists when an individual refrains from engaging in an activity because he fears punishment. Deterrence, thereby, implies a decision against a particular action in response to a subjectively assumed riek of punishment. Beyleveld (1979, p. 206) views deterrence similarly in that he defines it as occuring only when a person "refrains from that act because he fears the implementation of the sanctions and for no other reason".

However, when "deterrence" is eo defined, it can no longer be discerned since one is forced to conclude from the absence of an activity that "deterrence" is the motive therefore (Jeffery 1979, p. 101). Gibbs' argument that regardless of how the individual behaves, whether he doee or doee not engage in an activity, the motives for his behavior cannot be interpreted conclusively resulting from "deterrence" (1975, p. 12) leads to two conclusions:

If "deterrence" is conceivable only as a psychical process or condition, then "deterrence" must be investigated as a perception or attitude variable through interviews regarding the individual's estimation of the probability of being prosecuted and punished for committing a crime.

This approach would involve the recording of, e.g.:

1. the individual's knowledge of the criminal nature of an act,
2. the individual's knowledge of the punishment threatened for this act,
3. the individual's perception of punishment as being probable and severe,
4. the individual's actual behavior.

However, even if data were available on the above four factors, one still could not conclude that the non-occurrance of a deviant act were causally related to the aseumed severity/probability of punishment, since it also could be a function of the personal recognition of the normative system or of a particular norm. Therefore, "deterrence" can be considered only as one part of a general "action theory". In other

words, one must exclude theoretically that the non-commission of an act was caused by something other than the fear of punishment. Such an examination of causality in the form of an experiment would be methodologically conceivable although rarely realizable (see in this regard the experiments conducted by Buikhuisen 1974; Törnudd 1968; Tittle, Row 1973). However, if this theoretical exclusion is impossible, then one can proceed only by introducing more variables essential to behavior or determination in order to discover which causal relationships are plausible and which are not.

If the answer to the question "does punishment deter?", or "what type of sanction implementation produces 'fear'?" presupposes an eventual, identifiable, causal connection between sanctioning and the non-occurrence of deviant behavior, then the recording of data must be rethought in this connection. Not only the validity problem, but also the argument that the assumed causal effect of judicial response on the number of reported crimes can be interpreted inversely are valid reasons not to rely on officially registered crimes in data collection. On the other hand, data collection through interviews concerning both the individual's subjectively assumed probability and severity of punishment for the commission of certain criminal offences as well as his actual commission thereof has been objected to as methodologically untenable since this form of investigation leads to a causal conclusion between a presently felt threat and past performed behavior (Tittle 1980, p. 35). The attempt to circumvent this problem by isolating those individuals influenced by the threat of sanction through their own responses that this threat was the reason for their conformity faces the objection of "shared misunderstanding". A motive given presently for past behavior can result from the individual's false interpretation of the reason for his actions (Jensen 1979; Minor 1978). The attempted solution to this problem through recording past attitudes (Teevan 1976) or perceptions of future behavioral intent (Erickson 1976; Stewart, Hemsley 1979; Tittle 1980) is also subject to objections since information available regarding the stability of a person's attitudes over an extended period of time reveal limitations on this type of approach (Anderson, Chiricos, Waldo 1977). On the other hand, this method arranges the variables into a temporally suitable sequence of causality such that their application in cross-section studies appears feasible. The problems discussed here,

however, indicate that the demand for complexly constructed longitudinal studies based on repeated surveys is justified (Minor 1978, p. 39).

4. Theoretical approach of the investigation and selection of variables

The problems arising in connection with investigations of the general preventive efficiency of criminal law sanctions reveal that the danger of false interpretation of recorded data can be kept to a minimum only when a theoretical approach, which contains further essential determinants of human behavior other than the "deterrence variable" is applied.

The control theory presented above appears to be relatively well-suited for the description and explanation of the general preventive influence of criminal law norms and sanctions. Behavior is accordingly a function of "external control" and "inner personality, i.e., autonomous control". External control is represented through the degree of fear of being punished for particular deviant behavior. Internal control is represented through the degree of individual commitment to particular value and norm systems. Internal control is divided into three variables: "commitment to the relevant norm", "legitimacy" associated with the norm, and "commitment to the value system".

In addition to the "control variables", the following personality variables were included: social strictness, rigidity, willingness to take risks.

"Experience with criminal law sanctions and deviant behavior", as well as "age", were selected as further essential variables.

All potential influences affecting behavior certainly are not covered by these variables. The relative significance of general prevention in the sense of "fear of sanctioning", however, should be assessible for the prognostication of the occurrence of deviant behavior.

5. Variable operationalization

In this investigation, the criterion variable "behavior" was treated as "behavioral preparedness". This method of variable operationalization was chosen in order that causal relationships between present personality disposition, perception, and attitude variables could be formulated with the criterion variables. The interviewee was to be induced to communicate his conceptions about possible future behavior by the question concerning his present willingness to behave in a certain way. The possibility of assessing exactly the degree of correspondence between expected behavior and actual behavior is lacking. The subjectively accepted behavioral preparedness, however, may be interpreted at least as a condition preceeding the actual undertaking of an act (similar Gibbs 1975). A comparison of persons, who admitted committing past deviant acts, with the "non-burdened" group revealed that, on the average, the former perceive their behavioral preparedness as higher. Independant from this finding, a careful interpretation of the variable "behavioral preparedness" appears completely reasonable.

The questionnaire consisted of fifty situations for acting. The subject was to classify each situation according to the extent to which he could conceive of doing such a thing himself. The possible answers were: "would do under no circumstances", "would do only in particular circumstances", "would probably do", "would do with absolute certainty". The actions, a priori actions deviant from norms, ranged from deviations from social norms, e.g., "someone comes too late to work because he celebrated too long the previous evening", through deviations constituting infractions, e.g., "someone who clearly sees that no other traffic is coming drives at night through a red light" up to deviations constituty petty crimes, e. g., "someone takes tools valued at 100 DM from his place of employment", "someone, who has had tco much to drink, drives his very intoxicated friend home so that the latter must not drive himself".

The extent of "external control" was made operational through the subject's perception of the probability of punishment with respect to the deviant acts mentioned above.

Commitment to norms was measured through the subject's evaluation of the severity of the given acts. The possible answers were: "very bad","bad", "not so bad", "not bad at all".

The degree of "legitimacy" of the respective norms was investigated through the question if, and to what extent, the subject considered a criminal law sanction to be reasonable (Tittle 1980). The degree of "commitment to the conventional value system", was determined using the socio-economic status of the subject (professional position, income, level, education (see Minor 1978).

6. Data collection

Oral interviews were conducted on a random sample within the population (limited to Baden-Württemberg). Only German male citizens who were born before 1.1.1960 and after 1.1.1900 were included. A total of 846 interviews were conducted in the summer of 1978.

7. Results of the investigation

The main point of the investigation was to determine the relative significance of "fear of sanctioning" for the prognostication of deviant behavior. An attempt, therefore, was made to isolate the independent influence of the variable "fear of sanctioning". In order to determine this influence, the connection existing between the seven independent variables and the variable "behavioral preparedness" was investigated through multiple regression. The variables included were: "commitment to norm", "fear of sanctioning", "legitimacy of norm", "socio-economic status", "experience with deviant acts and punishment", "rigidity", "willingness to take risks", and "age".

The partial coefficients (Betas) existing between the single variables and behavioral preparedness for five different acts may be abstracted from Table 1. Here, it is revealed that the variable "commitment to norm" is the most relevant for the prognostication of deviant or conforming behavior. On the other hand, "fear of sanctioning" and all other variables included, are of secondary importance. This structure

Table 1 Correlations between 7 independent variables and behavioral preparedness in regard to 5 deviant acts (Betas)

act	commitment to norm	fear of sanction	legitimacy of norm	socio-economic status	experience with deviant acts and punishment	rigidity	willingness to take risks	age	R	R^2
1.*	.30	.09	.17	.02	.05	.16	.00	-.23	.56	.31
2.*	.26	.07	.04	.03	.02	.04	.04	-.05	.33	.11
3.*	.46	.06	.17	.04	.09	.01	.00	-.08	.60	.36
4.*	.30	.05	.07	.08	.11	.07	.02	-.05	.40	.16
5.*	.36	.06	.02	.03	.07	.09	.09	-.08	.47	.22
$\bar{m}$	.37	.07	.09	.04	.07	.07	.03	-.10	.47	.23

1.* "Someone uses foreign coins of lesser value to purchase cigarettes from a cigarette machine".

2.* "Someone uses the auto of another person without his permission".

3.* "Someone who has had too much to drink, drives his very intoxicated friend home so that the latter must not drive".

4.* "Someone takes tools valued at 100 DM from his place of employment".

5.* "Someone damages an illuminated highway marker at night while intoxicated and does not report the damage".

of the relative significance of the variables corresponds, with only insignificant deviations, for all of the acts considered. These findings indicate that variables of "internal control" are of greater importance in explaining conforming behavior in the general population than the variables of external control, i.e., deterrence through criminal law sanctioning.
A differentiation according to type of act covered by the norm, i.e., expressive or instrumental, also did not result in any change in the relative importance of the variables.

Our finding, that "fear of sanction" contributes little to the explanation of conforming or deviant behavior in general, does not mean that no sub-groups can be identified which in fact do react to a high risk of punishment. If the connection between behavioral preparedness and perception of the risk of punishment is investigated for the group of persons with a weaker commitment to norms, regarding the act "fleeing from an accident", we see, as is evident in Table 2, that individuals who perceive the risk of punishment as being high differ significantly in behavioral preparedness from persons who perceive the risk as being low. If the assumed risk of punishment is kept constant in these cases, then a greater capacity for differentiating commitment to norms is revealed. Fluctuations in behavioral preparedness with respect to the acts considered, show similar tendencies for various weights of the variables. While for the group of persons, who evaluated the act as "not so bad" or "not bad at all", behavioral preparedness decreased considerably with the perception of a higher risk of prosecution, the group, which evaluated the act as "very bad" or "bad", and which had considerably lower behavioral preparedness initially exhibited delayed sinking in the value of this variable. We can conclude, for acts of petty criminality, infractions and social norm violations, which were investigated here, that "conformity" in general is a function of commitment to norms, i.e., of congruency between personal values and the normative system, and that sanctioning, or rather the fear of sanctioning, functions (or does not function) only marginally according to the subjectively assumed probability of punishment and only in the group of individuals whose commitment to norms is weak.

We further ascertained that unreported offenders do not differ from non-

Table 2 Preparedness to "flee from accident" in cases in which the act was evaluated as "not so bad/not bad at all" (weak commitment to norms)

		Perceiving the risk of punishment					
		low		high		total	
		abs.	%	abs.	%	abs.	%
behavioral preparedness	not present	62	21,8	19	35,8	81	24,0
	present	222	78,2	34	64,2	256	76,0
	total	284	100,0	53	100,0	337	100,0

Chi^2 = 4.807, $p < .05$
DF = 1; c-Korr = .17

Table 3 Preparedness to "flee from accident" in cases in which a low risk of prosecution was perceived

		Evaluation of the act as					
		not so bad/not bad at all		bad/very bad		total	
		abs.	%	abs.	%	abs.	%
behavioral preparedness	not present	62	21,8	213	60,0	275	43,0
	present	222	78,2	142	40,0	364	57,0
	total	284	100,0	355	100,0	638	100,0

Chi^2 = 93.763, $p < .01$
DF = 1; c-Korr = .51

offenders in their assumptions concerning the risk of punishment (the types of offences, however, were not differentiated). In fact, assumptions concerning punishment risk were the same for individuals already sanctioned by the criminal law and for those not yet sanctioned, for those punished by fines and those punished by imprisonment. When both of these latter groups were considered together it was revealed that they do not even differ from the entire random sample in their perception of the risk of punishment.

8. Knowledge of the law as well as attitudes toward criminal law sanctions in a random sample taken within the population

In order to answer the question concerning the extent to which criminal law sanctions contribute toward the clarification and confirmation of social rejection of certain behavior, as well as prevent the legitimation of deviant behavior and produce moral aversion to injustice, which effect is a part of the normative theory of general prevention (Jescheck 1978, p. 53), the investigation of attitudes and views toward criminal law sanctions is indispensable. The recording of views toward fines revealed that a large number (78.2 %) recognized the fine as a "reasonable punishment". In this connection, individuals, who indicated that they had been the victim of a criminal offence did not differ from non-victims. These two groups, however, did differ in their evaluation of fines as compared to imprisonment. Victims of criminal offences assessed the fine more often as "too lenient". Although the fine is recognized generally as an appropriate penal sanction, almost two-thirds of the individuals questioned expressed mistrust in the application thereof. This mistrust was indicated in the suspicion that "rich people are more likely to be fined than poor people". Nevertheless, approximately two-fifths (39 %) of those persons questioned were of the opinion "that one should impose fines more often as a substitute for short terms of imprisonment". This point of view remained constant regardless of how high the proportion of fines to total sanctions imposed was estimated. These data can be interpreted as expressing a basic satisfaction with criminal law sanctioning practices. The dimension "fear of crime" (measured on the basis of the perception of an increasing threat of being the victim of a criminal offence as well as the evaluation of criminality as in-

creasing) had no influence upon the classification of the fine as reasonable or unreasonable. Moreover, these variables do not differentiate the groups which advocate or do not advocate a further expansion of the fine as opposed to short prison terms.

The relevance of the result that more than three-fourth of those persons questioned recognized the fine as a "reasonable punishment" is reinforced by the fact that approximately 70 % of the interviewees assumed correctly that fines were imposed in an overwhelming majority of all cases in which punishment was sentenced.

We also examined attitudes toward the 1975 fine reform, which converted the imposition of fines to the day rate system. It was not surprising that over four-fifths of the individuals questioned (82.1 %) knew nothing about such a change. Merely 5 % indicated that they were aware of this essential innovation in the fine system. In general, however, one can maintain that in the Federal Republic of Germany the fine is recognized by the population as a form of "criminal law sanctioning" and that this social recognition is related to both its qualitative and quantitative application.

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THE CURRENT STATE OF ADULT IMPRISONMENT AND PRE-TRIAL DETENTION IN THE FEDERAL REPUBLIC OF GERMANY

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1. Subject, problems and purpose of the study

1.1 Subject of the investigation

Our investigation is directed toward a comprehensive analysis of current adult and pre-trial detention practices in the Federal Republic of Germany. We included all of the agencies involved with these two criminal law sanctions through the use of written questionnaires. In several selected detention facilities, we conducted oral interviews of both staff numbers and inmates as a supplement to the information gathered on the problems relating to the modern prison system.

The project is limited to the imprisonment and pre-trial detention of adults. We find it logical to limit our investigation to those situations regulated by the statutes on punishment execution. Since this statutory basis is lacking with respect to juvenile criminality, we have not considered the detention of juveniles. Pre-trial detention is included, although it also lacks sufficient statutory regulation, because imprisonment and pre-trial detention often are within one institution.

1.2 The current situation in adult prisons in the Federal Republic of Germany

The execution of adult punishment has experienced penetrating development and alteration in the last fifteen years as a result of criminal law policy trends within West Germany but also on the international level.With respect to the official goals of punishment execution, it can be said that the concepts of treatment and individual special prevention were incorporated here statutorily at a time when criminal policy in the USA and Skandinavia was moving away from a "treatment ideology"(Hilbers/

Lange 1973) cf. summary, Kaiser 1977). The German Law of Punishment Execution (StVollzG) is, on the one hand, an expression and result of the general climate of reform at the end of the 1960's. On the other hand, it reveals an interest in the traditional type of custodial control. It includes measures directed toward security and order, reflects social attitudes regarding retribution and deterrence, and satisfies popular expectations of punishment appropriate to the crime committed. The penal goals of incapacitation and deterrence, therefore, which are preeently more intensely emphasized in the USA, also are included as an acceptable orientation for the Federal Republic of Germany, particularly with respect to politically motivated offenders and certain drug offenders. The concrete changes in the German Law of Punishment Execution point to opposite tendencies, which can be seen from the extremes of social-therapeutic treatment units, and high-security terrorist institutions or wards.

The German Law of Punishment Execution was received differently in the literature than in practice. The hopes for a statute more dedicated to reform as represented in some of the bills presented, were disappointed. The law contains only discretionary instructions regarding the form of punishment execution. Furthermore, the commencement of more cost intensive requirements for prison reform was postponed to a later, partially indefinite date (see summary of Kaiser, in Kaiser/Kerner/Schöch 1978, 49 f.). The reform was viewed by sceptics merely as a legitimation of existing practices (Berger 1974; Wetter 1978). This attitude was strengthened through the federal uniform administrative instructions, which simultaneously came into effect, and which excessively limited, according to critics, the existing latitude for discretionary decisions (Frellesen 1977; Jung 1977; AK StVollzG 1980).

The majority opinion, however, praised the new law as being open to reform (Busch 1977; Jung 1977; Kerner 1977; Rehn 1977; only Grunau 1977 criticised the law as too permissive) in that the trend began in the 1960's regarding punishment execution could be continued and the development of a treatment-oriented punishment could be realized.

In practice, the new law was criticised because of the increased work load necessitated by more reform oriented and relaxed prison rules.

The central question associated with penal reform concerns the way treatment-oriented directives can be transformed into prison practices. A conflict in goals obviously exists between continuing security interests, which have been validated particularly in cases of incarcerated terrorists and other special offender groups such as drug addicts and so-called prison agitators, and rehabilitative interests. Whether the orientation toward treatment contained in § 2 StVollzG can be implemented under the given constructional, personnel, and financial conditions, has been doubted (Federl 1979). This problem increases as the different penal institutions become confronted with the pressure of overcrowding which prohibits the minimum requirements for a treatment-oriented prison from being fulfilled. It, therefore, appears necessary to make an analysis of the existing architectural structure of penal institutions with emphasis on possible changes to provide for group living arrangements, free time activities, professional training, etc. In addition,the treatment postulate naturally presents a particular range of personnel problems involving the employment of psychologists (see, for example, Kury/Fenn 1977; Classen 1978), social workers (see Müller-Dietz 1972; Hohmeier 1974; Spittler 1977; Quensel 1977), and teachers. The solution to this problem entails new structural conditions which in turn present new problems such as role conflicts and professional insecurity among the general prison staff (see Hammermann 1975).These conflicts and insecurities present a burden which seems to be partially intensified through the new punishment execution law.

Drug addicts, foreigners, political offenders, prison agitators and security custody inmates (Sicherungsverwahrung, § 66 Penal Code), are considered to present particular problems with respect to both the goals of treatment and security.

The drug problem in prisons (Kindermann 1979) is a relatively new phenomenon. It presents the demand for both adequate drug adiction treatment and security maintenance in view of increasing drug trade and consumption. This problem frequently necessitates a restrictive environment with prison lock-ups. In several institutions, increasing restrictions and limitations have been undertaken for security reasons although exactly these restrictions make treatment more difficult.

Foreigners in prison have been described as under-privileged (Nährich 1975). This description could be based on the restricted leniency applied in many cases threatened with deportation. The disadvantaged position of these prisoners, however, also could result from inadequate supervision because of language barriers and non-suitable treatment personnel.

The situation of political offenders in prison, and pre-trial detention repeatedly leads to intense controversy in the mass media. A description of particular security and treatment measures, nevertheless, is the exception (Rasch 1976) in the criminological literature.

So-called prison agitators have always presented a particular problem for prisons, although the problem appears to have decreased with increasing liberalization. Riots and prison mutinies, often recorded in the 1960's, have occured less frequently in recent years. This decline is due to the fact of the introduction of special social-therapeutic treatment units, e.g., in Hamburg-Bergedorf and Berlin-Tegel (see Rehn 1979; Dünkel 1980), which are oriented specifically toward this problem, and due to the general liberalization within the German prison system.

Security custody (Sicherungsverwahrung), which has become quantitatively insignificant (at the end of 1979 there were only 254 such cases), causes frequent difficulties within prisons because of the isolation required in § 140 I 2 StVollzG. The "special treatment measures" are said not to differ in practice from those applied in other prisons. For this reason, they have been questioned as a "labelling swindle" (see in this regard Hanack in LK, Nr. 17).

Another group requiring individual attention is women, who because of their low incidence as prisoners led various federal states to the formation of so-called prison communities, in the sense of § 150 StVollzG. This response, depending upon the circumstances of this new environment, can cause a greater separation of these prisoners from their former social environment and, thereby make the preparations for their release more difficult.

A further problem area for the current prison system is differentiation

and classification. Here, the decision must be made concerning the assignment to a closed, open (see Rüther 1978) or social therapeutic institution (see Dünkel 1980). In addition, one must concentrate on the implementation of treatment studies and the setting-up of institutional plans. In this connection, the role of central diagnostic institutions, e.g., in Nordrhein-Westfalen, Niedersachsen and Baden-Württemberg (see Geiger 1977) is problematic not only because of the negative effects resulting from classification, but also because of the problems arising from the effectuation of treatment plans in the receiving institution (Neufeind 1979).

Important to the employment and professional training of inmates is simple information about the supply and demand for vocational training positions, number of persons actually employed, the differentiation of prison industries according to prison administration or private management, the number of persons unemployed, etc.With the exception of single investigations (see Hammermann 1977) this information is lacking. The extent to which prison employment consists of only manual activities is also unclear. It also would be interesting to obtain information about the various play levels in relation to the remuneration directives enacted in § 43 StVollzG.

The possibly justified criticism by Wolff et al. (1978) that prison facilities are inadequate in proving modern professional training which can be of use after the individual's release, is based on limited reports and observations of only a part of the prison system. Wolff also refers to the unclear criteria for the selection of individuals to take part since relatively few of those who enter the programs actually complete them. Therefore, he maintains, the high success rates of the participants must be relativized. The problem of the prisoners' motivation and stamina is hereby addressed. This problem necessitates a deeper investigation into the extent to which existing training facilities are adequate. What appears important here is that vocational and educational programs seem to promise success only when they are part of a definite social-pedagogic concept within a correspondingly modified organizational framework (Schacht/Koopmann 1974).

The liberalization of general detention conditions in the last 10 to 15

years is most clearly expressed in the increased possibilities for contact with other individuals and out of the penal institution. The new law of punishment execution also has expanded upon outside contacts through the vacation system. This system has been described positively, and the low incidence of individuals not voluntarily returning to the prison particularly emphasized (Kerner in Kaiser/Kerner/Schöch 1978, 314 f.; Stilz 1979). For several years, data on vacations, temporary release and dutiful return have been recorded by the individual German states, but this information does not appear in the official prison statistics.

Although there is no deficiency of information on individual institutions and administrative problems, a total deficiency exists of empirically based comprehensive descriptions of the general prison situation (Kaiser in Kaiser/Kerner/Schöch 1978, 41).

1.3 Pre-trial detention in the Federal Republic of Germany

On December 31, 1979, a total of 14.470 persons were recorded to be in pre-trial detention in Germany. Of these individuals, 82.2 % were 21 years of age or older. 28.3 % of the total number of incarcerated persons (N = 51.051) were individuals in pre-trial detention (determined according to the 1979 prison statistics, p. 18). The number of individuals incarcerated in Germany, which is relatively high when compared internationally, is partly the consequence of this considerably high proportion of pre-trial detainees (see Kaiser's statistics in Kaiser/Kerner/Schöch 1978, 27). Despite the quantitative significance of pre-trial detention, academic research efforts and public interest have always been relatively insignificant. In recent years, the conditions in pre-trial detention facilities have come to be of interest not only through several spectacular cases involving terrorists, but also because in light of the verified improvement of prison conditions in the last ten years, the unaltered state of pre-trial detention centers appears even more problematic and in need of reform (Böhm 1979, 209). Additionally, since credit is given for time spent in pre-trial detention, the offender's prison term is automatically shortened. In view of the prison's responsibility to re-socialize, extensive use of pre-trial detention is criticised for thereby shortening the effective treatment period.

While empirical research and practical reports on juvenile pre-trial detention clarify the deficient structures and inadequate situations regarding the institution's responsibility to re-socialize, as required by § 93 II JGG (Zirbeck 1973), knowledge about adult pre-trial detention currently is limited. In the past the construction of pre-trial detention centers was more a problem of criminal justice administration than of criminological research. According to the reports available (Fuck 1975; Geppert 1975), the following specific problems with adult pre-trial detention, which because of the lack of separate facilities, contrary to Nr. 78 UVollO and § 93 I JGG, are similar to the problems with juvenile pre-trial detention, exist: the spatial and constructional conditions are aged, detention rooms are poorly equipped and as a consequence of over-usage, depreciated. Periodic overcrowding in pre-trial detention centers also presents a problem. The personnel situation is described less favorably than in other prisons, particularly with respect to trained social-pedagogic personnel. Because of the individual's short and unforeseeable pre-trial detention period, social supervision is frequently impossible. Social workers also complain of lack of judicial cooperation regarding adult pre-trial detainees, which makes the desired preparations for release impossible. Drug addicts, aged, psychically disturbed, and foreign prisoners in pre-trial detention centers are considered to be particularly problematic groups. While prisons are supposedly becoming more open and "transparent", pre-trial detention institutions are remaining closed and anonymous to those interested. The isolation of pre-trial detainees intensifies the psychological pressures of detention and could be connected to the suicide rate, which is suspected to be higher than that in other prisons.

Seen as a whole, very little empirical data regarding adult pre-trial detention is available. The data contained in the official prison statistics also offer very little information. The actual conditions of prison administration, within the context of the administrative order contained in UVollzO and the code of criminal procedure, § 119 StPO, have never been investigated empirically.

Since the sole purpose of pre-trial detention is to guarantee the defendant's presence at trial, every influence corresponding to the resocialisation methods of the law of punishment execution is correctly rejec-

ted. Nevertheless, one should not overlook the fact that because of the severity of the intervention, social-integrative help should be available upon release. The personnel necessary for this purpose, however, appear to be lacking. In addition, voluntary educational or treatment facilities for suitable prisoners in pre-trial detention institutions have been recommended (Schöch in Kaiser/Kerner/Schöch 1978). Praticularly in the case of drug addicts, pre-trial detention treatment could provide the motivation for successful therapy.

Although prisoners in pre-trial detention cannot be required to work (see Nr. 42 UVollzO and § 119 StPO), they must be given the opportunity to work if requested. According to Nr. 54 UVollzO, prisoners in pre-trial detention should be accommodated in detention rooms which are larger and better equipped than those of other prisoners. According to § 119 I StPO, pre-trial detainees should not be placed in cells with other individuals. They also are to be separated, as much as is possible, from regular prisoners. Research topics for the present project are based on these, as well as other exemplary factors. We are not only concerned with the question of how far these principles are actually adherred to, but also are interested in making an independent, comprehensive description of the situation. Because of the deficiency of empirical knowledge, a purely descriptive approach toward the analysis of adult pre-trial detention has become a necessary research strategy.

1.4 Questions and purpose of the investigation

The research approach described here is no novelty in the field of prison research. At the end of the 1960's, similar investigations took place in the Federal Republic of Germany as a result of a general crisis concerning the legitimation of prisons and the need for prison reform (see Müller-Dietz/Würtenberger 1969; Calliess 1970).

The present investigation attempts to compare normative demands and legal reality with respect to the law of punishment execution and the statutes on pre-trial detention, i.e., the UVollzO and § 119 StPO. Moreover, we will describe the practices and problems of penal execution existing at the beginning of the 1980's. In this connection, we are not concerned with evaluating the resocialization goal contained in § 2

StVollzG, but rather with examining the practical effectuation of the recommendations contained in law of punishment execution for attaining this goal.

The questions raised within the investigation concern punishment execution practices in regard to the basic principles contained in the law of punishment execution, and the corresponding administrative specifications. The goal conflicts connected to the current architectural, organizational, financial, and personnel situation as it has developed over the last 15 years, as well as the activities and living conditions of those persons employed and incarcerated within penal institutions, are further topics of our investigation. Special significance is attributed to specific questions concerning the availability of therapeutic, therapeutically oriented, educational and vocational training, as well as the treatment of particularly problematic groups within the prison (foreigners, drug offenders, political offenders, prisoners sentenced to life imprisonment, prisoners in security custody, women, agitators, pretrial detainees, etc.). We are also interested in the problems of overcrowding and drug consumption in prisons and the practical effects therefrom.

2. Investigative methods

2.1 Questionnaire

One of the first investigative approaches should be a cross section analysis through questionnaires all sent to penal institutions in the Federal Republic of Germany and West Berlin. A sectional evaluation will be attempted to the extent possible on the basis of the Müller-Dietz and Würtenberger (1969) questionnaire used at the end of the 1960's and the Calliess study (1970) of adult male prisons in Nordrhein-Westfalen. The inquiry will utilize aggregate data, which is relatively easily recorded, for all adult penal and pre-trial detention institutions. In this regard we are interested in data which does not depend upon the evaluation of different groups within the prison and, therefore, which can offer a relatively genuine picture when gathered through a questionnaire of penal institutional directors.

The inquiry includes a total of 18 questioning complexes. They are representive of the situational and problem descriptions presented under

1.2 and 1.3

1. Location and character of the institution
2. Year of construction, reconstruction and renovation of the institution since 1965
3. Persons housed within the institution
4. Spatial arrangement in the institution and accommodation of special prisoner groups
5. Personnel structure
6. Management of the institution
7. General conditions of incarceration
8. Employment
9. Professional training
10. Educational training
11. Transfer to other institutions
12. Treatment measures and special arrangements for problem groups
13. Activity of non-prison personnel within the institution and contact through visits
14. Vacations and other relaxations of prison rules
15. Sickness, accidents, death, disciplinary measures, special security measures
16. Special questions regarding pre-trial detention
17. Special questions regarding open penal institutions
18. Special questions regarding conditional release and parole

Within the time allotted for the investigation, we planned to carry out a preliminary test with the above questions during the summer of 1980 in two institutions in Baden-Württemberg and to extend the investigation to the remaining penal institutions and federal states in March, 1981.

2.2 Interviews

The present situation within prisons will be investigated on the basis of several representatively selected penal institutions from the point of view of the individuals involved therein. We will proceed through oral interviews of the institution's staff (director of the institution, psychologists, medical doctors, teachers, social workers, correctional officers and work service officers) and inmates.

The questions are as follows:

1. How do the prisoners and members of the prison staff perceive living conditions and the availability of supervisory, treatment, and educational measures within the prison?
2. How are conflicts between staff and prisoners resolved?
3. How do the various professional groups within the institutions view their own professional situation and how do they evaluate the position of the other professional groups?
4. How do the prisoners view their relationship to the various professional groups and how do they evaluate their position?

In addition to the general questioning of prison staff and inmates, we plan to question certain selected individuals on particular points of interest. We are concerned here with the application of particularly relevant provisions of the law of punishment execution and the accompanying administrative instructions.

Interest lies in the following areas:

- practice of diagnostic inquiries and drawing up of institutional plans for the individual execution of sentence (questioning of the staff)
- Practice of conditional release and cooperation with the penal control board (questioning of the institute's director and sociologist).

After an exploratory phase in one prison in Baden-Württemberg, the investigation should be carried out to a selection of approximately 20 penal institutions (approximately 15 % of all adult penal institutions in the Federal Republic of Germany), whereby 10 to 15 prisoners and 10 to 15 members of the staff will be selected for each interview.

2.3 Longitudinal analysis of selcted topics

The evaluation presented in this section may be characterized, in terms of methodology, as secondary analysis of statistics and documents, e.g., of the prison budget. Of interest is the analysis of data at the state level, including juvenile penal institutions, which cannot be considered

separately on the basis of data available. A cross-sectional study, as well as a longitudinal study, will be undertaken for the period from 1970 to the present. In this way, we can compare the differing structures and practices within the individual federal states and their respective development.

2.3.1 The development of costs and personnel structure in prisons

The allotment of financial means for various items of the budget is an indication of the weight given these factors by political decision makers. Several investigations regarding prison costs and revenues have been carried out. They are limited, however,to an economic cost/benefit analysis (see e.g., Neu 1971; Grohmann 1973), whereby the development of expenditures for particular areas have never been differentially compared in a longitudinal study.

In our analysis, the degree to which expenditures for particular undertaking were raised or reduced relative to each other during the time period between 1970-1980 will be investigated on the basis of budget plans. We are primarily interested in the question of whether emphasis has shifted to a treatment oriented prison as can be seen from funding trends, and if so, what weight is attributed to treatment in comparison to security measures. Moreover, the development of the personnel structure also may be analyzed from the budget plans. In particular, one can see to what extent treatment oriented employees, i.e., social workers, psychologists, teachers, etc. have been engaged rather than correction oriented employees, i.e., correctional officers, work service officers, etc.

In addition to an overall consideration of cost development per prisoner and day of detention the following budget complexes will be recorded differentially:

1. Expenditures for personnel

Are there different rates of increase in the corresponding procurement of positions for treatment oriented services or correctional services?

2. Renovation and construction of prison buildings

Was the renovation or construction of prison buildings undertaken more for the improvement of security of the furtherance of treatment?

3. Prison receipts and expenditures

Have structural changes occured in relation to prison administration or private management of prison industries and have these changes resulted in a greater covering of costs?

4. Structuring of free time, e.g., educational and vocational training, and assistance in release and transition

Apart from the changes in budget for personnel listed under 1., are shiftings of emphasis revealed through increased expenditures which further resocialization?

2.3.2 Amelioration of prison conditions

The Ministries of Justice in the different states have recorded the number of vacations, leaves, and releases for some time. The number of persons not returning after leave also has been recorded. Although these statistics, which are not contained in the official prison statistics, have certain deficiencies, viz., insignificant state specific peculiarities in data collection, the develspment in recent years, particularly since the enactment of the law of punishment execution, can be examined. Information also can be gained on the assumed far-reaching changes in this area. Since several states differentiate between open and closed institutions, we can expect to find interesting specific information here. We are assuming that improvements in prison conditions, viz., vacations, leave, exit, release, have increased considerably since 1970 and that, in spite of the increasing number of "freedoms", abuse in the sense of failing to return has not increased. Furthermore, this "loosening-up" of prison rules is conducted to a greater extent in open than in closed penal institutions.

2.3.3 Disciplinary sanctions, accidents, deaths, suicides, suicide attempts, self inflicted injuries, escapes

A further longitudinal analysis is planned for indicators of potential conflict. Statistics available at the Federal Ministry of Justice can

be utilized. These statistics generally have been available to the public only sporadically or in exceptional cases (see, e.g., the conference report of the Prison Commission Vol. 5 p. 128; Law, Information of the Federal Minister of Justice 1978, p. 28). Here, we are interested in whether, relative to the average number of prisoners yearly, different practices exist between states in the application of disciplinary measures. If possible, these differences will be examined longitudinally. We are assuming that the relaxing of prison rules in recent years has reduced the potential for conflict as expressed in suicide rates, self inflicted injuries, hunger strikes, etc. We also are assuming that these potential conflicts and the application of disciplinary measures occur less often in open than in closed prison institutions.

3. Structural developments in prison since 1970, based on selected statistics - first evaluation

In the following section, we have chosen of the longitudinal analyses discussed under 2.3 and reported our initial evaluation thereof. We were interested in the developments of costs and the personnel structure based on prison budget plans (see 3.1 and 3.2), and the analysis of suicide rates,suicide attempts, and self inflicted injuries (see 3.3), as abstracted from Statistic Nr. 7 collected at the Federal Ministry.

3.1 Development of prison costs - the Berlin correctional system

The following analysis evaluates judicial administration budget plans in Berlin. Table 1 shows that 1980 annual expenditures in the Berlin prison system, 160.86 million DM, were four times as high as in 1970. Even when one corrects according to yearly inflation rates, which for the years 1970-78 increased for all private budgets between 100 and 150.1 (see Statistical Yearbook 1979, 486), the real increase in expenditures was three and one-half times the 1970 figure.

A majority of the increased rates of expenditures, recorded particularly since 1977, were for architectural measures and personnel.

The yearly costs for the renovation or construction of prison institutions have increased tenfold since 1975, while between 1970 and 1975 decreasing tendencies were established. The major portion of these ex-

Table 1 Development of Expenditures in the Berlin Prison System since 1970 Based on Individual Administration Budgets (in Million DM and Increase Rates in %)

Year	Total costs in prison system		thereof: personnel costs		costs for renovation/construction		compensation of work/pocket-mon. for prisoners		care and travel money for pris.		comparison rates 1) total costs for Berlin		total costs for prison system	
1970	38,78	100	23,33	100	3,32	100	0,86	100	0,05	100	4277,98	100	143,13	100
1971	40,97	105,7	25,70	110,2	2,12	63,9	0,95	110,5	0,09	180	4681,09	109,4	157,06	109,7
1972	47,75	123,1	28,94	124,1	2,60	78,3	1,33	154,7	0,12	240	6154,03	143,9	190,44	133,1
1973	51,91	133,9	34,47	147,8	1,02	30,7	1,62	188,4	0,16	320	6678,73	156,1	218,42	165,3
1974	58,06	149,7	37,28	159,8	2,41	72,6	1,62	188,4	0,19	380	8879,13	207,6	262,06	183,8
1975	70,04	180,6	42,02	180,1	4,16	125,3	1,62	188,4	0,19	380	8879,13	207,6	263,06	183,8
1976	77,59	200,1	47,99	205,7	5,47	164,8	1,62	188,4	0,20	400	9161,17	214,2	294,15	205,5
1977	87,93	226,7	51,23	219,6	11,56	348,2	3,30	372,1	0,19	380	10173,39	237,8	321,11	224,4
1978	107,39	276,9	58,49	250,7	17,00	512,1	3,69	429,1	0,19	380	11019,72	257,6	359,87	251,4
1979	130,33	336,1	68,90	295,3	30,32	913,3	3,62	420,9	0,35	700	11507,70	269,0	401,20	280,3
1980	160,86	414,8	79,51	340,8	41,45	1248,5	3,84	446,5	0,35	700	-	-	-	-

1) Source: Statistical Yearbook Berlin 1970, p. 79.

penditures, which accounted for approximately one-fourth of the total prison budget in 1980, 41.45 million DM, were made for the construction of the juvenile institution at Plötzensee, included in the prison budget since 1975, and a penal institution for women, included since 1978. In 1980 15 and 20 million DM, respectively were estimated alone for these two new constructions. In the Berlin prison system over the past ten years a total of 121.43 million DM was spent or alloted for the renovation or construction of penal institutions.

In comparison to the total prison system personnel costs have risen less than average since 1970. However, the 79.51 million DM alloted in 1980 still amount to 49.4 % of total expenditures. In 1970, 60.2 % of the budget funds were devoted to personnel costs. The largest rates of increase occurred between 1978-80. A yearly increase of more than 19 million DM took place during this time period. These figures must be viewed in light of the development of personnel positions as presented under 3.2. The number of positions authorized in the Berlin correctional system has increased considerably since 1978 with 500 employees to a total in 1980 of 2.490 employees.

Although budget allotments for the compensation of work performed by prisoners has risen more than average, and as a result of the law of punishment execution, the associated expenditures have doubled between 1976 and 1977, the 1980 expenditure of 3.84 million DM is of little significance as it represents only 2.4 % of the total prison budget. For this reason, the suggested increase of work compensation made by the Federal Government (see, bill of 15.8.1979 - printed matter from the Federal Council 397/79), according to §§ 43 and 200 StVollzG, from 5 % to 10 % of the average wage of socially secured persons, would have only relatively limited effects within the total budget. The Federal Council's negative attitude toward this bill appears particularly questionable since considerable expenditure increases for other purposes have been agreed upon. Here one must consider the prisoners' social insurance, which through the law of punishment execution also includes unemployment insurance since 1977. In Berlin 1.42 million DM in 1978 and 1.70 million DM in 1980 alloted for prisoners' unemployment insurance. The 1986 planned inclusion of prisoners in health and pension insurance plans would further increase costs, which generally must be related to

the total budget of the prison system. Expenditures for prisoners' care and travel money have almost no significance in relation to the total budget (0.2 %) although they have increased seven times to 350.000 DM in 1980.

Expenditures within the prison system are also interesting in comparison to general expenditures in Berlin and expenditures in the entire criminal justice system. The total Berlin budget rose more rapidly between 1970-77 than the prison system budget. An opposite development, however, took place after 1978. When the expenditures of the criminal justice system are compared with those of the prison system, the latter have experienced an above average increase since 1977.

If one compares prison expenditures to yearly revenues, one sees that revenues cover an increasingly lower amount of costs. In 1970, 4.63 million DM were recorded of which 3.8 million DM were from work administration. This income covered only 11.9 % of the costs incurred. In 1980 revenues amounted to only 3.95 million DM, including 2.85 million DM from work administration. Only 2.5 % of total expenditures were covered herewith. This comparison between 1970 and 1980 is not even corrected for inflation. The correctional system, therefore, appears to be increasingly less profitable in economic terms.

If one divides total net prison costs in 1978 after deducting revenues, by the average number of persons institutionalized, one finds that 74.56 DM is spent per prisoner per day. If one substracts the costs for the renovation and construction of institutions, then 62.36 DM are spent per prisoner per day of detention.

3.2 Development of personnel structure in the Berlin correctional system

Full and part time personnel positions can be abstracted from the Berlin budget plans since 1970. Although it is difficult to convert honoraria paid for non-employed co-workers into personnel positions this conversion appears necessary since a considerable part of the medical or pedagogical care services are settled on this basis.

Table 2 shows the development of personnel positions absolutely and dif-

Table 2 Development of Personnel Positions in the Prison Institution Berlin since 1970

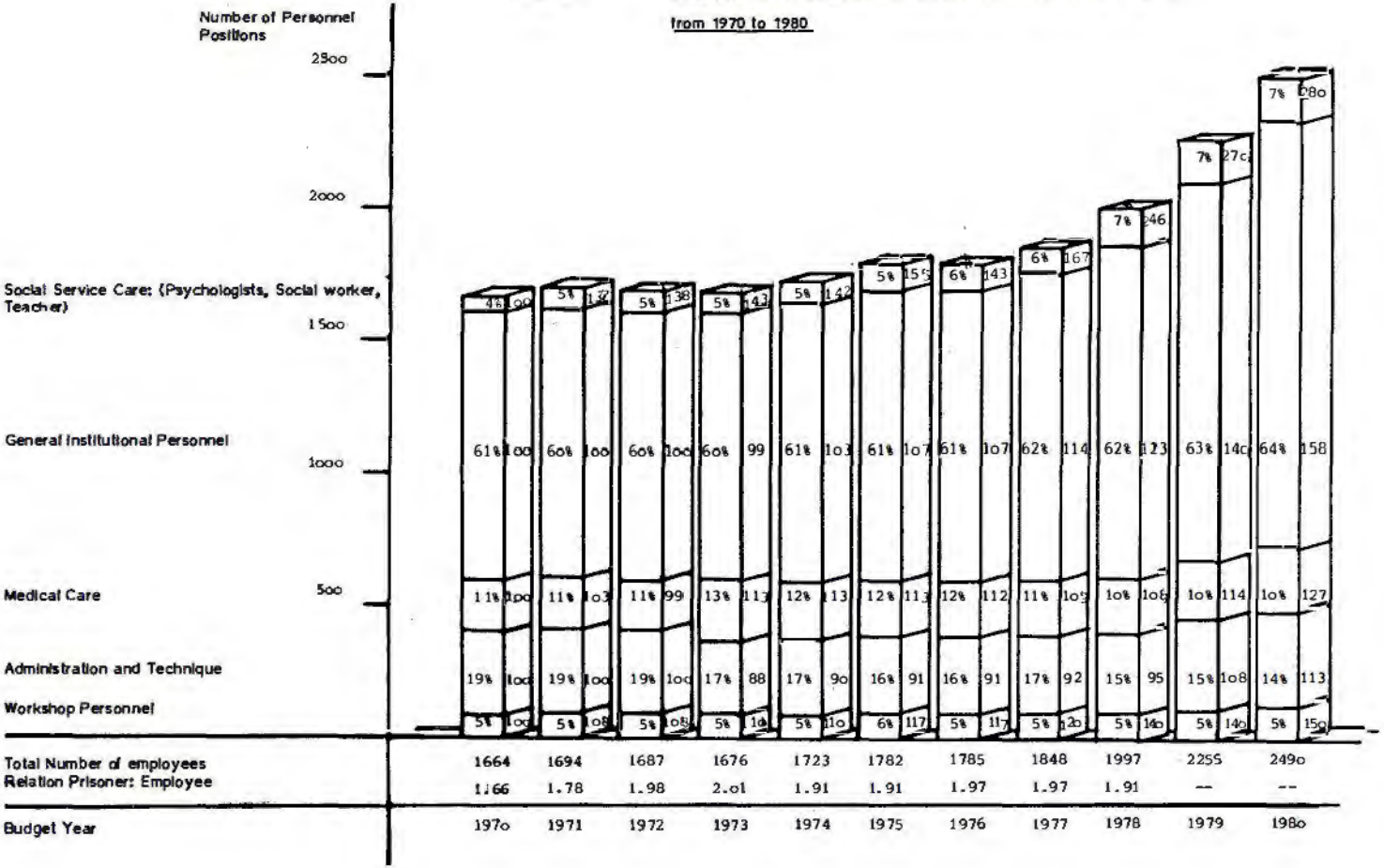
Year	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980
Average number of Prisoners	2761	3013	3330	3372	3297	3336	3517	3638	3816	-	-
Professional Groups											
General Institutional Service:											
N	1014,5	1011	1011	1005	1047	1090	1090	1152	1244	1421	1599
Increasing Rate	100	99,7	99,7	99,1	103,2	107,4	107,4	113,6	122,6	140,1	157,6
Relation Institutional Personnel: Prisoner 1)	2,7	3,0	3,3	3,4	3,2	3,1	3,2	3,2	3,1	-	-
Workshop Service:											
N	82	88,5	88,5	90,5	90,5	96	96	96	99	115	123
Increasing Rate	100	107,9	107,9	110,4	110,4	117,1	117,1	117,1	120,7	140,3	150
Relation Workshop Personnel: Prisoner 1)	33,7	34,1	37,6	37,3	36,4	34,8	36,6	37,9	38,6	-	-
Social Worker:											
N	40	56	57	58	58	64	64	65	106	118	122
Increasing Rate	100	140	142,5	145	145	160	160	162,5	265	295	305
Relation Social Worker: Prisoner 1)	69,0	53,8	58,4	58,1	56,9	52,1	55,0	56,0	36	-	-
Psychologists:											
N	11	13	13	13	13	14	17,5	17	22	25	27
Increasing Rate	100	118,2	118,2	118,2	118,2	127,3	159,1	154,6	200	227,3	245,5
Relation Psychologists: Prisoner 1)	251,0	231,8	256,2	259,4	253,6	238,3	201,0	214	173,5	-	-
Medical Service:											
N	17	33,5	26,5	31	31	31	30	24,5	30	37	37
Increasing Rate	100	197,1	155,9	182,4	182,4	182,4	176,5	144,1	176,5	217,7	217,7
Relation Medical Service: Prisoner 1)	162,4	89,9	125,7	108,8	106,4	107,6	117,2	148,5	127,2	-	-

1) Ratio of employees per prisoner.

ferentially in relation to the respective yearly average number of prisoners in prison institutions. It is clear that since 1970, special service positions have experienced larger rates of increase than, for example positions for general institutional or workshop personnel. This increase also indicates how unsatisfactory social service was in the Berlin prison system at the end of the 1960's. Positions for social workers increased four times by 1980. The number of psychologists increased from 11 to 27, and the number of medical doctors, including non-employed independent personnel, from 31 to 37. Large fluctuations in medical personnel are evident from the ratio of prisoners to doctors. These social service ratios, however, are relatively problematic since they say little about the actual medical, psychological or social-pedagogical care of prisoners in the individual institutions, but rather are based on data on the entire Berlin correctional system. In 1978, 9 out of the employed 22 psychologists were engaged at the social-therapeutical unit in Tegel House IV (230 prisoners), while in other Berlin institutions the ratio was considerably lower than the average of 173.5 prisoners per psychologist. This imbalance also exists in the ratio of medical personnel and, to a lesser extent, social workers per prisoner. The number of teachers, which is not listed in Table 2, rose between 1970 and 1980 from 9 to 19. In 1978, an average of 191 prisoners per teacher existed.

The interrelationship between employee groups is expressed quantitatively in longitudinal section in Diagram 1. Considered as a whole, the number of employees increased by almost 50 % from 1.664 in 1970 to 2.490 in 1980. Nevertheless since the number of prisoners increased more rapidly in comparison, the ratio of employees per prisoner fell from 1 : 1.66 to 1 : 1.91. Although relatively, the number of social service employees increased extremely, quantitatively the 600 correctional officers accounted for the major increase in prison personnel. Large rates of increase in correctional personnel have occurred since 1977. This increase also occured in the number of work service and social workers, whereas additional positions for psychologists already had been created in 1975. A shifting in employed professional groups hardly has occurred (see Diagram 1). General institutional services which now account for 64 % of institution employees has increased only slightly in relation to other employee groups since 1970 (61 %). Administrative and technical personnel declined slightly with 14 % as opposed to 19 % in 1970. Medi-

Diagram 1 **Development of Personnel Structure in the Berlin Correctional System from 1970 to 1980**



cal services (10 %) and Work services (5 %) retained a relatively constant share of employed positions over the long run. Special services, however, now represent 7 % rather than 4 % (1970) of prison personnel.

Viewed as a whole, the personnel structure in Berlin correctional system improved since 1970, particularly in the area of social services, in spite of increased overcrowding in prisons. The current evaluation, however, only yields relatively rough data and says little about the actual situation in the individual institutions. A longitudinal analysis of the prison system reveal that the Senate has made an effort through structural improvements on achitecture and personnel to conform to the demand of the law on punishment execution. This effort also was evident from the cost analysis in 3.1, although it must be realized that the results of this analysis are also a reflection of increased overcrowding,special problem groups, e.g., terrorists, drug offenders, etc., and the corresponding architectural measures for special maximum security units.

The extent to which the tendencies here illustrated are representative for the entire Federal Republic of Germany remains open.One must consider that in many respects, the correctional system, occupies a special position. The establishment of social-therapeutic institutions, for example, has occurred on a large scale only in Berlin.

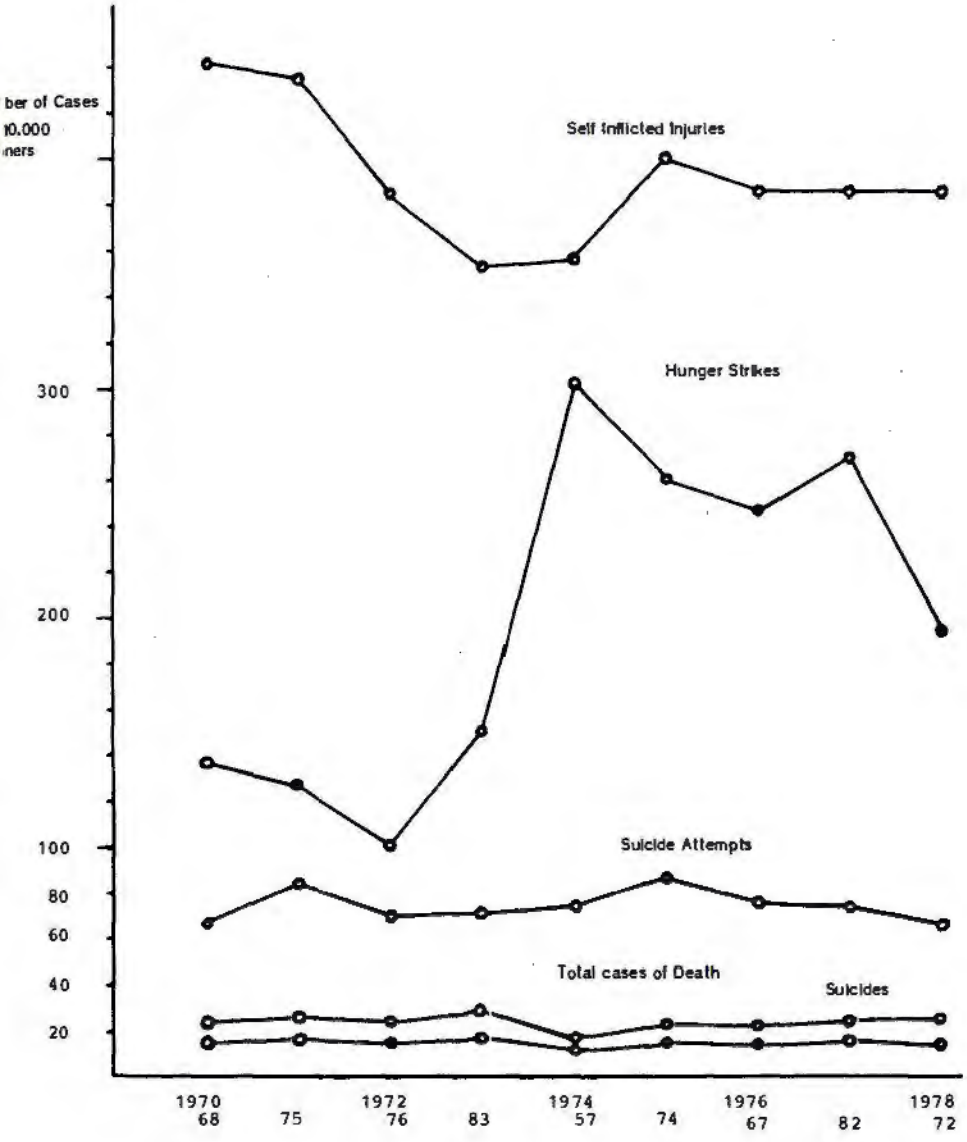
3.3 Death - including suicide, suicide attempts, self inflicted injuries, and hungar strikes between 1970 to 1978 in prisons in the Federal Republic of Germany

The data on the yearly frequency of deaths, in relation to the average number of persons incarcerated during the years under consideration,i. e., yearly average number of prisoners reveal hardly any tendencies. This fact is true for both total deaths as well as for deaths through suicide (see Diagram 2). The number of total death cases fluctuated from 1970 to 1978 around a value of 23 yearly deaths per 10.000 prisoners. Yearly deaths through suicide amounted to about 14 per 10.000 during this time period.

These data alone, however, offer little information. We, therefore, have compared them to the corresponding data for the entire population, which

Diagram 2

Death, Suicide, Suicide Attempts, Self-Inflicted Injuries, Hunger Strikes
Between 1970 to 1978 in Prison in the Federal Republic of Germany



we abstracted from the Statistical Yearbook of the Federal Republic of Germany. We then calculated values that could be expected from a group of the total male population, which was assembled according to the age structure existing in prisons. A comparison based on the male population appears sufficient, since women represent only a small proportion (about 3 %) of the inmates in penal institutions in the Federal Republic of Germany. For the year 1977, we found an expected death rate of 30 out of 10.000 persons and a suicide rate of 3.3 out of 10.000 persons from this comparison group. The suicide rate in prison, therefore, is about four times higher than in the average population. Deaths from causes other than suicide amounted in prisons to 9 out of 10.000 and in the comparative average population to 26.7 out of 10.000. The probability of death through causes other than suicide, therefore, was about three times lower in prison than out of prison. This difference is to be expected since many risks of death are eliminated in prison, e.g., death through traffic accidents.

The suicide rate unfortunately cannot be differentiated for prison and pre-trial detention since separate data are not available. It would be significant to know more about the different rates of suicide associated with the individual phases or forms of imprisonment. The higher average danger of suicide for prisoners could result from the situation in certain types of institutions, e.g., pre-trial detention facilities. A differentiation according to open and closed institutions in several federal states (Baden-Württemberg, Berlin, Hamburg, Hessen, Niedersachsen, Nordrhein-Westfalen) exists only for the years 1977 and 1978. On the basis of these data, we see that the suicide rate in open institutions is not as high when compared to the entire population as is the suicide rate in closed institutions. Reliable statements about the situation in open institutions in comparison to other institutions, however, cannot be made since the absolute size of the variables available is not larger enough to have statistical relevance. In 1977 in the open institutions of the federal states mentioned, 4 suicides and, in 1978,no suicides occurred (based on an average yearly accommodation of about 5.000 prisoners). The suicide rates calculated for open insitutitons on the basis of these values were 8 out of 10.000 prisoners in 1977 and 0 out of 10.000 prisoners in 1978, or an average of 4 suicides out of 10.000 prisoners over both years. The combined rate for both years, however, lies

completely within the expected values for the normal population. Although these statements must be cautiously interpreted because of the limitation mentioned, they at least give rise to the need for differentiated consideration of suicide rates in penal institutions.

In addition to data on suicide, statistics are also available on "serious suicide attempts". On the average, 73 suicide attempts per 10.000 prisoners were recorded yearly between 1970 and 1978. Suicide attempts in prison occur five times as often as actual suicides. For the rest of the population, estimates of between 1:5 and 1:15 exist. The authors of a report on psychiatry in the Federal Republic of Germany find it realistic "to estimate the ratio at 1:8 to 1:10" (Federal Assembly printed matter 7/4200 of 25.11.1975, Report about the Situation of Psychiatry in the Federal Republic of Germany, p. 279). In comparison to this value, the number of successful suicide attempts in prison is high. This higher rate also could result from the fact that the possibility of discovering and registering suicide attempts is higher in prisons than in the normal population, i.e., unregistered suicide attempts occur less often in prisons. Here, one also must consider that the term "serious suicide attempt" is open to interpretation and that the interpretation given by prison personnel could depend on institutional factors. As in the case of deaths and suicides in prisons, no significant increase or decrease in the rate of serious suicide attempts occurred over the time period in question. Here, one must consider perhaps stationary periods of time which point to more differences in the case of attempted suicides than in the case of deaths and successful suicides. In the years 1971 and 1975, suicide attempts occurred more frequently than in other years. This fact is apparent from Diagram 2 in the form of two slight peaks. Greater fluctuations, therefore, occurred in attempted suicides than in prison deaths. In other words, suicide attempts occurred more often during some time periods than others. Assumptions as to the reasons for this fluctuation cannot be formulated. Diagram 2 shows that the distribution of values during individual time periods vary greatly. The curves show very little fluctuation in the number of deaths and suicides, whereas the number of hunger strikes and self-inflicted injuries varied considerably. A significant increase in the number of hunger strikes occurred between 1972 and 1974. After 1974, hunger strikes declined. The increase could be attributed partially to the fact that hunger strikes

were used frequently and systematically during this period by incarcerated terrorists. This explanation, however, in light of the absolute value of increase from 561 cases in 1972 to 1.593 cases in 1974, is insufficient. Another explanation lies in the general current tendency for prisoners to use hunger strikes as a means of pressure and protest. Certainly the publicity offered certain well-known offenders was of some importance here.

Between 1970 and 1978 a slight decline occurred in the number of self-inflicted injuries. The curves between 1972 and 1975 show an inverse relationship between the number of self-inflicted injuries and the number of hunger stikes. A decline in the number of self-inflicted injuries ran parallel to an increase in the number of hunger strikes. Over the entire period between 1970 and 1978, a counter development occurred. Although the number of hunger strikes is higher in 1978 than in 1970, the number of self-inflicted injuries is lower. These developmental tendencies in regard to hunger strikes and self-inflicted injuries support the assumption, in our opinion, that the significant increase in the number of hunger strikes is the result of a general trend within prisons.
In conclusion, one can say, as suspected, that only the number of self-inflicted injuries declined over the course of the 1970's. The number of suicides and suicide attempts remained relatively constant over this period and appears to be independent from structural changes, e.g., the opening of the institution.

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EXECUTION OF PRE-TRIAL DETENTION FROM AN ORGANIZATIONAL POINT OF VIEW

Bernd Busch

1. Summarized presentation of the investigation

The object of our research plan is the investigation of the institutional conditions for pre-trial detention of youth and young adults in the three pre-trial detention centers in Freiburg, Mannheim and Rastatt. The investigation begins with a treatment research project conducted by the Max Planck Institute for International and Foreign Penal Law, Criminological Research Unit (see Kaiser/Kury 1976 and Kury/Fenn/Spieß 1977).In this project an experimental group of youth in pre-trial detention in Freiburg were psychotherapeutically treated. The results of the treatment program were controlled on a comparative group of persons in pre-trial detention in the institutions of Mannheim and Rastatt. In order to determine the effects of the therapy, it was absolutely necessary to compare the institutions involved.

The purpose of this investigation is the acquisition of empirical knowledge on the degree of comparability of the three pre-trial detention institutions and, thereby, a clarification of their influence inmates are exposed to from the institution during their period of incarceration.

The recording of institutional variables proceeds on objective and subjective levels. Objective conditions were defined as those which are independent from the statements of inmates, but at the same time represent potential stimulis from them. Here, we are concerned with context variables which relate to the ecological structure of the institution, e.g., demographic characteristics (building lay-out, size, equipment), organizational structure (programs, conditions of social and cognitive deprivation), and attributes of reference persons (interaction, relations). On the subjective level, institutional characteristics were recorded according to how they are expressed in the behavior and/or custody of the inmates. A questionnaire, which describes the environment from a subjective perspective, was proposed for these purposes. Three environmental

dimensions were considered which characterize the different aspects of various institutions (see Wenk/Moos 1972; Miller/Dinitz 1973). They are:

1. dimensions of interpersonal relations,
2. dimensions of measures for improvement, and
3. dimensions of order and control.

In order to relativize internal instituional conditions, pre-institutional data from the socio-cultural background of the inmates were recorded as control variables, e.g., family structure, previous convictions, institutionalization, etc.

The data were recorded in the three pre-trial detention centers during 1979. The centers were studied for four weeks through the method of participatory observation. The institutional data also were recorded through an institutional questionnaire, as well as through questionnaires for the inmates and personnel.

The first evaluation results are available for participant observation and concern the activities outside the cells in the individual institutions. A measure of deprivation for the lock-up periods also could be gained, hereby. Considerable differences exist between the three institutions regarding the length and course of lock-out periods. The results of the investigation will be comprehensively presented in a dissertation.

2. Situation of pre-trial detention in practice and in research

Pre-trial detention should serve to prevent further criminal offences as well as to secure the official right of punishment (Kern/Roxin 1975, 144). This statement of purpose is also true for the pre-trial detention of youth (Brunner 1975, § 93 Anm. 2). Peculiarities of juvenile proceedings concern the condition of imposition and execution of pre-trial detention (§ 72 Abs. 1 JGG: subsidiary principle) as well as the shaping of punishment execution (§ 93 Abs. 2 JGG: offer of rehabilitation).

In spite of the emphasis placed upon the subsidiary character of pre-trial arrest for youth and the priority granted to educational measures outside the institutional setting, no alternatives to pre-trial detention

exist other than "Haus Kieferngrund" in Berlin. This deficit is illustrated by "the desolate state of temporary accommodation in a suitable reformatory since the beginning of legal regulation" (Kreuzer 1978, 345).

The demand for a rehabilitative structuring of pre-trial detention is not, exceptions excluded, fulfilled in practice (see in this regard Krause 1971; Zirbeck 1973), and one can justifiably speak of a "discrepancy between legal demands and institutional reality" (Kaiser 1977, 173).

An important question concerns whether the requirement of a rehabilitative structuring of pre-trial detention inside the existing institutions can be complied with, since rehabilitation is not only a question of the availability of specially trained personnel and corresponding educational programs, but also a question of the particularities of the legal structure under which they are offered.The conditions of "total institutions", i.e., sub-culture, labelling, personnel problems, in general, as well as those conditions particularly related to pre-trial detention, i.e., fluctuation, short confinement period, are addressed here.

When the shaping of rehabilitative pre-trial detention, as provided by law, is not implemented, then the dangers of incarceration are raised through the custodial character of the institutions. Youth are exposed through incarceration to a socially undesirable process in a life phase in which they are particularly susceptible to environmental influences because of the incompleteness of their own development. The sudden disruption of existing social contacts, in association with considerable deprivations inside the pre-trial detention center, raises the danger of ties to anti-social groups. It also could result in the further deterioration of the youth's psychic state which has already suffered significant emotional burdens (see Blumberg 1978, 140). The psychic burden on youth undergoing prepubescent development may be grater generally in pre-trial detention centers than in prisons since their future is very uncertain because of the unclear legal situation. The danger thus exists that the latent and manifest interferences with normal socialization may be further developed under such conditions. The processes of self-stigmatization, e.g., extensive tatooing, which is also a sign of self-aggression under deprivational conditions, also reveal the assumption of a deviant self-image.

The problems caused by incarceration have not been systematically investigated either sociologically or psychologically for youth in pre-trial detention. Empirical criminology generally has shown little interest in this form of incarceration in spite of the close connection between imprisonment and pre-trial detention on levels concerning personnel, and organization.

Not only basic data collection and data analyses, but also investigations dealing with the selection processes underlying incarceration are lacking. Unanswered is also the question regarding the personal and social characteristics of the youth concerned; i.e., "against whom, independent of the prerequisites specified in §§ 112 ff. StPO, is pre-trial detention actually imposed" (Kaiser 1976, 229).

The current state of theoretical and empirical research on pre-trial detention is very poor (for further discussion see Kreuzer 1978, 338; Müller-Dietz 1977, 4),although its significance appears to have increased (Kerner 1978, 551; Kreuzer 1978, 339). According to Kaiser, the following tendency exists: "A period of increasing criminality leads, moreover, to a strengthening of general-preventive strategies at the disadvantage of special prevention,i.e., to a new growth and broader practicing of pre-trial detention in a concrete sense" (1978, 48). The lack of empirical data on pre-trial detention has been repeatedly emphasized (Kerner 1978; Kreuzer 1978, 347) although thie data should be the basis for rational legislative policy. This lack of empirical data is surprising in view of the above-mentioned significance of pre-trial detention, which affects about one third of all prisoners (see Kaiser 1978, 27). In light of this situation, the empirical investigation of pre-trial detention advanced by Krebs in 1967 must be agreed with (Krebs 1967, 84 and Kreuzer 1978, 346: regarding the state of research). In any case, the official prison statistics do not meet this demand since they do not provide detailed knowledge on, e.g., the length of pre-trial detention, the offender's social situation, etc. (see "Statistisches Bundesamt", Wiesbaden, 1978, 16).

The data regarding the length of incarceration, age structure and sentencing rate in the three pre-trial detention centers in Freiburg, Mannheim and Rastatt, presented in the following section 3., stem from an investigation according to the plans described under section 1. On the basis of

these data, different institutional peculiarities and processes can be pointed out. Here, we are not interested in a single case analysis of pre-trial detention. Focal point of our study is the investigation of the length of detention, which was calculated for all new admissions and for real new admissions. Differences existing among the various penal insitutions will be more closely investigated through supplementary data (sentences, orders for release, movement of prisoners, age structure).

3. Data regarding pre-trial detention

3.1 Previous investigations regarding the length of pre-trial detention for youth and adolescents

Böhm (1977, 88) has specified the average length of pre-trial detention for youths and adolescents between 3-4 months. The investigations to which he here refers are somewhat older (Hilkenbach 1967; Krebs 1967; Zirbeck 1973). A more recent investigation was conducted in the youth devision of the penal institution in Stuttgart between 1975-1977 (Legislature of Baden-Württemberg, Printed Material 7/4770 of 16.11.1978). The average length of detention was 2.5 months.

An average length of detention of approximately 70 days was found by Herrmann in the Freiburg Institution (1977, 48).

A further reference to the length of detention is found in Kreuzer (1978, 338) who assumes an average of 2-3 months based on Böhm (1977), Hilkenbach (1967), Krebs (1967), Krause (1971), Zirbeck (1973), as well as verbal reference from Franke. When the time calculations are more closely considered, two questions, which aggravate an assessment of the validity of previous investigations, remain open. One problem concerns the time units according to which the youth have been classified. Monthly intervals are partially used for classification, which causes distortion since this procedure assumes that all youth were in prison for the maximum time unit, i.e., until the end of the month. Another problem is that no difference between all admissions and real new admissions was made in previous investigations. This lack of differentiation is of significance since, in the calculation of the average confinement period based on all new admissions individuals are included who entered pre-trial detention

facilities for reasons other than pre-trial detention, e.g., trial postponement. Since their detention is usually short, the inclusion thereof lowers the average length of detention calculated.

3.2 Present plan

The appropriate detention periods were obtained from the entrance and departure books for each inmate. The length of detention was calculated according to days so that exact average values could be determined.

This method of obtaining data does not differentiate between pre-trial detention and police detention. This determination is important because the calculations assume that all youth brought into pre-trial detention centers are also pre-trial detainees. According to my own personal evaluation, the problem of police detention is of no significance in the pre-trial detention centers in Freiburg and Rastatt, whereas it appears to be "characteristic" in Mannheim. Our random sample, however, will be defined in the data recording, which also can be determinative of the results obtained. The random sample drawn by Zirbeck (1973), for example, consists only of juveniles who were actually sentenced with punishment. This selection includes primarily juveniles who committed more serious offences and thereby who were detained longer in pre-trial detention.

A total of 961 male youths and adolescents were registered as new admissions in all three of the institutions. According to the 1977 statistics, these admissions in Baden-Württemberg represent 19.5 % of all admissions in the Federal Republic. Nine admissions were not recorded in our data (Freiburg 6, Mannheim 3), because of defective registration. We also were unable to calculate time served in pre-trial detention by those juveniles who were transferred to adult detention facilities. The total number of inmates also differed depending upon whether the method for calculating was based on time or age. Admissions occurring at the end of 1978, were usually recorded as released in 1979. Release thus followed promptly. Prisoners still incarcerated at the time of our investigation, were considered released on the date our data was gathered. This situation existed for a total of 11 inmates (Freiburg 3, Mannheim 6, Rastatt 2).

After a determination of the individual detention period, age, and type

of exit was made for each inmate, different questions could be addressed.

For purposes of clarification, we differentiated between all new admissions and real admissions. When only all new admissions are considered, the data is systematically distorted since deferments,witness dates,etc., are included within the calculation of the detention period. Therefore, it was absolutely necessary to determine the number of real new admissions. For the purpose of our investigation, real new admissions deferred within a week. This number is still somewhat too large since deferments also occur after one week.

3.3. Presentation of the data

The average confinement period was about 46.9 days out of a total of 32.440 confinement days. This calculation also includes individuals who were detained only shortly because of transfer, expert testimony, witness dates, etc. After eliminating those cases deferred within one week, the length of confinement increased to an average of 54.5 days for a total of 590 prisoners with 31.999 confinement days (see Table 1).

Table 1 Average Length of Confinement of all Inmates in the Pre-Trial Detention Centers in Freiburg, Mannheim, Rastatt (1978)

All New Admissions (N=691)		Real New Admissions (N=590)	
46,9 days		54,3 days	
Youth (N=204)	Adolescents (N=487)	Youth (N=177)	Adolescents (=413)
46,3 days	47,3 days	52,6 days	54,9 days

Table 2

Average Period of Detention in the Pre-Trial Detention Centers in Freiburg, Mannheim, and Rastatt

All New Admissions (N=279)					
Freiburg (N = 86)		Mannheim (N = 279)		Rastatt (N = 326)	
57,5 days		43,0 days		47,6 days	
Youths (N=38)	Adolesc. (N=48)	Youths (N=69)	Adolesc. (N= 210)	Youths (N=94)	Adolesc. (N=232)
45,8 days	66,7 days	39,4 days	44,2 days	52,9 days	45,4 days
Real New Admissions (N=590)					
Freiburg (N = 85)		Mannheim (N = 243)		Rastatt (N = 262)	
58,1 days		48,9 days		58,0 days	
Youths (N=38)	Adolesc. (N=47)	Youths (N=57)	Adolesc. (N= 79)	Youths (N=79)	Adolesc. (N=183)
45,8 days	68,0 days	46,8 days	49,5 days	62,1 days	56,2 days

The calculated averages of 46.9 (all new admissions) and 54.3 days (real new admissions) and the values attributed to youth and adolescents obscure differences existing among the institutions. When one calculates the average length of confinement associated with each of the three institutions, the data becomes more differentiated.

The average confinement period for all new admissions in Freiburg is 10 days longer than in Rastatt. When deferments are eliminated, however, the average confinement period for all real admissions is almost identical in Freiburg and Rastatt, but 10 days longer than in Mannheim. This difference and the reasons therefore should be investigated in the future. Mannheim assumes, on the whole, a striking position in comparison to the other two institutions. The confinement periods are the lowest when youth and adolescents are separately considered and are undercut only in the case of real new admissions of youth in Freiburg. Although the confinement periods for all real new admissions in Freiburg und Rastatt are similar when these periods are calculated separately for youth and adolescents, differences appear. In fact, these two institutions are completely opposite in their detention periods. Freiburg has the lowest detention period for youth but the highest for adolescents. Rastatt has, on the contrary, the highest detention period for youth and a lower detention period for adolescents than in Freiburg.

In order to better understand the varying results for the two institutions, those inmate who spent only one day or 1-7 days in the institutions will be excluded. The numerical explanation is found in Table 3 for the differences appearing above, which result from the inclusion of short-term inmates whose terms necessarily lower the average confinement period.

These data clarify the causes for differences in the average confinement period. Mannheim shows a clearly higher percentage of short-term new admissions than both other institutions. The data presented in Table 3,particularly the results in lines 2 and 5, explain the relative short confinement periods in Mannheim. If one calculates the average length of confinement for real new admissions excluding short-term prisoners from line 5, who cause a distortion, then the differences between the institutions are minimal. This fact is clear from Table 4.

Table 3 Movements in Prison within the First Week

Institution	Freiburg		Mannheim		Rastatt	
Confinement Period	abs.	%	abs.	%	abs.	%
1 day or less (ref. to all new admissions	1	(1,2)	50	17,9	14	4,3
1 to 7 days (ref. to all new admissions)	7	8,1	99	35,5	86	26,5
within one week transferred	1	(1,2)	36	12,9	64	19,6
1 to 7 days (ref. to real new admissions)	6	7,1	63	25,9	22	8,4

Table 4 Average length of confinement of real new admissions, excluding those persons released within a week

Institution	Freiburg (N=79)	Mannheim (N=180)	Rastatt (N=240)
Duration	62,4 days	64,7 days	63,0 days

Before concluding our discussion, a further table (see Table 5), which relates to exits (release order - sentence) in the three pre-trial detention centers, has been added for the purpose of completion.

Table 5 Release Orders and Convictions

Institution	Freiburg		Mannheim		Rastatt	
Exit	abs.	%	abs.	%	abs.	%
Release Order	49	57,0	155	55,0	112	34,4
Youth	24	27,9	40	14,2	44	13,5
Adolescent	25	29,1	115	40,8	68	20,9
Sentences	8	9,4	51	21,0	82	31,3
Youth	2	2,3	16	6,6	21	8,0
Adolescent	6	7,1	35	14,4	61	23,3

The percentages for releases include all inmates. Release includes only those exits from pre-trial detention through a release order. The existing data do not differentiate between release after termination of the proceedings, after discontinuance of the proceedings, or release justified in another way. The percentages of those sentenced include only real new admissions. All exits to Adelsheim or Schwäbisch-Hall are considered as sentences. Those inmates, who were transported into one of these two institutions within a week, were not included in the data.

In percentages, Freiburg has the highest release rate. Mannheim is only two percentages points lower. The difference between these two institutions results from the fact that release orders in Freiburg do not reduce the average confinement period. Contrarily, in Mannheim release orders frequently (see Table 3) occur within the first week and thereby lower the average detention period.

In a comparison of institutions on the basis of sentences, Freiburg occupies the most favorable position. A possible reason therefore lies in the age distribution of Freiburg inmates, which clearly deviates from that of the other institutions.The low sentencing rate can be explained partially by the high number of youth in the Freiburg institution. This overproportion of youth is also revealed in the relatively high number of home referrals, which account for 22 % of all exits of youth in Freiburg and 10,5 % of all exits in Freiburg in general.

The age distribution in the Freiburg institution also deviates from that in the national prison statistics. The age distribution, however, in the pre-trial detention centers at Mannheim and Rastatt is almost identical to that in the national prison statistics as of 31.12.1977 (see "Statistisches Bundesamt", Wiesbaden 1978, 16: the total of youth and adolescents breaks down to 27.05 % and 72.95 % respectively). Freiburg, on the contrary, deviates sharply from the federal average with approximately 50 % youth. In the absence of further data, we can only make suppositions as to the reasons for this deviation.

3.4 Discussion of results

1. The detention period in the three institutions in Freiburg, Mannheim and Rastatt is shorter than the 3-4 months previously calculated by Böhm (1977). In these institutions the detention period is approximately 54 days for all real new admissions. When those findings are generalized, they imply that considerably more youth and adolescents come into pre-trial detention than had been previously supposed. Kreuzer (1976, 339) also considered the data from Böhm (1977, 88) on the number of entrants into pre-trial detention to be underestimated. Böhm, assuming a 3-4 month average confinement period, calculates the number of real new admissions yearly to be 3.000 youth and 1.000 adolescents based on the number of total detainees on any one day. If one assumes an average confinement period of 2 months, however, then the number of real new admissions into pre-trial detention increases to 4.000 youth and 12.000 adolescents.

2. The trend cited by Kaiser at the beginning of this essay, viz., that shifting of youth from penal institutions to pre-trial detention centers is occurring, has been confirmed in our research. It is urgently necessary to inquire further into this shifting of sanctions in order to determine more exactly whether a tendency exists "to replace short prison terms with pre-trial detention" (Kreuzer 1978, 342).

3. The average confinement period and some of the other results calculated appear to be differentiated. The reasons for this differentiation probably can be explained extensively only through considering the practices of the criminal justice system authorities. These practices certainly are partially responsible for the high rate of short-term prisoners (primarily in Mannheim) and the high rate of youth in Freiburg.

4. As Table 3 indicates, Mannheim has a very high percentage of short-term inmates (1-7 days). It seems obvious therefore, that individuals in Mannheim are taken into custody more often and released more quickly than in the other two cities considered. The reasons for this difference cannot be determined with the existing data. In the absence of additional knowledge about the structure of offences, social-biographical situation of the offenders, and the strategies of judges, police, and prosecutor's office, further statements cannot be made. We also could not differentiate between police detention and pre-trial detention using existing data and data gained from admissions or discharge books. In Mannheim pre-trial detention appears to be utilized more often as a general means of deterrence since the percentage of inmates who spend only one day in pre-trial detention is relatively high.

5. The causes for Freiburgs' deviance in age distribution could not be explained through existing data. An empirical investigation of a few obvious suppositions could clarify this difference. Because of time restrictions, we could not research the problem posed here. Some questions, however, should be presented hypothetically.

a. Youth in Freiburg compose a higher percentage of the population than in Mannheim and Rastatt.

b. The youth in Freiburg behave more deviantly.

c. Officials such as police, prosecutor, and "detaining judge" (Haftrichter), exercise special strategies of action in Freiburg.

d. The accommodation of youth in pre-trial detention results from the search for a suitable home for home referral.

Additional statements can be made regarding only the last two hypotheses. It may be supposed that in Freiburg, pre-trial detention serves in some cases to bridge the gap between arrest and home referral. This assumption is based on the fact that Freiburg has the highest number of home referrals (22 % of all youth are assigned to a home) and the lowest sentencing rate (see Table 5).

The other hypothesis concerns an eventual alteration in the action stra-

tegies of officials because of the work of the Youth Assistance Agency in Freiburg. This agency's implementation of therapy, e.g., group therapy, has created the impression that pre-trial detention is strongly oriented toward education. Judges, could assume, therefore, that pre-trial detention is especially suited for the admittance of youth when alternativee are unavailable. We must point out that our data is valid only for 1978. Whether the same distribution of youth and adolescents would exist in another year remains open.

6. The movement of prisoners among the individual institutions is also of great importance. The geographical location of the institution is certainly significant here, since prisoners are more likely to be transported to centrally located institutions, such as those in Mannheim and Raetatt than to periphally located institutions as that in Freiburg. High rates of fluctuation can cause considerable organizational problems within the institution, with the consequence that education and therapy become impossible. The situation needed for the application of therapeutic measures, in spite of all legal deliberations appears to be lacking because of both time considerations and existing institutional conditions. Educational measures, which are considered to be secondary, are similarly limited.

Although we certainly are not proposing an extention of the pre-trial detention period for the purpose of attaining therapeutic goals, we do find that an alternative to the existing institutional setting should be created in order to facilitate the realization of the subsidiary purposee of juvenile detention.

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VI. TREATMENT AND REHABILITATION RESEARCH

PROGNOSIS AND TREATMENT OF YOUNG OFFENDERS

Helmut Kury

1. The problem

The unsatisfactory nature of pre-trial detention of youth and adolescents has been stressed for years in the juristic and criminological literature. Much attention has been directed toward the legally prescribed rehabilitative goals of juvenile detention centers, which have never been fulfilled. Schaffstein (1973) determined that the "realities in practice stand in dismaying contradiction to the demands of the law, viz., the juvenile court law, the code of criminal procedure, and the code for the execution of pre-trial detention. We could never maintain that pre-trial detention is carried out according to the goal of re-socialization as expressly required by § 93 (2) JGG" (see also Schaffstein 1977).
Kreuzer (1978) pointed out that pre-trial detention "has been extremely neglected in legislation, criminal policy, and in the practice of theory of penology" and thus remains "far behind general developments in the execution of sentences". Kaiser (1977, p. 1973) emphasized regarding the pre-trial detention of youth and adolescents that "the demands of the law and the realities of the situation ... are more contradictory than for any other of the requirements of the JGG." He also stressed that pre-trial detention is not carried out to re-socialize the detainee as prescribed in § 93 II JGG but rather is executed more similarly to short-term imprisonment, which is in effect straight forward inhumane punishment (Kaiser 1977, p. 1974).

Although, somewhat systematic resocialization programs have been implemented in prisons and juvenile correction facilities, these types of programs are essentially lacking in pre-trial detention centers. Different model attempts have "thrown a little light upon the great shadow of the present pre-trial detention system". These attempts, however, have hardly achieved any extensive results (Kaiser 1977, p. 174; cf., e.g., also Brandler 1975; summary Kury 1980). The treatment of individuals in pre-trial detention is on the whole still worse than the general treatment of prisoners (refer to Eisenhardt 1978; Böhm 1979).

Schöch (1978, p. 77), regarding the prison goal of resocialization, correctly criticised the "pre-trial detention period as not only lost but also destructive time. Lack of care in a situation involving considerable human loneliness and hopelessness leads not only to bitternese and defiance but also increases the danger of 'criminal infection'" (see also Rotthaus 1973). On the basis of current criminological knowledge, it must be realized that incarceration without treatment, in light of the subcultural influences existing in prisons, is more likely to "strengthen tendencies toward deviation" than encourage law abiding behavior after release from confinement.

In a recent study of 37 youths and adoleecents concerning their ability to psychologically master the problems associated with the commission of a serioue criminal act under the conditions of pre-trial detention, Schütze also concluded that qualified assistance is neither available under the currently existing structures of pre-trial detention nor from the professional groups employed in the juvenile prisons. "The pre-trial detainee is dependent upon himself and the 'help' of fellow-prisoners, which defendance encourages an unfavorable psychological attitude toward the commission of crime is negative with respect to the goal of resocialization" (1980, p. 148). This author emphasized that "the reeocialization possibilities missed during the initial phase ... can scarcely be utilized effectively later". The psychological effects spontaneously established at the beginning of detention as a result of the influence of fellow-detainees and the prison subculture probably cannot be reversed during the prison term nor later after release (1980, 152).

In light of these facts, Schöch emphasized that one should attempt "at least on a voluntary basis, to provide resocialization and treatment measures to eligible individuals in pre-trial detention". Increased efforts to negate the harmful consequences of pre-trial detention should be made (eventually through volunteer co-workers) (1978, p. 77).

The unfavorable conditions of pre-trial detention are particularly problematic since the number of detainees has increaeed significantly over the past few years. For thie reason Kaiser (1976, p. 229) commented "pre-trial detention, because of its changed function, increasingly becomes an important means of crime control". From the prison statistics one sees

that almost 1/3 of all prisoners are pre-trial detainees. This high proportion of pre-trial detainees underscores the importance of endeavors to remodel pre-trial detention so that it is more favorable to resocialization (see Kerner 1978a).

Pre-trial detention centers for youth and adolescents in particular should be oriented toward resocialization. Since those individuals in pre-trial detention on the average are not embedded in their criminal careers as firmly as prison inmates, efforts at treatment could have a better chance of success.

Two factors may be responsible for the limited use of resocialization programs during pre-trial detention. First, the treatment atmosphere on the whole is less favorable in pre-trial detention than in prison since the confinement period is ususally considerably shorter and the chances for successful therapeutic intervention, therefore, are diminished. In addition, the psychological pressure on persons in pre-trial detention, from the uncertainties involved in the forthcoming trial are greater than on convicted prisoners. This pressure causes an unfavorable situation for initiating treatment. Secondly, the pre-trial detainee's constitutional rights pose a problem for non-voluntary treatment programs since the individual's guilt has not been proven at the time of detention. Pre-trial detainees, therefore, must be considered innocent until the trial has been concluded. It thereby follows that the treatment of individuals in pre-trial detention is legally possible only on a voluntary basis. On the other hand, one must agree with Walter (1978, p. 339) concerning the treatment of juvenile pre-trial detainees as he emphasized "social pedagogic care of juveniles ... is only offered to these individuals ... and cannot be questioned as an impermissible manipulation of the personality". An offer to re-socialize, as every offer to treat, obviously must be based upon the principle of voluntariness since a positive personality alteration is otherwise improbable. Unanimity exists, as mentioned above, that pre-trial detention in the absence of an offer of systematic resocialization, hardly contributes toward the individual's reinstatement in society. On the contrary, danger exists that individuals, who suffer the damages of prison confinement, will be less capable of coping with life after release than before they were incarcerated. For this reason, the often repeated demand that juvenile pre-trial detention facilities be

transformed to favor resocialization should be urgently supported.

Numerous studies, primarily in the United States, e.g., Sykes (1958, see summary by Klingmann 1975), concerning the effects of incarceration conclude that detention in the absence of offer of systematic treatment is not only inhumane, but also likely to desocialize the confined individual. Consequently, such confinement contradicts the aims of modern penology.

If confinement is not systematically used for the treatment of socialization and personality damages, then the goal of reinstatement in the community hardly will be achieved. For this reason, not to mention for the purpose of satisfying legal requirements, often stated demand that the pre-trial detention of youth and adolescents be transformed to be more responsive to resocialization purposes should be supported.

2. The general status of treatment research

Here, the typical questions discussed in treatment research arise. Which measures have which resocialization effects for which confined subjects under which conditions. Otherwise expressed, which treatment programs have the greatest success for the reinstatement of juvenile delinquents in society (see, in this connection the extensive literature regarding psychotherapy efficiency research, summarized by Meltzoff and Kornreich 1970; Hartig 1975; Garfield and Bergin 1978; Köhnken et al. 1979).

We have at our disposal, primarily from the United States,numerous treatment research projects which furnish an abundance of information. These projects and their results, however, are contradictory in many ways and not sufficiently validated. Lipton et al. (1975) established in her comprehensive secondary analysis of 231 projects that the majority of the results described are not valid because methodological deficiencies existed in the research plan (see, in this connection the comprehensive presentation of Bailey 1966; Logan 1972; Slaikeu 1973). The fact that treatment programs, which were used in the total penal institution complex,had little or no influence on the recidivism rate led to increased criticism of the supporting research and partially to a rejection of the treatment ideology in the middle 1970's. "Nothing works" became a slogan that

seemed to conclude a reform policy begun with hope and partially unrealizable expectations (see Martinson 1974). Only a treatment program such as that which was practiced in the various "community-treatment projects" in the United States still seemed justifiable. In the state of Massachusetts, for example,the juvenile detention centers were temporarily closed and the inmates were given individual treatment within the community (see Miller et al. 1977).

In the meantime, new investigations in the Federal Republic yielded partially encouraging results regarding the effects of treatment in social-therapeutic institutions (see Egg 1979; Rehn 1979; Dünkel 1980). Furthermore, clinical psychology provided new research methods for interpreting therapy or treatment success, which contributed to new involvement with the effect of treatment measures in penal institutions. However, even today psychologists justifiably point out that the methodological problems involved in an efficiency control of treatment measures are still in no way satisfactorily resolved. An advancement, as will be emphasized, could be achieved through improved methodological projects, and particularly through longitudinal studies. The marked conflict, however, between methodological demands and research actually realizable will be indicated.

In the United States, criticism of previous treatment research results often led to the demand for methodologically exact research plans. For example, Sechrest et al. (1979), in a comprehensive study, came to the conclusion that only methodological and more exactly planned and conducted projects could ultimately lead to an advancement in treatment research. Although one should not overlook the fact that treatment research is one of the most difficult areas of empirical social research, one must also agree with Kaiser (1979, p. 118), who emphasized that "(the problem presented here) may be difficult and many-layered, but criminology ... cannot be disengaged from the task of seeking a scientific answer".

Although treatment research is still significantly limited, this type of approach is reasonable and necessary since it offers the only possibility of developing a penal system oriented toward resocialization. Kaiser (1979, p. 122) stressed "that regardless of all criticism against a treatment ideology, therapeutic and social-pedagogic endeavors cannot be ignored. Otherwise, only inhumanity and regression would be attained

in the name of greater rationality and justice".

As clearly has been shown over the past few years, treatment in a closed institution, such as prison cannot be accomplished by high expectations. If treatment does not occur in an environment generally favorable toward resocialization and if it is not accompanied by purposeful measures for release from confinement, then its chances of success are obviously limited. Specific treatment in prison should be part of a comprehensive resocialization program which is supplemented by educational and professional training, and assistance in the regulation of the confinee's debts and the acquisition of employment and living quarters after release. The general problem of high juvenile unemployment could pose significant problems for a released juvenile and thereby hinder the positive effects of treatment. Therefore, post release measures supportive and supplementary to treatment are extraordinarily important. If treatment is to be successful, someone such as the probation officer must implement these supplementary measures.

3. Intentions of the present project

3.1 Purpose

Although numerous and often contradictory data are available regarding treatment measures in the penal institution, resocialization programs during pre-trial detention have rarely been employed systematically nor as to their effect. Our purpose here was to contribute toward closing this research gap. This research project, which was carried out in collaboration with the Scientific Institute of the Freiburg Youth Welfare Organization (see Blumenberg 1978; Miribung 1978; Scientific Institute of the Freiburg Youth Welfare Organization 1978), involved the systematic observation of the treatment program offered by the members of this institute in the Freiburg pre-trial detention center for youth and adolescents and the appraisal its effects for the detainees' later reinstatement in society.

In order to avoid a conflict of interests, a separation of tasks was planned. The therapists of the Scientific Institute of the Freiburg Youth Welfare Organization implemented the therapy program according to a mu-

tually agreed upon plan. Independently therefrom, the criminological research group of the Max Planck Institute undertook the accompanying research.

In the planning and implementation of the investigation, which was set up as a longitudinal study, we attempted to avoid or overcome the deficiencies of previous research projects as described in the corresponding literature. Some of these deficiencies, however, could not be avoided without endangering the practicability of the project.In spite of intensive efforts, for example, it was impossible to make a random assignment of subjects to the experimental and control groups. With respect to the variables examined, data was acquired on the period before the last detention, during detention, in order to obtain the most comprehensive picture possible on the subject's development. In this way, we hoped to evaluate the effect of treatment independently from the subject's personal characteristics, the institutional environment and the post-release situation.

3.2 Selection of therapy forms

The treatment essentially concentrated upon the application of two internationally significant types of therapies, viz., client-centered psychotherapy (cf. Rogers 1972, 1973; Minsel 1973; Biermann-Ratjen et al.1979; Helm 1980), and behavior therapy (see Schulte 1973; Pielmaier 1979). Both forms of psychotherapeutic treatment have been applied in the case of delinquents, primarily in the United States but also in the Federal Republic of Germany (cf. Sarason and Ganzer 1971; Doll et al. 1974; Leky and Mohr 1977; Baulitz et al. 1978; critically, Schweinitz 1980). The therapists active in the project all had had several years experience in the treatment of delinquents.

Client-centered psychotherapy assumes that the psychic injury or behavioral disorder, e.g., criminal behavior, is a result of emotional conflict, which is expressed in a stark splitting of the individual's self- and ideal-image. According to the personality model articulated by Rogers (1972, 1973), the founder of client-centered psychotherapy, this emotional injury is connected to distorted perceptions and mistaken assessment of reality. A positive personality development can be achieved through

the therapists offer to discuss the client's problems and emotional state free from anxiety. It is assumed hereby, that the client's problems can be worked out and a solution to his difficulties found. Behavior therapy on the other hand, is composed of numerous different treatment programs, which are all based on learning theory. Misbehavior is seen as learned or conditioned in the sense that proper behavior was not learned and a behavioral disorder resulted.

One can correctly assume that criminal offenders have behavioral disorders because of some deficit in their socialization process. Their misbehavior is partially attributable to the fact that they have not been presented with an adequate behavioral model for particular social situations. In such cases it is important to provide these individuals with a behavioral model suited to such "critical situations", so that they may demonstrate adjusted behavior. In our project we followed an American learning program, which was particularly successful for criminal offenders. In the pre-study phase of the project we developed thirty model situations, which in fact occur frequently and which indicated appropriate behavior instead of the delinquent behavior often exhibited by "endangered" juveniles. All sessions were recorded on videotape after being examined for usefulness in order to facilitate standardized procedure (see Pielmaier 1980).

3.3 Research plan

A short summary of the research plan will be presented here.

Over a period of 25 months, all of the individuals newly assigned to the Freiburg pre-trial detention center for youth and adolescents were examined within one week of their confinement through an extensive battery of psychological tests. In our selection of tests, we primarily preferred those that examined personality dimensions which, on the basis of theoretical considerations could be expected to be altered through applied therapy. General personality tests were also included, such as the "Freiburg Personality Inventory - FPI" (Fahrenberg et al. 1973), parts of "Objektive Testbatterie OA-TB 74" (see, Häcker et al. 1974; see also, Cattell and Warburton 1967; Schmidt 1975), and the "Gießen Questionnaire"

(see, Quensel 1972; see also, Jesness 1966). Finally, we included tests recording particular personality dimensions which differentiate delinquents from non-delinquents (see, Schwenkmezger 1977; Utz 1978), since in reliance upon the results of psychotherapeutic research we assumed that the effect of therapy also depends upon the personality structure existing at the beginning of treatment (see, Kiesler 1977). All test methods were examined for relevance to our project in an extensive pre-study of the inmates of several juvenile penal institutions (see, Kaiser and Kury 1976; Kury 1976, 1977a, 1977b). After conducting pre-tests, we assigned the inmates randomly to one of two treatment groups. To keep the treatment groups as small as possible, each group was divided into younger and older subjects. An older and a younger group received client centered psychotherapy for 75 minutes three times weekly, and the other groups received behavior therapy for the same amount of time. The learning program described was applied through the use of model situations recorded on a videotape. Both types of therapy were also implemented in groups of five or less participants. In support of this treatment, groups were formed for free time activities. Furthermore, the staff was schooled and supervised in non-directive communication techniques.

To examine the effects of treatment, we conducted a second series of psychological tests six weeks after the beginning of treatment. It was necessary to conduct these post-tests after the relatively short period of six weeks to minimize the loss of subjects released or transfered from the institution.

Since recent psychotherapy research (see, Eckert 1974; Schwartz 1975; Franke 1978) correctly has emphasized the significance of recording continuous data during treatment, we recorded all therapeutic sessions on sound or videotape. Furthermore, both the subjects and therapists filled out a standardized form after every session. This procedure enabled us to conduct a longitudinal study on the entire therapy. Thus, not only the overall effects but also the structural processes of treatment could be studied.

Regarding previous treatment research it has been fairly remarked that individual projects lacked control groups of untreated subjects. Therefore, we placed great emphasis on providing such groups. Since the assem-

blage of a control group in the same institution appeared impossible for ethical reasons, as well as because of the relatively small number of confined persons, we were forced to form comparative groups in other institutions. Moreover, this method corresponded to our general research interest of comparing possible prisonization processes. For this purpose, we selected the pre-trial detention facilities in Rastatt and Mannheim. The control subjects were adminietered psychological examinations only (pre- and post-tests) and received no form of treatment.

In order to compare the treatment and control groups, an analysis of the institutional conditions of the three detention centers was conducted. In this connection, every aspect of confinement, which was assumed to have a positive or negative influence on resocialization, was investigated (cf. Busch's contribution in this volume).

This part of the research plan was also important in determining the extent to which individual institutions differ relative to the expected effecte of imprisonment. Different aspects of incarceration, e.g., the degree of deprivation, can cancel positive treatment effects. Treatment, therefore, also can be successful in a penal institution exerting strong prison effects by avoiding any further deterioration of the subject's personality. With regard to this consideration, eimple pre-post-tests revealed no differencee between before and after treatment. This lack of difference, however, does not indicate a deficiency in treatment success.

Through an analysis of court and prison files using standardized forms, biographical data regarding the previous social and legal behavior of the incarcerated eubjects were collected. Theee data were primarily of significance for differentiated evaluation of the effects of treatment on different sub-groups. Since numerous investigations indicate that the positive effects of treatment programs continue for only a limited time after release, we recorded exactly which conditions and problems are presented on release from confinement. For this purpose, a eub-group of 170 juveniles on probation and their probation officers were observed over a time period of up to 2 years (see in this connection the contribution of Spieß in this volume).

In an uncompleted stage of our research we are recording the extent to

which the collected data are prognostically significant for later legal behavior. Moreover, the legal behavior of juveniles 5 years after their release from confinement will be studied through information available in the central federal register. In this connection, we hope to develop a prognostic procedure in which data on the confinee's personality and psychological make-up also are considered.

The main part of our project concerning the implementation of treatment lasted as expected 25 months. During this period, 699 inmates of the three pre-trial detention centers were considered. Of these, 166 comprised the treatment group and 533 the two control groups. Participation in the treatment program was voluntary for juveniles. A total of 905 therapeutic sessions were conducted in the treatment groups. The average hourly treatment per subject was 18 hours in the client-centered psychotherapeutic groups and 19 hours in the behavior therapy groups.

The size of the research project, and particularly the fact that data collection, with the exception of the five year catamnesis, was first concluded at the end of 1979 and that the evaluation thereof is still in its initial phases, permit the reporting of only relatively general conclusions.

3.4 Problem of the dropout rate

It should be stated that we experienced often occuring problem facing empirical social research, viz., the dropout rate of subjects to multiple testings (see, Köhnken et al. 1979, p. 109 f.). It was almost impossible particularly since testing was voluntary, to record results for the entire random group for each of the test inquiries.

As expected, we also had relatively high dropout rates over various phases of the project.Of the 699 subjects included in the pretest, only 234 were available for the post-test. The main reason for this high dropout rate was release or transfer. In comparison, the number of refusals to participate was very limited. Files could be procurred on only 397 subjects. No data files could be obtained on the remaining subjects in spite of extensive endeavors over several months. Of the 161 subjects pre-tested in Freiburg, 111 participated in therapy. The other subjects

were not accepted into a therapy group primarily because their period of confinement in the pre-trial detention center was too short. Refusals to participate here also were relatively low. In the post-investigation of probationary assistance, 170 of the 699 pre-tested subjects were included.

The question may be raised here as to the extent to which the individual sub-groups were representative of the final group tested, i.e., what distortions could exist. Since pre-tests were available for all subjects included in the project, we could compare the individual sub-groups on the basis of these pre-test results. We found that almost statistically significant differences existed between the individual groups. We could assume, therefore, that distortions through dropouts, at least with respect to the pre-tested personality dimensions, were relatively insignificant and could be disregarded.

4. Results

4.1 Personality at the beginning of pre-trial detention

The use of psychotherapeutic programs for criminal delinquents is based on the assumption that the individuals treated suffer psychic disorders which are connected to socially deviant behavior. The elimination of these psychic disorders is assumed to eliminate or at least reduce the occurrence of socially deviant behavior. Some investigations have demonstrated that delinquents differ from non-delinquents in numerous psychological dimensions. These results, however, are in many ways contradictory (see the comprehensive presentation of Schuessler and Cressey 1950; Waldo and Dinitz 1976; Tennenbaum 1977). More recently, research on unreported criminality has shown that differences existing between incarcerated delinquents and control groups could not be confirmed as existing between non-reported delinquents and the control groups (see, however, Villmow-Feldkamp 1976). As was indicated justifiably, the differences shown for incarcerated offenders also could result from the effects of confinement. Consequently, it is possible that the previous investigations recorded not only differences associated with the commission of a criminal act but also those differences which could be attributable to the effects of incarceration.

We examined our subjects concerning the extent to which they deviated from the norm values of the individual tests, i.e., from comparable values of non-delinquent groups. This comparison is primarily of significance for the treatment group and, therefore should be limited to the Freiburg random sample. The Mannheim and Rastatt subjects, in fact showed almost the same results. For the purpose of simplicity, our comparison will be limited to the most important tests, viz., the "Freiburg Personality Inventory, FPI, the "Gießen Questionnaire", the "Risk Questionnaire" (see, Schwenkmezger 1977), the "Questionnaire for Recording the Subjective Delinquency Risk" and the "Negative Valence of Sanctioned Consequences" (see, Lösel 1975). All of these questionnaires have been utilized successfully for delinquent groups by other researchers (see, Rasch and Kühl 1973; Quensel 1972; Schwenkmezger 1977; Lösel 1975) and also proved to be relatively valid in our study.

The Freiburg pre-trial detention group deviated with statistical significance from norm values, i.e., comparable values for individuals without criminal records, in 34 of the 45 personality dimensions involved. In the personality questionnaire, the subjects in pre-trial detention without exception revealed a disturbed personality described themselves as more aggressive, excitable, and socially maladjusted, as well as more anxious and depressed than non-delinquent individuals. It also appears significant that the detainees revealed significantly increased values for the dimensions of extraversion and emotional instability. These increased values support Eysenck's personality and psychologically oriented criminality theory, which assumes that delinquents show higher values in these two dimensions as well as in the psychoticism dimensions not included here (see, Eysenck 1964). Furthermore, the subjects in pre-trial detention had increased values on 4 of the 5 risk scales indicating a willingness to take higher risks, which along with other factors can be seen as a cause for their delinquent behavior. At the same time, they perceived the risk of criminal detection to be higher than did subjects in the control groups. This perception is certainly connected to the fact that the detainees at the time of testing had recently undergone the negative experience of detection and arrest. It was particularly striking to find that the negative consequences of socially maladjusted behavior, such as warning, arrest, fine or even prison, were viewed to be essentially less serious by those incarcerated than by non-delinquents. This finding indi-

cates that the deterrent effects of these negative consequences is not as great for delinquents as for lawabiding citizens, which again may partially explain the delinquent behavior of our subjects. On the other hand, this finding may result from a sub-conscious falsification by the pre-trial detainees, who having to suffer the negative consequences of incarceration understate these consequences in an effort to convince themselves that their situation is not "so bad". In general it can be stated that individuals in pre-trial detention deviate significantly in a negative sense from the average population, i.e., the non-delinquent control group.

4.2 Differences between subjects in the experimental and control groups on pre-tests

One problem with our investigation, as mentioned above, was that we could not form a control group in the Freiburg pre-trial detention center and randomly assign our subjects to a particular group. Therefore, we had to set up control groups in other institutions. The question here became to what extent the control subjects from other institutions were actually comparable to the subjects in the experimental groups. Actual differences between the experimental and control groups in post-test analysis can be interpreted in relation to therapeutic effects only if these groups are comparable and if pre-trial detention execution is not essentially different from one institution to the other. We, therefore, interpreted the comparability of the three groups on the basis of pre-test results. The analyses of variance, which we conducted, revealed numerous statistically significant differences between the three groups particularly in regard to the "Freiburg Personality Inventory" and the "GieBen Questionnaire". The Mannheim subjects in pre-trial detention almost always appeared to be the unfavorable. These inmates apparently have a significant more disturbed personality structure than the Freiburg and Rastatt pre-trial detention center inmates. In the "Freiburg Personality Inventory - FPI", for example, they appeared to be more depressed,aggressive, withdrawn and emotionally unstable than other inmates. On the GieBen Questionnaire, they scored significantly higher on all scales except scale 9.

Other than these differences in personality structure, striking differences existed between the three pre-trial detention center groups in the existing data files on previous legal and social behavior.

The number of average previous convictions was higher in Freiburg than in Mannheim and Rastatt. Clear differences also were indicated regarding the proportion of inmates having served previous prison sentences. While 57 % of the Mannheim subjects had served previous prison terms, only 49 % of the Freiburg detainees and 46 % of the Rastatt detainees had previously been incarcerated. Consequently, although the number of previous convictions is higher for the Freiburg subjects, the number of previous detentions is lower for the Freiburg than for the Mannheim subjects. It can be concluded that in spite of the higher number of criminal convictions in Freiburg and Rastatt, apparently fewer institutionalizing sanctions were imposed there than in Mannheim. These differences in sanctioning practices also are revealed in the length of prison terms served. Of all inmates approximately 90 % had been sentenced to juvenile punishment. The length of this sentence was a maximum of one year for 71 % of the Freiburg subjects, but for less than 50 % of the Mannheim and Rastatt subjects. Expressed differently, the imposed sentence was more than one year for only 29 % of the Freiburg subjects, for 53 % of the Mannheim subjects and for 55 % of the Rastatt subjects. Moreover, probation practices differed substantially among the three institutions. Probation was granted for about half of the Mannheim and Rastatt subjects but for three-fourths of the Freiburg subjects. Hence it follows that the number of subjects who actually served juvenile prison sentences following pre-trial detention varied greatly with 40 % in Mannheim and Rastatt and only 13 % in Freiburg.

Differences particularly with respect to drug offences, also were revealed in the structure of offences comitted by inmates of the three institutions. The number of subjects who regularly took drugs was approximately one-half higher in the Rastatt and Freiburg groups than in the Mannheim group.

For a discussion of the differences in the length of pre-trial detention, see Busch's contribution in this volume.

Regarding age structure we found that nearly one half of the Freiburg subjects, and only one fourth of the Rastatt and Mannheim subjects are juveniles. The Freiburg pre-trial detention center subjects consequently are on the average younger than the Mannheim and Rastatt subjects.

We also found clear differences in additional variables concerning the course of pre-trial detention. The Freiburg subjects apparently spend more time in their cells than the Rastatt and Mannheim subjects. This finding indicates that the degree of deprivation is essentially higher in Freiburg. This higher level of deprivation, however, could have a negative effect on resocialization and oppose the positive effects of treatment.

Summarily, one can say regarding the comparability of the three groups, that the Freiburg subjects not only have higher criminal records but also experience greater deprivation within the pre-trial detention center. Both of these factors support a negative prognosis of these subjects. On the basis of these circumstances alone, it should be more difficult to demonstrate therapeutic success through treatment as shown in improved post-test values since higher prisonization effects may superimpose treatment results and eventually cancel their effectiveness. Our comparison of the three institutions on post-test results is consequently qualified by the described differences..

4.3 Differences between pre- and post-tests and in the revocation rate after release from detention

Therefore, it was not surprising on the basis of the previously obtained results to find that very few statistically significant differences existed between the pre-tests and post-tests of the treatment groups. However, this finding cannot be interpreted to mean that treatment had no positive effects. One finding, possibly indicating treatment success, was that those subjects from Freiburg, on whom information on probation revocation was available from interviews with probation officers, experienced fewer revocations than the other subjects in spite of the fact that they had more previous convictions and suffered greater deprivation during imprisonment. This result could be partially the result of therapy.On the

other hand, it also could indicate different levels of intensive post-prison care or different judicial practices (see, in this regard Spieß's contribution in this volume). Differential statistical analyses of the extensive data material should provide further information.

5. Discussion of the results

Finally, one must ask which conclusions can be drawn from the results of our project. No clear treatment effects could be demonstrated from the personality tests because of the relatively high deviance among the three institutions. One treatment effect, however, which counteracted the effects of prisonization was clearly higher in the experimental group than in the two control groups.

An additional reason for our insignificant results could be that the post-test was conducted directly before trial proceedings were initiated. The defendant's uneasiness could have hindered the expressing of expected treatment effects on our tests. A study by Fitch (1962) of individuals in pre-trial detention confirmed that Eysenck's extraversion and neuroticism values changed for individuals under the pressure of trial proceedings. This pressure caused so much emotional stress that positive treatment effects were temporarily suppressed.

Previous psychotherapy process research indicates that the effects of therapy do not proceed linearly but rather are subject to fluctuation. Exactly this factor makes the evidentiary strength of pre-post tests relative. It is possible that we included a therapy segment in the second test for which success can hardly be established. The still outstanding evaluation of the continuously recorded data from the sound and video tape recordings could offer decisive information here (see, Kury and Deutschbein 1979). Eckert (1974), for example, in a longitudinal study of client-centered psychotherapy found that various therapy processes contributing to successful treatment occurred over the course of the study (see also Schwartz 1975).

A further reason for the insignificant differences between pre- and post-tests for the treatment group could be the relatively high proportion

of subjects who used or were addicted to drugs. Previous research revealed that treatment of such delinquents is usually unsuccessful particularly in a prison environment.

Furthermore, one must consider that treatment could extend only over a few hours because of the relatively short total detention period. Consequently, treatment effects also were limited. Until the middle of the 1970's it was maintained that client-centered psychotherapy could have positive results in a few hours. This premise, however, has been increasingly questioned in recent years. Clinical psychologists today indicate that 20 or more hours of client-centered psychotherapy or behavior therapy are not unusual for relatively minor psychic disorders. Only a few hours treatment can scarcely bring penetrating success with isolated delinquents, who suffer marked socialization damages and personality defects. For this reason, it is necessary to initiate extensive resocialization programs, which begin as soon as possible after arrest in order to prevent the consolidation of a criminal career. Treatment in a pretrial detention center could be of significance here as the beginning of a differentiated resocialization program which continues after release from detention through particular welfare and treatment measures based on institutional treatment and implemented through the probation officer. Pure psycho-therapeutic treatment in the absence of supportive measures after release from detention does not appear optimal.

For the subjects, who were observed during probation, the variable "participation in therapy" had almost no influence upon the frequency of probation revocation. Pressure directly after release, such as unemployment, social disintegration and lack of personal contact, however, was associated with higher revocation rates (see, Spieß's contribution in this volume).

In the evaluation of our results regarding therapy success, one must consider that the effects of treatment could have been cancelled by integration difficulties occurring after release from detention. Lipton, Martinson and Wilks (1975) indicated that in many cases pragmatically oriented assistance could be better than classical therapy methods, especially if the latter are applied in relative isolation. The probation officers interviewed stated that in the initial phase of their work they were orien-

ted toward securing an existence for the released individual. Systematic confrontation with psychic and social stress is undertaken only at a later stage. Therapy during confinement, however, could be an essential preparation for this phase through motivating the subject to critically confront the psychical background of his delinquent behavior. A significant effect of treatment during detention also could be the furtherance of the subjects desire to change his wayward lifestyle. The effect of therapy within an institution undoubtedly can be increased if the institutional climate is shaped to be as favorable as possible to treatment. Although apparently therapy can have positive results only in a favorable environment, this environment, at least to a certain extent can be established in a detention center. Our project revealed that therapy can be implemented under extremely unfavorable detention conditions, and that juvenile inmates of pre-trial detention centers are interested in treatment. How leng-lasting treatment success can be and whether this success depends upon the individual subject, his personality structure, and socialization background, can be shown only in our ongoing differential analysis under consideration of the catamnestic data.

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RESEARCH ON DETENTION IN JUVENILE INSTITUTIONS

Determinants of the Interaction Processes between Staff Members and Inmates of a Juvenile Penal Institution

Christa Brauns-Hermann

In the following, part of a research project presently being conducted in juvenile institutions will be presented. We will attempt to analyse interactional processes taking place between members of the institution's staff, and inmates of the institution as determinants of typical juvenile confinement.

Before our research design and related considerations and hypotheses are presented, a seriee of research projects will be discussed. This project may be classified within the context of these other projects.

1. Early approaches to prison research

Our search for relevant empirical investigations and theoretical publications, which offer information on inetitutional confinement, revealed that presently prison research on interactional processes as determinants of confinement deale only with partial aspects thereof and, therefore, eays little about confinement as a whole.

Many sociological investigations have been conducted in Anglo-American research. They centered primarily upon organizational and interactional etructures and their significance for the prisonization process (see, Clemmer 1940, 1958; Sykes 1958; Morris/Morris 1963; and more recently, Hughes 1976; Propper 1976; Winfree 1976).

In addition, a series of comparative investigations on institutional organization have been undertaken which assist in ranking institutions according to their structure on a continuum ranging from purely custodial to treatment oriented. Furthermore, the goal of these investiga-

tions was to determine the effects of structural context conditions upon behavior as well as upon the inmates' psychical and physical changes (Street 1965; Akers et al. 1974; Bottoms/McClintock 1977).

The experiences and results of an evaluation study in England have had great significance for the development of juvenile institutions in the Federal Republic of Germany. In this study McClintock and Bottoms (1973) examined the efficiency of a new type of juvenile institution.

This investigation is different from the other studies mentioned in that the authors chose an action research design, which made it possible for them to participate in institutional life and to be involved actively during data collection in the alteration of the system from a traditional custodial to an individualized treatment orientation (in an educational sense). The authors viewed the following system: "to look closely at each aspect of training as traditionally conceived, and to make such modification as seemed likely to increase its effectiveness" (1973, p. 8).

Of primary concern in this project was the change-over from an educational traditional training regime to a modified training regime. The authors examined the efficiency of the modified training regime through various questionnaires, interviews, tests and institutional files. From these sources they hoped to gather information on how inmates react to modified training programs. At the same time,the authors, through participatory observation, noted changes in the institution's atmosphere, which were dependant on the staff behavior toward inmates.

The investigation was primarily interesting for our research purposes in its methodological approach of participatory observation. In spite of the justified reservations against this method, the study by McClintock and Bottoms appears to illustrate that particular fields, primarily those concerning behavior, are observable in their entire complexity only through personal observation (Devereux 1976). One such field involves situations in which the objects of observation have a subjective interest to consciously conceal their acts, motives and behavior and the answers to the necessary form of questioning can be formulated to exhibit a high degree of social desirability.

The German investigations relevant to our study mainly dealt with the effect of incarceration and its significance for desired resocialization (Hoffmann 1967; Hoppeneack 1969; Reinert 1972; Kommer 1975 and Luzius 1976).
A primary point of emphasis was the comparative investigation of prison organization which centered upon the contrast between legal norms and the actual practice thereof in different institutions (Waldmann 1969; Hohmeier 1973).

Apart from a few deficient social scientifically-based analyses of formal and informal institutional requirements and their effects upon prisoner behavior and institutional processes, the above-mentioned investigations gave no satisfactory explanation of the well known discrepancy between the statutory demand for resocialization and the actual situation within penal institutions.
One reason for this unsatisfactory information, in our opinion, is the extremely fragmentary knowledge of the actual occurrences inside penal institutions, which are characterized by many complex processes interacting and mutually affecting the general situation.
Official records, viz., filee and institutional analyses, reflect only partial aspects of this situation. In addition, eince the origin of data contained in these records cannot be reconstructed, the researcher faces the danger of drawing comparisons between basically incomparable data. For example, frequent rioting in institution A ae opposed to institution B is no indication of the existence of different inmate populations, but rather can be the consequence of different conditions, type of staff, or other strategies employed by the prison administration in evaluation and sanctioning. In other words, files and structural analyses can neither give information about the occurrence of particular (registered) activity nor be a basis for the comparison of behavior since they contain no information on fundamental situational conditions nor on subjective evaluative strategies.

Approaches in which the influence of these variables has been considered can be classified under the general term "interactionism". Here, one must differentiate, however, between inter-personal relations and their effect upon particular behavioral patterns (see, Secord/Backman 1974;Irle 1975; Piontkowski 1973; Crott 1979) and situational conditions and

their effect upon behavior (cf. Fishbein 1975; Ayzen/Fishbein 1969; 1974 a, b; Krämer-Badoni 1977; Wakenhut 1979).
Recent knowledge of the dependence of behavior upon situational conditions generally has led to wide-spread dissatisfaction within social psychology since the prognosis of behavior through test diagnosis appears questionable (see, Wakenhut 1979; Leichner 1978).
The extent to which social psychology has been accepted in criminology research, particularly in prison research, will be presented in several examples in the following discussion.

2. Interactional approaches in prison research

Blandow's (1974) investigation of the "discovery, assessment and sanctioning" is concerned with the clarification of conditions for the development, further development, and discontinuance of criminal careers as a function of the interaction between actor and audience, i.e., between multiply convicted offenders and the prison authorities responsible for their resocialization.

Blandow hoped to learn about the typical interaction processes between such "unequal partners" since he believed them to be one of the original causes of deviant behavior (see, 1974, 279).

Blandow's research model is of special significance since it is detached from criminology's conservative offence and offender-orientation but includes consideration of the "offender" and his deviant behavior. It also is divorced from the idealistic and radical definitional approach which attributes criminal careers exclusively to the classification processes employed by the formal instances of social control (1974, 180).

Similarly, in a discussion of "offender-oriented, aetiological approaches" in criminology and the definitional, i.e., labelling approach, Rüther (1978) concluded that interactional processes between deviants and officials exerting social control are essential determinants for the solidification of criminal behavior patterns.

In his essay Rüther refers to the inadequacy of explanatory approaches,

which deal exclusively with the behavior of the offender or that of the control authorities, and advocates instead the analysis of the effects of interactional and stigmatization processes upon deviants and their behavior. Rüther implicitly bases his argument upon Quensel who assumes that criminality within society is linked to particular criminal behavior patterns and social and psychic characteristics, e.g. member of the lower class, disrupted family relations, etc. According to Quensel, this criminal image is transformed into reality through systematic selection and application proceesee. These processes are similar to the process by which the female's social role is converted into reality through the consequent ascription of connected behavioral patterns with the result that women generally behave according to the role, which has been ascribed and attributed to them (1978, 195).

The attempt to use an international approach as an explanatory model for particular confinement processes necessarily requires certain methodical procedures. Since interest lies with the analysis and explanation of behavioral patterns, some researchere prefer the method of systematic behavior observation. Köhne and Quack advocate this method, not only because they find current knowledge of daily prison life to be fragmentary, but also because they consider behavior observation to be "an essential empirical basis for institutional decisions and policies" (Köhne/ Quack 1979, 15; see also in another connection Haferkamp 1975). In light of the controversy as to the exactnese of participatory observation, they require "methodically planned and controlled behavior observation" ... since "otherwise, results could depend on circumstances and conditions which are not even recognized by the individual observing" (1979, 15). The authors find this assumption to be in accordance with Devereux (1976), who characterizes observation results as a source of information about the observer since in most cases the results are determined through transference phenomena (see 1976, 17). Their objection to "participatory observation" as an "objective method" is, in our opinion, not avoided by the systematic controle suggested. Through a standardized procedure for observation, as has been suggested by Friedrichs/ Lüdtke (1971, 1977) errors in measurement, which are the consequence of subjective distortions in observation, can only be minimized and not completely excluded since "observation is always a process of selection, structuring and accentuation" (Frech/Teigler 1974, 1978) and not an in-

strument for "recording objective reality" (Labarre 1976, 11).

3. Description of our methodological approach

As has been indicated in our summary of current research, behavior observation entails certain methodological consequences. The decision to describe and analyze interaction processes between groups in prison as determinants of typical prison confinement implies a decision to carry out a methodically planned, controlled and standardized observation of behavior. The exactness of measurement will not be overlooked but will continually remain in the center of analysis for the implementation of different control measures and the interpretation of results. Our procedure appears even more appropriate in light of the unanimity among researchers that the formerly common procedures, i.e., questions, tests, files, and institutional analyses, portray reality to an even lesser degree than would be expected through observation (Steffen 1976; Brede 1977; Köhne/Quack 1979).

Our preference for observation, however, does not mean that these other methods should be abandoned. On the contrary, certain partial aspects of such a complex field as "prison reality" must be investigated through different procedures. It also follows that a meaningful interpretation of the results obtained from various different procedures can be attained only in an integrated synopsis. Our research plan, which will be presented in the following discussion, was designed on the basis of the above-mentioned preliminary considerations.

Our investigation took place in a model penal institution in Baden-Württemberg, which was established in 1974 and has a capacity for accomodating 400 persons. This institution was designed as a model in its abundant offer of different therapeutic measures aimed toward the resocialization of its inmates. Our project was originally conceived as an evaluation study. Since, however, the general model plan, particularly with respect to psychotherapy has not as yet been realized, such an investigation seems to anticipate reality.

Our chief research interest is the description, analysis and explanation

of typical interaction processes between particular groups in prison. We are assuming that activities and evaluation patterns originate from these processes. These activities and evaluation patterns are of decisive significance for the period of institutionalization.

Our review of possible instruments for recording such interaction processes revealed that presently a special instrument therefore does not exist. We, therefore, abandoned the description of complex processes and instead recorded partial aspects of these processes, which can be considered determinants of the relevant activities or evaluation patterns.

These determinants will be recorded through a number of different methods. However, the focal point of this investigation is the observation of interactions occurring between staff and inmates and in particular the type of behavior exhibited by the staff toward the prisoners. The procedures employed in behavior observation and in recording staff behavior, were based on a series of considerations, which will be presented in the following discussion.

In accordance with the requirements formulated by Friedrichs and Lüdtke for controlled, standardized observation, a student team of "participant observers" was formed. This team was introduced to institutional life by one of the institution's members of the Criminological Service, who was not a staff member. Daily prison life was viewed as a "temporal" totality of all possible staff behavioral patterns, from which random samples were taken. In the time periods investigated, these behavioral patterns were recorded in such a way that they could be ordered on a seven-level scale by means of a rating procedure developed in previous investigations (particularly Nickel et al. 1970, 1971a, 1973; Tausch et al. 1976, 1972, 1969a, 1966). A catalogue of specific, frequently occurring situations was developed to minimize the influence of situational conditions and facilitate comparison of the observed behavior. These situations reflect a certain kind of behavior, which can be assumed frequent, since it follows the statutory demand of "resocialization or rehabilitation". We, therefore, refer to this behavior as "resocialization behavior", which is characterized by a series of attributes, the general effect of which can only be understood when a multiplicity of determinant groups are considered. We have selected three of these determinant groups,which

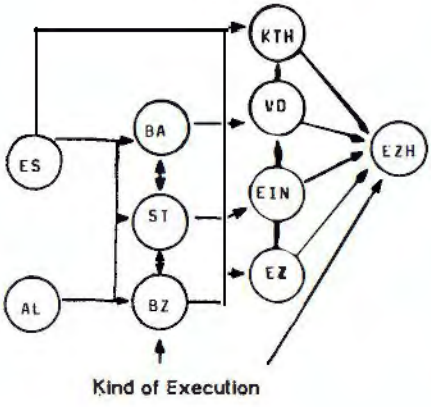
in their effects extensively reveal variances in resocialization behavior.

The determinants, which we have selected, relate to the individual being resocialized. We differentiated between objective personal data such as age, professional group and status, and subjective personal data such as goals, theories, strategies, attitudes and personal preferences.

The third area included concerned the conditions under which resocialization behavior occured. We assumed that the greatest variance would be explained through these conditions (see hypotheses).

The following model is an overview of the relationship between the determinants selected and the resocialization behavior practised by staff members.

Diagram 1



Legend :

ES	=	Own Socialisation
AL	=	Age
BA	=	Professional Education
ST	=	Status
BZ	=	Professional Contentment
KTH	=	Criminological Theories
VO	=	Prejudice
EIN	=	Suspension
EZ	=	Aim of Education
EZH	=	Educational Behavior

Those determinants, which were not included in behavior observation, were recorded through a written questionnaire and a semi-standardized in-depth interview. Finally, on the basis of institution files, the reaction behavior of staff members will be recorded and analyzed.

Before the assumptions which underlie our approach are presented, we will summarize the instruments once more:

Instrument	Subject matter
rating-scales	staff behavior toward inmates
questionnaire	staff behavior
interview	staff behavior
file investigation*	recording and evaluation of inmate behavior by staff members

* The instruments were constructed in connection with an exploratory phase of observation in the institution and subjected to item analysis and selection after a corresponding preliminary investigation.

4. Hypotheses

The relationship between a series of determinants and the resocialization behavior of the staff, which manifests itself in interaction processes with the inmates, was presented in a model diagram. We characterized this behavior as the dependent variable and formulated statements about those determinants which influenced this behavior and in what way they did so.

As noted by R. Lamp in this volume, a follow-up study is planned. It will examine the relationship between specific confinement periods and recidivistic behavior. In such case, our dependent variable would be one of the possible independent variables, i.e., we would assume that certain (social integrative) staff behavior toward inmates would have a more favorable influence in the sense of reintegration than other behavior (authoritarian, restrictive).

We assume that a large part of variance in the behavior observed can be explained through the different confinement situations, i.e., we are attributing certain effects to the context in which the behavior occurred. In the institution selected, these context conditions ranged from "treatment oriented" open-access punishment execution, to "leniant" punishment execution, to custodial, traditional punishment execution.

As to the effects of these conditions, we expect that as the degree of prison standardization increases, staff behavior will become more restrictive and be characterized by a high degree of (patronizing) control and a limited degree of regard for the inmates and acknowledgement of their self-sufficiency.

On the other hand, we expect that as the degree of prison standardization decreases ("open access" prison), staff behavior will become more socially integrative and be characterized by a high degree of regard for the inmates, an acknowledgement of their personal responsibility, and a limited degree of patronizing control.

Furthermore, we assume that a further part of the variance in the resocialization behavior observed can be explained through the varying occupational groups of the staff members. This hypothesis is based on the assumption that the three occupational groups observed, viz., psychologists, social workers, and civil officials receive varying degrees of training in the type of resocialization behavior considered desirable, i. e., socially integrative behavior.

We assume that social workers are most likely to have been trained to respect the individual being resocialized and to grant him the freedom to express himself within the limitations presented by social reality, i.e., to fulfill his own wishes and needs without conflicting with his surroundings.

Contrarily, institution officials learn less about favorable resocialization behavior especially with respect to the inmate's self-realization. We assume, therefore, that they, in acting according to traditional resocialization ideas, engage in more control oriented behavior.This control supports the inmate's adaptation rather than his "self-sufficient activity".

Finally, we assume that part of the variance can be explained through the social biographies of the institution staff. Differences in attitudes, goals, resocialization methods, strategies, etc., also result from the individual's personal secondary socialization. These differences in turn, result in differences in behavior practiced.

In summary, the variance between types of confinement are attributable to differing degrees of standardization. Differences in staff behavior occuring in different confinement situations are attributable to occupational group and social biography.

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CONFINEMENT OF JUVENILE PRISONERS - A DYNAMIC ANALYSIS

Rainer Lamp

1. Purpose of the investigation

Periods of confinement of juvenile offenders in two detention centers in Baden-Württemberg were examined. In the initial phase of the investigation, the records of 400 former inmates were evaluated in a time-series analysis according to the Box-Jenkins method for time-series-data. The effectiveness of certain institutional measures on the behavior of the inmates were estimated through time-series experiments.

In the second phase of the investigation, a certain dynamic variant of the anomie theory, explaining conforming and deviant behavior, will be applied and tested. In addition, a random sample of 200 inmates will be examined over three different time intervals. We will consider not only individual, but also special characteristics and the relationship between individual inmates and the institutional staff.

The investigation started at the beginning of 1980. The file analysis was finished in 1981 and the entire investigation should be completed in 1982.

2. Origins of the investigation

Our investigation of the confinement of juvenile offenders within the federal state of Baden-Württemberg was suggested by a group of academicians and representatives of the Ministry of Justice of Baden-Württemberg, the state juvenile detention centers, the Max Planck Institute for International and Foreign Penal Law in Freiburg, and other institutes. After social-statistical data on the entry of juvenile offenders into juvenile detention centers in Baden-Württemberg were collected and evaluated over a three year period, the need arose to obtain systematically

not only data regarding entry but also regarding the actual confinement period. Available data, viz., the personal files of former inmates, were evaluated for this purpose. A further study possible would be the correlation of these data with post-release data particularly with respect to recidivism.

Our investigation of juvenile confinement was conducted simultaneously with an investigation of the behavior of institutional staff members in the named juvenile detention centers. Certain theoretical relationships exist between the investigated variables in the two studies. Furthermore, simultaneous investigations contributed to the validation of record analysis as a research method and to the validation of additional data which were not acquired thereby.

3. Purpose of the investigation

Our investigation of the confinement of juvenile offenders had several purposes. First, we wanted to give an accurate description of juvenile confinement. Secondly, we wanted to formally reconstruct the confinement period. We see confinement as a dynamic process which can be formalized through differential equations. We wanted to explicate simple, dynamic models and test them on the basis of collected data. An example will be given in section 4.1. Thirdly, we planed to carry out time-series-experiments, in which empirically determined time-series are examined in order to determine what effect institutional measures, particularly those related to resocialization, have on confined individuals. Fourthly, in a second investigative phase, we plan to apply a dynamic theory which can explain conforming and deviant behavior of inmates in penal institutions. This theory is a variant of the anomie theory and was explicated by Opp and made dynamic by Diekmann and Opp. This variant will be tested within our study. Fifthly, we will consider the extent to which the methods and theories here applied could be carried over to other criminological areas.

Our investigation can be partially classified as prisonization research, in the tradition of Clemmer and Wheeler, since it will contribute toward solving the dispute over the validity of the prisonization hypothesis.

Furthermore, we will also consider the discussion dealing with the cultural drift theory.

The subject of our investigation is in no sense novel. On the contrary, extensive literature, also in the German language, is available thereon. Our research approach, however, is new. Prisonization research was previously limited to a description of the correlative connection between the duration of confinement and particular behavioral patterns and attitudes arising during confinement (cf. Wheeler 1961), or was focused on a static causal analysis, in which the time factor per definitionem was not considered (cf. Thomas 1976) premises concerning the relationship between the period of confinement and certain activities and attitudes of prisoners during confinement will be seen as quasi-laws whose fundamental, dynamic and causal structures should be revealed.

4. Individual steps of the investigation

An evaluation of available prisoner files composed the first part of our investigation on the confinement period. In addition to the problem of the validity of data acquired through file analysis, which cannot be discussed further here, the question also arose as to the theoretical relevance of data so acquired. One cannot assume that information theoretically relevant to inmate behavior is necessarily the information recorded in the files. An analysis of files alone, therefore, cannot satisfactorily explain the confinement period. For this reason, in addition to file analysis we plan to conduct a longitudinal study, in which the variated anomie theory is applied. In this part of the investigation, we will be particularly interested in the conditions under which a prisoner behaves deviantly from the official rules of the institution.

Two major sections exist in our investigation:

Section 1: time-series-analysis of the personal records of former inmates. Section 2: evaluation and testing of a dynamic theory explaining conforming and deviant behavior in penal institutions. This section involves a non-experimental longitudinal study. These two sections will be considered in the following discussion.

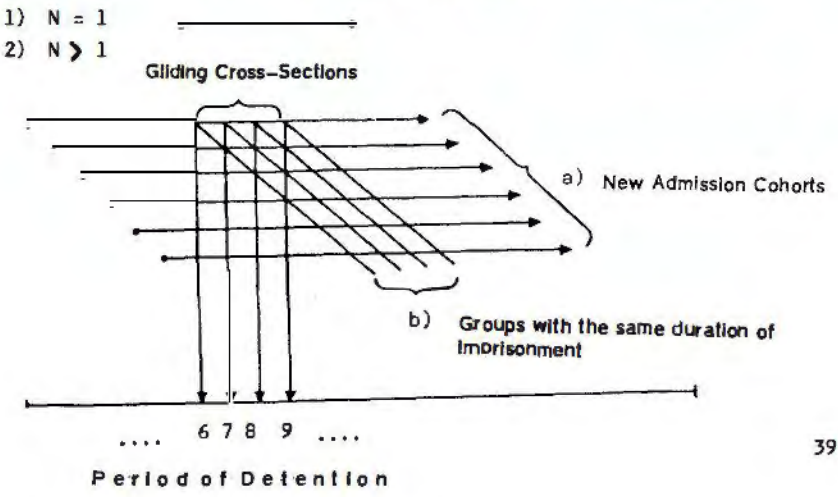
4.1 Time-series of the personal records of former inmates

Description. Through an analysis of the records of former inmates, the confinement period will be described as a time series based on weekly activities during confinement. The selection of activities is necessarily limited by the data recorded in the files, which include inmate behavior toward other inmates and the staff, behavior at work and in school, behavior during release periods, e.g., vacation, furlough, community release, and release requests entered and refused.

With the exception of the last two categories, the files usually include inmate behavior, which is considered deviant according to the official terminology of the institution. (A list of approximately 40 different varieties of deviant behavior is available). In addition to the inmate's activities, institutional measures, which mainly concern positive sanctioning, e.g. relaxing particular regulations, or negative sanctioning, e.g., punishment, are presented.

A time-series-analysis of the personal records can deal with various investigational units: 1. individual prisoners (N = 1, single case analysis); 2. groups of prisoners (N > 1), who a) are entry cohorts, i. e., entered the institution together, who b) have been incarcerated the same amount of time (a) is subset of (b), or who c) are all serving sentences at any particular point in time "t" (cross section to point in time t). The various units of analysis are symbolized graphically in the following diagram:

Diagram 1 Different Units of Analysis in the Investigation



The random sample for file analysis will consist of nearly 400 inmates who entered juvenile detention centers in Baden-Württemberg from 1976 to 1979. Some data are already available on these inmates,including social-statistical data and personality data based on continuous investigations during the relevant time period. A wide field, therefore, is available for data analysis.

Our investigation tool used for file analysis was preliminarily tested in February, 1980. The main study was initiated in June, 1980.

In spite of the well-known problems with file analysis, this instrument appears to be the only one that can be justifiably used in the investigation of the above-mentioned time-series-data. The reasons therefore are based on cost and time considerations. Every other procedure for data investigation would be more expensive, and the data would be available at a much later point in time. Moreover, it is questionable whether other procedures could guarantee decisively better data validity. Finally, any deficiencies existing in the file analysis can be determined since, in our parallel investigation, we will examine observation data on deviant behavior in the institution. These data can be compared to entries in the current prisoner files.

Reconstruction. Time-series analysis frequently presents a somewhat irregular picture. It only seldomly permits a systematic pattern to be recognized on first appearance since regularities, which possibly exist, are concealed by many other factors. In most cases, the statistical analysis of time-series is superior to visually studying the data. In the statistical analysis of our time-series data, we will attempt to reconstruct the confinement period through differential equations, which for every point in time, i.e., for every time interval during confinement, indicate the functional value, viz., the frequency of occurrence of particular inmate activities. From particular assumptions concerning the (dynamic) relationship between the independent variables we will derive the time path of the dependent variables. This time path will in turn be confronted with the empirically determined time path of the confinement period. A simple model serves as an illustration of the fact that the rate of deviant behavior of a group of inmates with a particular release niveau is dependent on the rate of deviant behavior and the level of

stigmatization within this group. This relationship is represented by the following differential equation:

$$(1) \quad \frac{dV}{dt} = S - q.V$$

whereby V indicates the rate of deviant behavior, S the degree of stigmatization and q the speed of the dynamic process. The time path, which may be derived from this equation, is expressed as follows:

$$(2) \quad V_t = -\frac{S}{q} \cdot (e^{-qt} - 1) + V_0 . e^{-qt}$$

whereby V_0 is the rate of deviant behavior for point in time zero, i.e., at the time of entry in the institution, V_t the rate of deviant behavior at a later point in time t, and e the exponential function. The time path derived can be compared with the empirically determined time-series for the rate of deviant behavior and also used to assess the value of the model, e.g., through regression analysis.

After the pre-test is concluded, dynamic models or model equations will be formulated explicitly as described. Their time functions will be derived analytically to the extent possible and compared with empirically collected data on the confinement period. Since our selection of variables is not based on theory, it is clear that these models are not theoretically satisfactory. The explicit application of a theory of the confinement period will follow in the second section of our investigation.

We shall now outline the time series experiments mentioned above.

Time-series-experiments

The question presented in the time-series-experiments is whether certain institutional measures have particular (desired) effects. More technically expressed, the question is whether the alteration of variables representing institutional measures at a particular point in time or during a particular time period alters the course of certain dependent variables over the course of time, and, if so, in what way. In answering this question, the attempt should be made to identify experimental or quasi-experimental patterns in the file material. We, therefore, are looking for experiments, which the institution conducted with its inmates. It is not necessary for our purposes that the institutional per-

sonnel was aware of the experiment. A typical experiment in the investigated institutions, the transfer of an inmate from the standard control section to the less restrictive section of the institution. Further experiments are easy to identify: vacation, educational and professional measures, confinement in an arrest cell, refusal of prisoner's requests, and changes in the institutional director. Once the experimental patterns have been identified, the effects of the measures involved will be examined through a time series analysis with the help of the Box-Jenkins technique. To our knowledge, this procedure has never been applied in German criminology. In the United States, for example, it has been applied in the investigation of both the effect of speed limits on the number of accidents, and the effect of changes in the divorce law on the divorce rate. In Germany, application has been made primarily in clinical psychology, e.g., in the investigation of therapy effects. This technique appears to be the most promising for a time-series-analysis of the data in our investigation. Furthermore, we expect to find application of this technique in the analysis of numerous other criminological time-series- data.

4.2 Application of the anomie theory in the explanation of conforming and deviant behavior in penal institutions

The strategy of evaluating available data in a secondary analysis, as we plan to do with the data gathered from institutional files, is a standard procedure in empirical social research. The limits of such procedure, especially in the analysis of files, are apparent. We nonetheless consider it necessary, out of theoretical considerations, to apply one or more of the concurrent theories of the confinement period. We shall limit ourselves to the explanation of deviant behavior in the institution and to the application of a theory widely discussed in the sociology of deviant behavior.

We have selected the anomie theory in the version developed by Opp in his expansion upon two essays written by Merton and one essay by Cloward (see, Opp 1974; Cloward 1975; Merton 1959 and 1964). Opp, together with Diekmann, modified this original version and made it dynamic (Diekmann/Opp 1979). Because of its formulation, this version of the anomie

theory is applicable to every form of deviant and conforming behavior as well as to deviant behavior in prison, and, therefore, will be tested in our investigation.

This is not the first time that the anomie theory or a version thereof has been used to explain deviant behavior in penal institutions. Previous investigations also indicate that the anomie approach could be effective here. The version applied in our investigation, however, has never been empirically examined. For reasons of brevity, we have presented Opp and Diekmann's version only schematically. A more detailed and concrete presentation can be found in Opp (1974), Diekmann (1979), and Diekmann/Opp (1979).

The theory consists of the following variables:

Abb	Name of Variable
Z_i	Goal Intensity - Intensity of inmate's goal i, which from his own points of view, can be realized through a class of activities.
$N_{K_{i,j}}$	Conforming Norm - Intensity of inmate's norm to achieve goal i through a particular conforming activity j from the named class of activities.
$N_{Ai,1}$	Deviant Norm - Intensity of inmate's norm to achieve goal i through a particular deviant activity from the named class of activities.
$M^K_{i,j}$	Conforming Means - Degree of possibility, perceived by inmate, to achieve goal i through a particular conforming activity j from the named class of activities.
$M_{A_{i,1}}$	Deviant Means - Degree of possibility, perceived by an inmate, to achieve goal i through a particular deviant activity 1 from the named class of activities.
$M^o K_{i,j}$	Objective Conforming Means - Degree of inmate's actual possibility of achieving goal i through a particular conforming activity j from the named class of activities.

$M^{o}A_{i,l}$ — Objective Deviant Means - Degree of inmate's actual possibility of achieving goal i through a particular deviating activity l from the named class of activities.

$D_{Ki,j}$ — Discrepancy in Conforming - Discrepancy found by an inmate between the intensity of goal i and the degree of possibility of achieving this goal through conforming activity j, i.e.,

$$D_{K_{i,j}} = Z_i - M_{K_{i,j}}$$

$D_{Ai,l}$ — Discrepancy in Deviating - Discrepancy found by an inmate between the intensity of goal i and the degree of possibility of achieving this goal through deviating activity l, i.e.,

$$D_{A_{i,l}} = Z_i - M_{A_{i,l}}$$

The variables, which causally preceed the independent variables of the anomie theory, are the following:

K_l — Control - Degree of institutional personnel's control over inmate's deviating activity l.

KT_{MK} — Legitimate Contact - Frequency of inmate's contact with individuals offering legitimate possibilities.

KT_{KA} — Illegitimate Contact - Frequency of inmate's contact with individuals offering illegitimate possibilities.

KT_{NK} — Conforming Contact - Frequency of inmate's contact with individuals, who conform to norms.

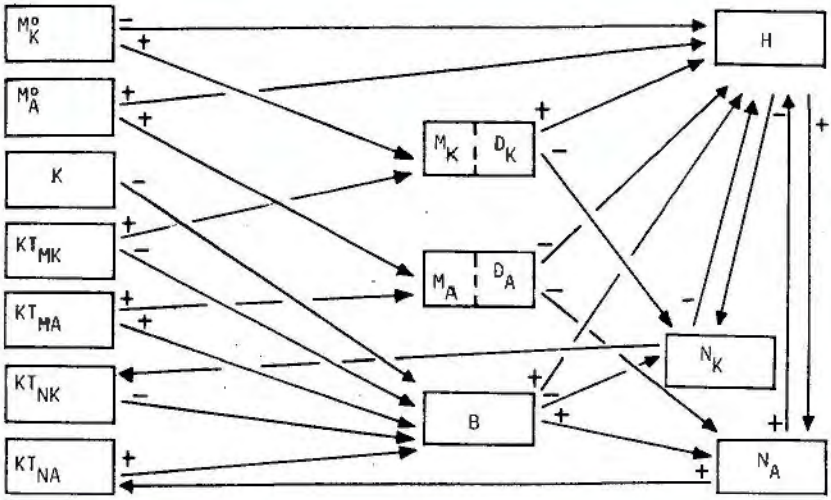
KT_{NA} — Deviating Contact - Frequency of inmate's contact with individuals, who deviate from norms.

B_l — Reward - Degree of reward for the inmate's deviating activity l.

H_l — Deviant Behavior - Frequency of inmate's deviating activity l.

The postulated relationship among the variables is specified through the following causal model.

Diagram 2 A Modified Model of the Individual Anomie Theory with Feedback and Context Effects (see Diekmann/Opp 1979, p. 333)



The plausibility, i.e., empirical evidence, of the postulated relationship cannot be discussed at this point.

Roughly stated, our test of the theory presented will determine the value of the variables for every inmate in our sample at three different time periods, viz., the beginning, middle and end of confinement. Using these data we will estimate the unknown parameters of the structural equations, which are the basis for the causal model. The sign and size of the empirically determined coefficients determine whether the model will be accepted or rejected.

Our initial random sample will include approximately 240 juvenile offenders, who in the early part of 1981 (presumably) will be committed to juvenile detention centers in Baden-Württemberg. On the basis of available data, we expect a 20 % mortality rate within the random sample. Data recording will be concluded one year after beginning the study. The second section of our investigation is presently in the phase of operationalizing of the variables. A pre-test was carried out in February, 1980. A test of the standardized instruments of investigation will follow at the end of 1980.

We plan to conclude the entire project in the middle of 1982.

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PROBATION, PROGNOSIS FOR PROBATION, AND SUCCESS OF PROBATION IN REGARD TO A GROUP OF JUVENILE PROBATIONERS

Gerhard Spiess

In the endeavors to reduce the number of prison sentences and thereby avoid the negative consequences of incarceration, the introduction of probation in 1963, as well as the increased use of monetary penalties for adults, played an important role. The appointment of a probation officer, which is mandatory according to juvenile court law (JGG), is intended to facilitate in the resocialization of juvenile delinquents.

More than 60 percent of Weet German juvenile delinquents sentenced to a prison term are currently placed on probation. Probation is most commonly used when a delinquent is sentenced to prison for the first time.

In addition to judicial decisions granting or denying probation, the later revocation of about 40 % of the probationary releases through the probation board also is important in determining the prison population and thereby in increasing the probability of future criminal careers.The court's decisione regarding probation and the activities of the probation officer, therefore, can be viewed as elements of a strategy of diversion from prison and thus an assistance in the avoidance of attaching a definite criminal stigma.

The majority of social workers active in the field of probation actually see their work not in its control function, as required by statute, but rather in the avoidance of official court intervention in an attempt to further through professional methods, the probationer's self-sufficiency and competency to deal with daily problems.

Numerous projects attempting "treatment in freedom" and treatment in prisons, such as analyzed by Lipton et al. (1975), could not fulfill the high expectations associated therewith. Of importancce, however, was the substantiation by single experimental studies that the reduction of

freedom depriving measures or their replacement by non-custodial alternatives did not lead to increased revocation and recidivism rates. Although the results of these studies are highly inconsistent with respect to the various treatment methods, one profit of this evaluation research was the finding that for a large percentage of prison inmates non-custodial intervention forms are at least equivalent alternatives in regard to the legal risks involved.

1. Scope and research design

The project "Prognosis and Treatment of Young Offenders" (see, Kury in this volume) concerned psycho-therapeutic treatment during the pre-trial detention of juvenile offenders and the effects of this treatment on later probation. Since some of the inmates investigated were placed under probation supervision either immediately after pre-trial detention or after serving part of their sentence in a juvenile prison, it seemed worthwhile to include some hypothetical correlates of probation results in our investigation.

The research presented here will investigate:

- how participation in therapy during pre-trial detention is related to success or failure during probation;
- how regionally different court practices regarding release affect success or failure during probation;
- how official assistance during probation is correlated to social reintegration and recidivism.

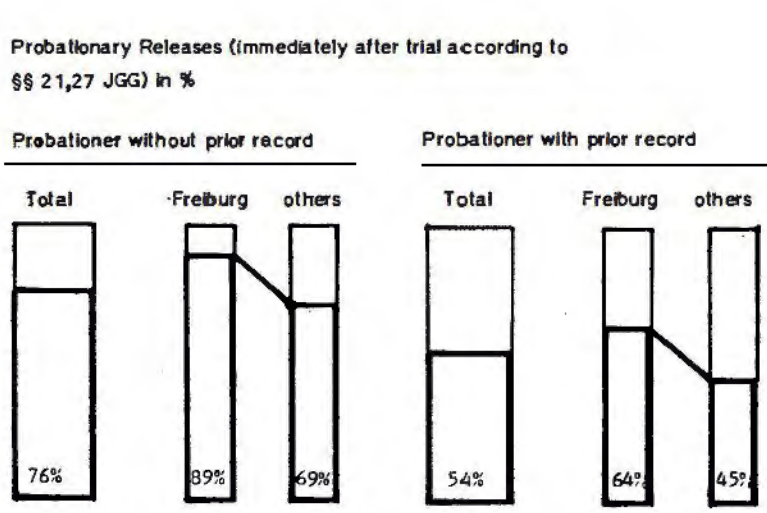
The probation officers for 170 probationers from various districts were asked through written questionnaires about essential factors regarding probationers after their release from confinement and for up to 2 years of the probationary period. Approximately 60 % of the individuals questioned actually completed the questionnaires. Our data include all probation revocations announced by 12.31.1979, which account for 80 % of all cases investigated.

2. Probation practices and recidivism

2.1 Differences in judicial probation practices

Significant differences were found among the groups investigated in judicial practices regarding probation. The Freiburg group had a clearly higher percentage of probationary releases directly after trial (§§ 21, 27 JGG) than the comparison groups. In Freiburg, juveniles with previous criminal records also had a relatively higher chance of being granted immediate probation than juveniles in other groups, who more often served an initial prison sentence before being released.

Diagram 1 Previous Convictions and Probation Decisions



Although the risk of revocation correlates with previous convictions regardless of region, the more liberal Freiburg practices in no way led to increased revocation rates in this group;

Table 1 Revocation Rates According to Group Investigated

Cases investigated	Freiburg N	Freiburg %	Comparison Group N	Comparison Group %	Total N	Total %
not revoked	39	60,9	57	53,8	96	56,5
revoked	25	39,1	49	46,2	74	43,5
	64	100,0	106	100,0	170	100,0

2.2 Juvenile court aid's report and probation practices

Corresponding differences also were found in association with the recommendations contained in the juvenile court aid's report. As the following table shows, the Freiburg judges always followed the recommendation, for immediate probation when given with a positive prognosis for development. They also granted probation in approximately 70 % of the cases in which a positive prognosis was lacking.

Table 2 Connection Between the Prognosis for Development in the Juvenile Court Aide's Report and the Decision Regarding Probation (According to Groups Investigated)
(rate of immediate probation in %)

Favorable Pregnosis	Freiburg (N = 31) yes	Freiburg (N = 31) no	Comparison Group (N = 81) yes	Comparison Group (N = 81) no	Total (N = 112) yes	Total (N = 112) no
releases (§§ 21, 27 JGG)	100 %	72 %	76 %	65 %	83 %	67 %

The juvenile court aid is commissioned by law to assist, through an investigation of the offender's personality, in finding a judgement, which is appropriate for the individual involved.

In critiques of juvenile court aid (such as Sagebiel 1974), it has been postulated that through the formulation of social stereotypes based on middle class standards probationers of the lower class are disadvantaged. The legally prescribed evaluation of personality and life circumstances is based on features of the family background, developmental history, and earlier deviant behavior, which differ from middle class standards. The contents of the official files, which were primarily produced by the control agencies, were formulated with the tenor of a moral judgement and served as the basis for unfavorable prognoses, the determination of "dangerous tendencies" and, thereby, the unfavorable recommendation for sanctioning.

In order to investigate the postulated influence of the juvenile court aid upon the probationer's reintegration chances, we first examined which single characteristics in the criminal files contributed with what weight to unfavorable evaluations in the juvenile court aid reports.

Table 3 shows the connection between different single characteristics such as age, previous convictions, illegitimacy, etc. (as independent variables) and favorable summary evaluations in the juvenile court aid reports (as dependent variables). The dependent variables are: unfavorable milieu in the parent's home; dangerous tendencies and inclinations (example of formulation: "the probationer is inclined toward external and, in unobserved moments, also to internal depravity"); denial of a positive prognosis for the probationer's further development. According to a rating system, we also determined files as a whole presented the image of a "typical" criminal personality.

The relative weights of single characteristics on the formation of summary evaluations were assessed through the calculation of (standardized) multiple regression coefficients for each of the dependent variables. Taking into consideration the ordinal data niveau, rank order numbers were assigned in columns (1 indicates the strongest influence) to the weights of the single characteristics to the extent they contributed to an unfavorable judgement.

Table 3 File Contents, Their Contribution to Evaluations in Juvenile Court Aid Reports and Their Connection to the Later Outcome of Court Proceedings (revocation)

INDEPENDENT VARIABLES	DEPENDENT VARIABLES Summary Evaluations in the Juvenile Court Aid Report				Sentence	Result
Officially recorded facts	milieu/education unfavorable	dangerous tendencies/inclinations	no positive prognosis	judgement of characteristics stigmatizing	no immediate suspension	revoked cases
Younger probationers		4	1	3		+.18
Previous convictions		6			1	+.28
Parent(s) foreigner	4		3	3		-.19
Illegitimate				2		
Change of main educator	2			4		
Male main educator unemployed					3	+.16
Female main educator employed	3	4			4	
Unfavorable economic situation of parents	1	3		2		-.36
Unfavorable economic situation of probat.				7		-.12
Lack of leaving certificate			5		5	+.38
Lack of professional training				6		
At the time of commiting crime unemployed					6	
Change of employment		5	4	5		+.16
At the time of commiting crime without steady residence						+.22
Without steady girlfriend		2			2	
Without steady circle of friends	5					-.16
Drugs	6	7				
Number of evidences in the file	7	1		1		

Particularly clear is the strong influence social stereotypes have on unfavorable evaluations of the family milieu. The poor economic situation of the parents, the existence of a broken home, the mother's employment and the foreign nationality of at least one of the parents were essential factors affecting this judgement.

The characteristics mentioned, and further the juvenile's lack of professional training, lack of steady personal relationships,and officially recorded use of drugs all contributed to further unfavorable evaluations in the juvenile court aid reports.

In fact, actual connection with an increased danger of revocation could be proven for these variables. Children of foreigners or from economically deprived circumstances are in no way more likely to suffer probation revocation than other children as is revealed in the right column of our table. In this column the standardized regression coefficients (only those greater than .10) are listed with positive or negative signs. A positive coefficient indicates an increased risk of probation revocation.

In column 5, the rank order of correlations between file contents and denial of immediate probation are listed. To the extent this decision can be explained through the file contents it is influenced by factors other than those that were relevant for the juvenile court aid reports. The differences can be seen through a comparison of the weights of the individual factors in our table. The influence of previous convictions upon judicial decisions regarding probation (second column from the right) is clear. This influence also remains clear when one controls for differences in the file contents. The connection between summary evaluations in the juvenile court aid reports and decisions on sanctioning are shown in the following table 4 (here, summary judgements in the juvenile court aid reports are the independent variables, and decisions on probation and, in comparison, the results of probation, e.g., revocation, are the dependent variables).

Table 4 Evaluations in Juvenile Court Aid Reports, Region and Previous Convictions in Relation to Probation Practices and Revocation Rates

Independent Variables	Standardized regression coefficients refering to (dependent variables): Suspension refused (§§ 21, 27 JGG)	Results of the investigation Revocation
Previous sentence	+.22	+.21
No positive prognosis	+.20	(-.08)
Dangerous tendencies/ inclinations	+.26	(+.06)
Education/milieu unfavorable	-.15	-.14
Stigmatizing description of the probationer	(+.01)	+.22
Place (Freiburg viz., comparison groups)	-.15	(-.09)
R^2	(-.19)	(.11)

It cannot be determined, as can be seen from the weights of the single characteristics in Table 3, that an unfavorable evaluation of the family milieu negatively affects court decisions regarding probation. On the contrary, our data indicate that a reference in the juvenile court aid report to external burdens on the juvenile offender, is more likely to be appraised as reducing the juvenile's responsibility. A destigmatizing influence, therefore, can result from the juvenile court aid's unfavorable evaluation of socialization conditions. The underlying hypothesis appears empirically tenable: probationers who came from an unfavorable family milieu, also when other variables were held constant, did not suffer probation revocation more often than average. Only previous convictions and general "stigmatizing impression of the probationer"

(impression rating) were closely connected to increased revocation rates. On the contrary, the influence of the stigmatizing impression of the probationer upon probation practices can not be proved. Above all, no connection between the prognosis for development contained in the juvenile court aid report and the later actual outcome of the probation period could be found. Probationers, for whom a positive prognosis for development was lacking, in no way experienced probation revocation frequently than other probationers, for whom an explicitly positive prognosis was given.

Summarily, we can make the following statements regarding the stigmatization and selection effects of juvenile court aid reports in the group investigated:

1. Stereotyped patterns of evaluation affect summary judgements and the selection of "deviations" recorded.

2. The prognosis for development in juvenile court aid reports, which influences sanctioning decisions both normatively and actually, could not be proven valid, i.e., it could not be confirmed in the group investigated. Although the denial of a positive prognosis had a detrimental influence, deviation from recommendations in the juvenile court aid reports also occurred. Offenders, who were granted probation regardless of the lack of a positive prognosis were not recidivistic more often than those who served part of a juvenile sentence before being released on probation.

3. It appears, although here only ex post facto interpretations can be made, that important and valid juvenile court aide evaluatiens are more likely to be found "between the lines" than in explicit comments and recommendations. The relationship between the impression rating and the revocation rate remains even when the entire explicit evaluation variables are held constant. The court aide's tendency to avoid negative recommendations to the court, which are explicitly, stigmatizing and disadvantageous to the probationers,is probably responsible therefore.

3. Improvements on probation prognosis through personality diagnostics?

Diagnostic personality findings on the youth investigated permits us to determine whether the application of a diagnostic personality test, in this case the Freiburg Personality Inventory (FPI), could improve the prognostic validity of the juvenile court aid report.

Diagnostic inquiries were conducted at the beginning of the pre-trial detention period in the phase in which the juvenile court aide is called upon in preparation for trial.

The Freiburg Personality Inventory (FPI; Fahrenberg et al. 1970) is employed in entrance diagnostics in prison. In the criminological literature, higher values were reported for the prisoner population than for the norm group on primarily the following scales (see, Egg 1979):

FPI	1	Psychosomatic Disturbances, Nervousness (similar to MMPI-Hy)
FPI	2	Spontaneous Aggression, Uncontrolability
FPI	3	Depression, Insecurity (similar to MMPI-D)
FPI	4	Excitability, Irritability (similar to 16 PF-D)
FPI	8	Social Inhibition (similar to 16 PF-H)

Different authors also postulated a connection with the dimension "extraversion" (FPI-E).

Table 5 shows the results of a comparison of mean values of N = 155 probationers, of which 67 (43,2 %) experienced revocation and 88 (56,8 %) completed probation.

A score of extremity was computed over the scales 1, 2, 3, 4 and 8 as an indicator of an unfavorable offender. A probationer's value was determined according to the number of scales in which he ranged in the most unfavorable quarter of our research group, i.e., exhibited striking deviations in the direction considered typical of the criminal offender. The score of extremity, therefore, can be considered an indicator of personality, which is similar to a so-called "criminal personality". As in the case of individual scales, no prognostically valid correlation could be proven. On the contrary, of the 33 probationers who showed ex-

tremely unfavorable characteristics on 3, 4, or all of the 5 scales, only 11 were later revoked probation.

Table 5 FPI - Comparison of Means for Offenders Revoked and not Revoked During Probation

Mean Values FPI-Scales:	revoked	not revoked	t - test p =
FPI 1 Nervousness	7.07	7.78	.27
FPI 2 Spontaneous Aggression	6.36	6.69	.45
FPI 3 Depression	9.09	9.05	.93
FPI 4 Excitability	5.49	5.85	.41
FPI 5 Sociability	8.49	8.48	.98
FPI 6 Imperturbability	6.30	5.73	.12
FPI 7 Reactive Aggression	4.58	5.30	.06
FPI 8 Social Inhibition	3.94	4.28	.35
FPI 9 Openness, Frankness	11.10	10.95	.68
FPI- E Extraversion	7.81	7.83	.95
FPI- N Emotional Lability	6.99	7.07	.85
FPI- M Masculinity	7.31	7.19	.75
Extremity Score (see text) (N = 155)	1.22	1.43	.33

The peculiarity of the test situation, viz., shortly following incarceration, does not explain this lack of correlation since in the post-tests, which were conducted after the initial shock of imprisonment was over, the same results were found.

The use of the Freiburg Personality Inventory in the personality evaluation and probation decision, therefore, would not have lead to a more valid prognosis of the risk of revocation for our group. Contrarily,the consideration of extremely unfavorable personality profiles would have injustly denied probation to a number of juveniles, who later proved to

be successful.

4. Prognosis for probation through the probation officer and probation results

Neither the prognosis in the court aid report nor the results of psychological personality investigations permitted valid predictions as to the possible success of the offender during probation. Valid assessments of probation, ahances, however, could be awaited from the probation officers. They obtain their information directly from work with the probationers. They possess knowledge of actual external circumstances, which could negatively affect the course of probation. They, unlike the juvenile court aide, receive a high degree of feedback on the accuracy of their hypotheses concerning endangered probationers or endangered environmental conditions. A comparison of the probation officer's first prognosis, which was made after two months of the probationery period, ("with what likelihood, according to your opinion, will the probationer successfully complete the probationary period") with the later actual probation outcomes indicated that their assessment had greater accuracy than the others.

Table 6 Prognosis for Probation by the Probation Officer (After a Two Month Period of Supervision) and Later Outcome of Probation

Chance for probation prognostisized by the probation officer	N =	Thereof remained without revocation
0 to 25 %	14	28.6 %
30 to 45 %	31	35.5 %
50 to 55 %	40	55.0 %
60 to 75 %	45	66.7 %
80 to 100 %	33	78.8 %
Total (no answer in 7 cases)	163	57.1 %

The probation officers also were in a better position, than the juvenile court aides to differentiate between risk categories. In addition, the prognosis of the probation officer has practical significance since it influences his future activity in relation to the probationer, e.g., in his preparedness to argue for a continuance of probation in cases of probation violations.

Even more interesting are the observations upon which the probation officers supported their first prognosis.

As in the analysis of the juvenile court aid report, the assessment patterns in the questionnaires out of the first 3 months of the probationary period will be identified through multiple regression. In the right-hand column the regression coefficient for the revocation variable is reproduced for comparison. Positive coefficients mean increased revocation rates. (Coefficients around 0 are reproduced through "-").

The relatively high variance rate in the probation officers' prognoses for success can be explained through a few details about the actual social situation of the probationers.

5. Strengthening or resolution of socially undesirable situations and the connection to the outcome of probation

In social and biegraphical background, as described in the criminal files, the probationers investigated corresponded to a large degree to the general image of juvenile prisoners discussed in various investigations thereof. They represented a combination of many characteristics, which are burdening or evaluated as burdening. In accordance with various file analyses, characteristics such as failure to complete schooling, job instability, and lack of established residence, when actually documented, were connected to increased revocation rates.

Table 7 Single Characteristics from the Period after Release from Confinement and their Contribution Toward Prognosis by the Probation Officer

Independent Variables single characteristics	Dependent Variables unfavorable prognosis of the probation officer	probation results revocation
Previous sentences	-	+.22
Younger probationers	+.18	(+.08)
Unemployed	+.16	+.14
Debts more than DM 5000.-	+.12	+.15
High alcohol consumation	+.36	-
Drug consumation	+.28	+.11
Personnel relationship	(-.09)	-.22
Living with persons of the same age	-.10	-
Social Behavior autonomously (viz., dependent) judged	-.12	-
R^2	.35	(.16)

Investigations of the prognostic validity of background characteristics (see, Schultz 1975) led to scepticism of prognostic procedures, based on biographical data. The validity and reliability of official file data are not the only factors which appear questionable. Their relevance also appears problematic when intervention decisions are required during "treatment in freedom". If social and personal conditions are causative factors for the results of probation, then a prognosis should make assumptions about the future existence of such conditions during the probationary period. If, however, the contents of the criminal files are the basis of the prognostication, then a continuance of the recorded elements of social desintegration is implicitly accepted for the future.

In fact, the social framework of conditions should be altered through the selection of the appropriate treatment device, particularly through probationary assistance. Instead of static prognosis, which relates to past conditions, dynamic (intervention) prognosis, which considers the possible effects of future intervention,must be made. Because of the lack of empirical research on the German probation system, the results of different prognostic strategies cannot be estimated. It, therefore, seemed useful to determine which present social conditions, representing a change in the probationer's environment, can be identified and whether these conditions are connected with the anticipated outcome of probation.

The assumption here is that the probationer returns to a deficient social environment after release. His general situation has also been worsened by detention through the disruption of social contacts, the impairment of employment possibilities, and other consequences of the offence and criminal proceedings. Should such a situation continue, then the probationer's loss of legal chances can result in resignative tendencies or in the pursuit of illegal activities. In addition to information provided by the probation officers, we also examined the probationer's perception of problems and his self-evaluation in our consideration of these assumptions.

In the following section, our thesis will be illustrated through the problems of unemployment and indebtedness.

5.1 Unemployment and revocation risks

Unemployment, at the time of the offence,was recorded in the files for approximately 46 % of the probationers. This group had a lesser chance of immediate sentence suspension than employed probationers. Unemployment at the time of the offence, however, proved to be a predictor neither for unemployment after release from confinement nor for an increased risk of revocation. Contrarily, clear connections were found between unemployment after release from confinement and the length of this unemployment and the revocation rate .

Approximately half of the probationers were unemployed at some point

during the first three months of supervision: 70 of 170 (= 41 %) in the first month, 62 of 164 (= 38 %) after two months, whereby approximately four-fifths of the latter group were unemployed during the entire three months (Diagram 2).

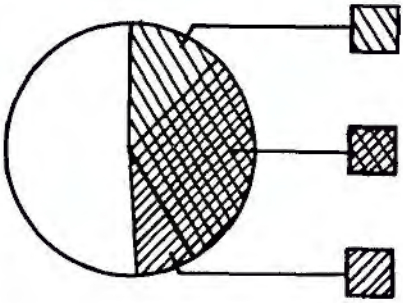
As Diagram 3 shows, probationers,who were unemployed after release from confinement, ran a higher than average risk of probation revocation. The greatest proportion of revocations occurred with probationers who were unemployed continuously from the beginning of probation until the third month.

5.2 Debts, regulation of debts and outcome of probation

As expected, many of our probationers - approximately 60 % - were burdened with considerable debts and civil damage claims after their release from confinement.

These debts and claims essentially were civil damage and recovery claims (median approx. 2,500 DM; maximum 100,000 DM), tax claims related to drug offences (median 1,000 DM; maximum approx. 14,000 DM), court costs, and personal acquisitions before or, in less than 10 % of the cases, after sentencing.

Diagram 2 Unemployment within the first (A) and third (B) month of supervison

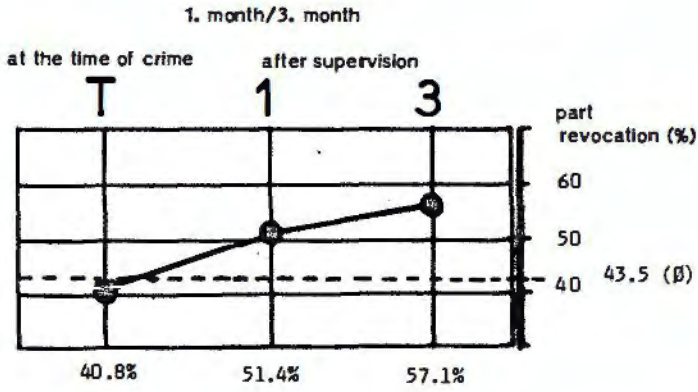


(A) First month employed (N = 70) (thereof only within the first month unemployed: 21)

(A∩B) within the first and third month unemployed (N = 49)

(B) within the third month unemployed (N = 62) (thereof only within the third month unemployed: 13)

Diagram 3 Date of Unemployment and part of Revocation



Since high debts, which cannot be paid in the foreseeable future, considerably impair the future perspectives of the probationers, we expected to find clear connections between revocation and indebtedness. Of the 95 probationers, who according to the probation officers were burdened with debts, approximately 39 % were revoked probation. This percentage was not above-average. However, the amount of debt and the foreseeability of debt regulation were connected, as expected, to the revocation rate.

We found increased revocation rates for probationers with debts over 2,000 DM. This increase was particularly striking for probationers with debts of at least 5,000 DM. Of the 14 probationers who had debts over 5,000 DM, 10 were recalled. In the third month of probation only about half of the 95 indebted probationers come to an agreement with their creditors regarding installment or delayed payment. The recovation rate was 24 % (11 out of 45) in theses cases in which an agreement had been made, it was at 52 % (26 of 50), or about twice as high in these cases in which debt regulation was unclear.

As expected, unemployed probationers were clearly over-represented in the group of probationers with unclear debt regulation.

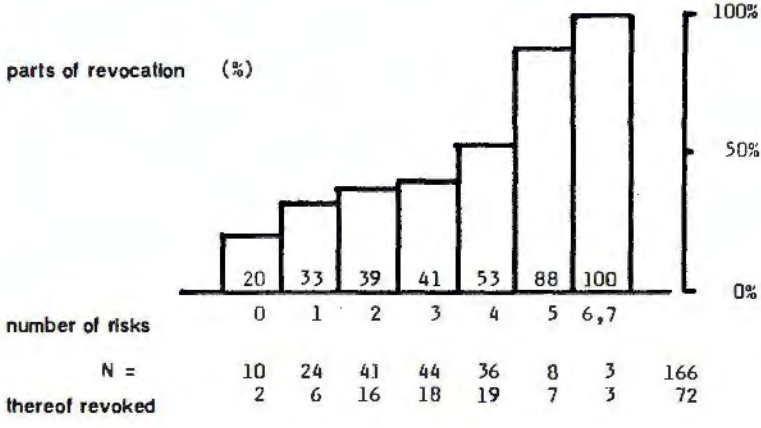
5.3 Socially undesirable factors during the first phase of the probationary period

Other factors, which were evident in the probation officer's analysis of risk, also give information on the type of problems juvenile offenders typically confront during probation. Using these factors, we constructed a "risk index", which indicates the degree to which the probationers were burdened by a conglomeration of various problems of social integration. This index includes the following (maximum 7) possible problem areas:

Unemployment; less than 500 DM monthly income; indebtedness over 5,000 DM; unclear debt regulation; drug or alcohol misuse; no partner relationship; unautonomous social behavior.

Four or more of these problems were attributed to more than one-fourth of the probationers. The continuous increase in the revocation rate for the higher risk groups shows that the coinciding of various kinds of social problems within the firet 3 months of the probationary period is characteristic in cases of later revocation.

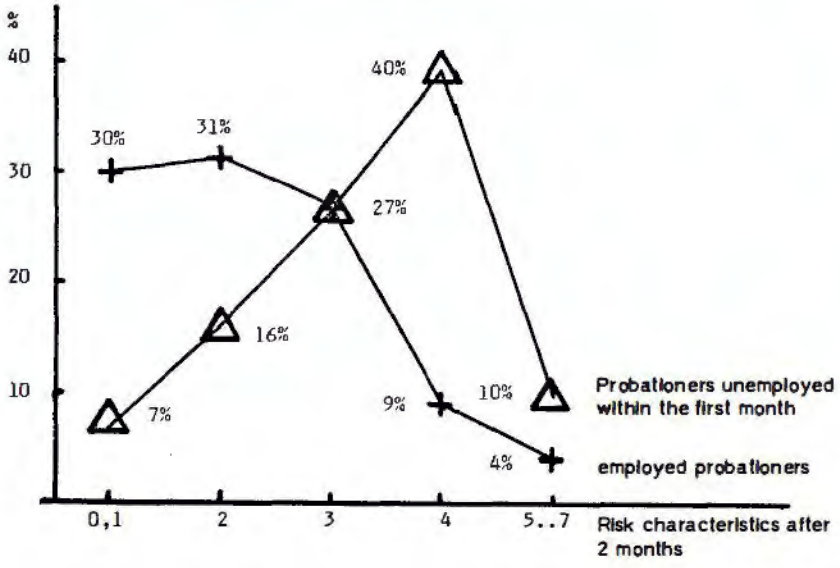
Diagram 4 Coinciding of Probleme and Risk of Revocation



One should not overlook the fact that the problem considered here, excluding the problem of debts, which is frequently a consequence of the criminal act, are in no way atypical for general age group under discussion. In fact, they can be considered characteristic of a juvenile's development toward economic and social autonomy. This development is also marked by the establishment of independent relationship and behavioral patterns. These problems usually have an episodical and transitory character. Atypical is the simultaneous occurrence of many of these problems, with the danger that a normal phase of development will become solidified in a situation of social deficiency.

Unemployment is of decisive significance for this process of problem solidification. In our investigation of possible changes in the offender's social problems during probation, we found that unemployment after release from confinement was primarily connected to an increased number of risk factors during the later probationary period.

Diagram 5 Unemployment and Frequency of Risk Factors - a Comparison of the Distribution of Probationers, Who Were Originally Unemployed and not Unemployed, within the Risk Groups after the Second Month of Supervision



A solidification of the risk structure during the first 3 months of probation occurred usually in the case of those juveniles, who in the first month of supervision were unemployed. In addition, we found that probationers with stable jobs, even in the presence of various risk factors, were less endangered of revocation than unemployed probationers with comparable risk factors.

The majority of the empirically substantiated problems confronting the probationers, may be partially attributable to the loss, due to unemployment, of chances of participation in normal economic and social life (see, Brinkmann 1978). Primarily in the case of unemployed probationers, a process began involving the loss of social possibilities and integration, which if not stopped resulted in provocation. Probation officers try to avoid these risks in their concentration upon the establishment of the fundamental daily needs of the probationers during the first 3 months of supervision. Their work can be described as an attempt to counteract social desintegration through the methods of social work.

One frequent concern here is eradicating the problems arising through the criminal procedure. According to our observation, actual release preparations occurred for juveniles in pre-trial detention only in situations in which the probation officer already had contact with the probationer through an earlier criminal proceeding. Several of the probationers had lost their job or apprenticeship as a consequence of their incarceration. Finally, through incarceration, the mark of delinquency and criminal prosecution was made public which reduced the probationer's chances of finding employment.

6. Summary: expected gains

We investigated a group of juvenile offenders, placed on probation either immediately or after partially serving a juvenile sentence. We were concerned with the relationship between success or failure during the probationary period and:

- the regional sentencing practices of the judiciary;
- the probationer's previous convictions, as contained in the official files, which influence the juvenile court aid report and the judi-

ciary's decision to grant probation;
- the problems of social deficiency directly after release from confinement;
- the process of social reintegration;
- the observations and evaluations of the juvenile court aides, probation officers and probationers.

In addition to investigating the probationer's social situation, we also considered the probation officer's activity and its possible influence, on the basis of thematic contacts, on probationers. Problem evaluations and their alteration during the probationary period as well as evaluations of mutual cooperation between probation officers and probationers were studied.

It was demonstrated that the officially recorded social biography of the offender has only limited prognostic value. The juvenile court aid evaluations, which are based on these official records, are also prognostically invalid. It was also shown, however, that the use of a diagnostic personality inventory, such as the FPI, does not facilitate a more valid identification of a later risk group.

Of more prognostic significance were factors considered by the probation officers which indicated the solidification of social problems. These social problems are connected to the probationer's unemployment after release from confinement. The accummulation of social problems at the beginning of the probationary period was clearly connected to the official success of probation. Increased use of probation, in connection with social treatment measures, must not lead to less favorable probation success rates, as was seen in a comparison of court districts with more or less restrictive probation practices. The success rate in less restrictive districts was also not affected by the release of juvenile offenders with more serious criminal records.

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RESOCIALIZATION IN PRISON

A Comparative Longitudinal Study of Traditional and Social-Therapeutic Model Institutions: Selection of Main Variables

Rüdiger Ortmann, Hartmut Dinse

1. Introduction

An important aspect of prison concerns the general system of punishment execution. In 1976, the Bundestag (Federal Parlament), ratified the "law of punishment execution, including incarceration and other freedom depriving measures for rehabilitation and protection". This law has been in force since January 1, 1977.

According to § 2 StVollzG, "... the prisoner should learn to live with a sense of social responsibility without the commission of criminal offences ...". This goal of resocialization has priority over all competing goals, including the protection of the general public through custody of the prisoner (see, Schöch 1978, p. 55).

§ 2 StVollzG applies to all prisoners and all types of penal institutions. In social-therapeutic institutions, however, more diverse and intensive resocialization measures are available than in traditional institutions, e.g., psycho-therapy, educational and job training measures, assistance in debt regulation, procurement of employment and living quarters, and community release, which is a phase of detention before final release during which the incarcerated person may live and work outside the institution during the day and must return to the institution at night.

The largest social-therapeutic model institution in the Federal Republic of Germany is a part of the Berlin-Tegel prison. It has been in operation since 1970 and can accommodate approximately 220 individuals. This social-therapeutic institution is divided, according to the resocialization measures primarily applied, into three sections: social-therapy for 62, social training for 85, and education for 32 individuals. More-

over, a community release program for approximately 40 individuals exists. Inmates, who have participated in one of the first three programs, can be accepted into the latter program.

Admission into a treatment program in the social-therapeutic institution must be requested by inmates from the custedial sections of the Berlin-Tegel prison. Several formal criteria regarding length of remaining sentence and age must be fulfilled and the applicant must appear to the institution's therapists to be prepared for and in need of treatment.

Since early 1979, an evaluation study has been underway in Berlin-Tegel. This investigation should answer fundamental questions regarding the possible contributions a social-therapeutic model institution in comparison to a normal institution, can achieve in the advancement of the most important goal of penal execution.

In our opinion, this investigation is necessary even though many efforts already have been made on the international level with similar questions. Although important studies have been published (Adams 1977; Bailey 1966; Cronbach and Snow 1977; Dünkel 1979; Egg 1979; Glaser 1978; Harris and Moitra 1978; Hood and Sparks 1970; Kaiser, Kerner and Schöch 1978; Kaufmann 1977; Lipton, Martinson and Wilks 1975; Logan 1972; Martinson 1974; Opp 1979; Palmer 1975; Quay 1977; Rasch and Kühl 1978; Rehn 1979; Sechrest, White and Brown 1979; Warren 1977; Waxweiler 1980), empirical evidence of the efficiency of resocialization measures justifies neither resignation nor optimism toward extensive success. On closer examination it becomes clear that the majority of the investigations has left gaps in content and methodology which could be filled by future evaluation research.

One of the first problems to be considered concerns the selection and measurement of evaluation criteria, which should be oriented more toward basic hypothetical concepts of the conditions for recidivism.

A second problem involves the investigation of resocialization measures. Existing studies, in which the implementation of treatment measures was not considered, cannot even maintain that the experimental and control groups were handled differently. Furthermore, they provide no informa-

tion as to whether the chosen treatment could result in successful resocialization, nor whether the individual resocialization measures are at all relevant to treatment. Efforts, which are toward the advancement of a theory a theory of resocialization in the penal institution, are not furthered hereby. A third problem concerns the formulation of empirically sound control groups.

A fourth problem concerns the recording of possible trait-treatment interactions.

A fifth problem deals with cross-section analysis, which is used in cross-section analysis, which is used in numerous investigations. To the extent that the assignment of test subjects to different treatment groups is not random, the relevance of cross-sectional analysis is limited. This limitation results from the fact that the possibility cannot be excluded that criteria differences found for the experimental and control random samples could have existed before treatment occurred. This deficiency also cannot be compensated for through the statistical control of co-variables.

The following section, we will deal primarily with problems 1 and 2, which involves the main variables of the present evaluation study.

2. Criteria of success

Law-abiding behavior after release from prison will be considered to be the most important criterion of success. Furthermore, a series of intermediate criteria, which can be recorded at the time of the prisoner's release from confinement, will be investigated. These intermediate criteria are the independent variables of post-release behavior. Their selection is based on hypotheses regarding recidivism and they, therefore, characterize part of our hypothetical conceptions of the occurrence of recidivistic criminal behavior. At the same time, they can be used to examine the success at the time of release from confinement of resocialization measures applied in penal institutions.

If one were to consider legal behavior after release as the only crite-

rion of success, at most one could make statements as to whether different resocialization measures lead to different post-release legal behavior. Difficult, however, is the decision as to whether a certain type of post-release behavior can be interpreted as the success of the resocialization measures applied in the institution. It is always possible that individuals and the legal authorities evaluate prisoners, who are released from various types of institutions, differently although the resocialization success of all of the institutions is the same. For this reason, it seems important to record institution dependent resocialization success at the time of release from detention. A contribution toward the development of a theory of recidivism can also be achieved hereby.

Through our approach we can also contribute to a clarification of the concrete resocialization goals, which an institution should strive for. The pre-requisites for initially determining the suitability of the institutional setting, in which resocialization should take place, and of the concrete resocialization measures applied would hereby be satisfied.

Using our division of success criteria, we will formally define the concept of "social responsibility". Only those characteristics which presumably influence legal behavior are incorporated, herein. Socialtechnological approaches with other variables are ineffectual and scientifically questionable.

On the one hand, it appears necessary to proceed with the selection of criteria variables as mentioned above. On the other, it is clear that the theories on recidivism and resocialization therefore required are presently unavailable.

The methodological difficulties in testing through recording legal behavior are not insignificant. All methodological approaches for the registration of legal behavior involve a measurement procedure. Certain minimum requirements regarding reliability and validity must be established for the measuring instruments. This problem exists for investigations of institutional sanctioning practices, in which, aside from the suspect, the general population, police, prosecutor and at least one

court participate, as well as for studies of unreported crime.

When the validity of the instruments used is not completely established, then an inadequate conformity between intermediate criteria and recorded legal behavior also indicates the invalidity of the criterion. In a borderline situation, intermediate criteria for the measurement and prediction of legal behavior are conceivable. These criteria have more validity than the recording methods used in the institutional sanctioning practice. Similar considerations apply to the inadequate reliability of criteria.

In general, the assumption appears justified that the validity and reliability of methods for registering legal behavior could be noticeably improved. Therefore, one should ask if, in the evaluation of the prognostic relevance of the intermediate criteria, one should correct for the unreliability of criterion for recording legal behavior.

We will next discuss the intermediate criteria.

Initially, we will consider legislative intent. Of particular significance is that the main goal of punishment is not limited to the reinstatement of the prisoner into the community. More important is that correct legal behavior after release "results in social responsibility".

These intentions, as formulated by the legislature, contain three hypotheses:

1. A reincorporation of prisoners into the legal community is possible through penal measures.

2. The legal behavior of released prisoners depends on their "social responsibility".

3. The "social responsibility" of prisoners can be increased through penal measures.

All three hypotheses are in no way sufficiently supported by empirical data. The second hypothesis can be viewed as part of a theory of recidivism. Even through the concept "social responsibility" is indefinite, it

is clear that actor-related characteristics are meant.

The third hypothesis involves a theory of resocialization in prison. The dependent variables of this theory, viz., the components of "social responsibility", are assumed to be altered according to the goal of punishment execution through penal measures such that the risk of the offender's recidivism at the time of release is lower than at the time of incarceration.

In their present form, none of the three hypotheses can be empirically tested. Hypothesis 1 can be supported only partially through determining recidivism rates. On the other hand, one cannot examine the influence of penal measures on post-release legal behavior, since a control random sample of offenders, who were not incarcerated, would be necessary for this purpose. The hypothesis, however, that different institutional forms and penal measures applied differently influence post-release legal behavior can be empirically tested.

The second and third hypotheses cannot be examined because the term "social responsibility" is not clearly defined. They could be investigated in an altered form if one considered a relatively broad spectrum of personality characteristics.

In general, it is apparent that the statutory text contains no detailed plan for scientifically oriented evaluation studies of penal measures. It reflects in a very compact form, part of the current level of research on psychological explanations of human behavior.

Three of these basic psychological explanations were incorporated by the legislature in § 2 StVollzG: human behavior can be predicted more exactly when personality characteristics are known than when they are not known; human behavior can be altered; behavioral changes can occur through the alteration of personality characteristics. We consider these three positions to be correct and, therefore, believe that a theory of recidivism as well as a theory of resocialization through prisons should take them into account. Herein lies the recognition merely that a psychological personality approach cannot be totally excluded in a description and explanation of legal behavior, since the object of personality

psychology is the description and explanation of individual differences.

The basic concepts of personality psychology are hypothetical constructs which here are understood as classes of correlating characteristics. These classes represent analytical units or categories of the set of conditions for human behavior, and thereby provide, at least in principle, a relatively economical system for describing this behavior.

One objective of this type of approach could be the development of a coordinate system consisting of as few dimensions as possible, with which as many social scientific phenomena for as many people as possible could be investigated.

On the basis of this objective and the hypotheses, one would be more likely to choose a broad and well recognized descriptive approach in the empirical examination of the supposed relevance of these analytical units in the set of conditions for law abiding behavior after release.

This approach toward an exact determination of more meaningful resocialization goals and evaluation criteria is in no way anti-theoretical. The assumption that essential variances in legal behavior can be described with the same psychological system of categories as other variances in human behavior is supported theoretically and corresponds to the hypothesis that this system of categories includes characteristics, which influence legal behavior after release from prison.

Through this approach, which outlines possible independent variables for a theory of recidivism, the prerequisites for applying the existing research on one of the fundamental fields of criminology in new criminological investigations are also satisfied.

The important basic concepts of personality psychology are: personal traits; beliefs; norms; values; motives; self.

The hypothesis will be made that essential variances in legal behavior can be explained through these analytical units. This hypothesis corresponds to the basic premise that individual differences can be traced back to individual differences. We do not mean to imply, however, that

important conditions for human behavior do not exist independent from the person acting. In the psychological approach to personality evaluation, social influences are seen as classes of empirical determinants of individual behavior (see, Roth 1972). We are assuming, therefore, that social factors influence human behavior indirectly, through elements of the personality rather than directly. Social norms, cultural values, social standing, social group, and family are viewed as determinants of personality elements.

The current etate of criminological research on the connection between personality elements and criminality supports our selection of a broad system of psychological categories. The basic assumption, that criminals can be differentiated from non-criminals according to personality elements, is so strongly supported that it could not be seriously doubted regardless of recognized criticism. In spite of numerous investigations, however, the actual differences in personality have never been concretely determined (Kaiser 1979, p. 57).

A secondary analysis by Tennenbaum (1977) revealed that 45 out of 54 studies evaluated differentiated between criminals and non-criminals on the basis of at least one personality element. These results, however, could not be for all of the personality elements considered.

The investigations of Eysenk's theory of criminality also furnished no consistent results (Eysenk et al. 1977; Eysenk and Eysenk 1977); Gossop and Kristjansson 1977; Smith and Smith 1977).

Several noteworthy single works should be mentioned here:

Hampson and Kline (1977) were able to distinguish criminals from non-criminals through factor analysis using the Q-technique solely on the basis of personality dimensions, which were interpreted as "social inadequacy and authoritarianism" and "insecurity and aggression".

Stott and Wilson (1977), within the context of a longitudinal study investigated the personality and behavioral characteristics of juveniles who later exhibited criminal behavior:

"The present study is one of three ..., which, in different geographical locations and cultural settings, used a follow-up design in order to uncover the early precursors of adolescent and/or adult crime. All three found the major precursor to the childhood behavior disturbance of an anti-social type; and in all three this was demonstrated apart from the possible influence of social class. In view of this consensus the central importance of personal instability as an immediate cause of crime would seem to have been established" (p. 55).

Hirschi and Hindelang (1977) conducted a secondary analysis on the connection between intelligence and delinquency. They came to the conclusion:

"IQ is an important correlate of delinquency. It is at least as important as social class or race" (p. 572).

This result is particularly meaningful since the correlation between intelligence and delinquency remained for homogenous sub-groups of various classes:

"If there exists a cultural correlate of both IQ and delinquency strong enough to account for the relation between them, it has not yet been identified" (p. 582).

Considered in its entirety, the empirical evidence available appears to support the differentiation capacity of the following construct variables: nervousness, aggressiveness, depression, excitability, openness, extraversion, neuroticism, readiness to take risks, future perspectives, and intelligence (see, Kaiser 1979, p. 57). Primarily those variables, which are generally in widely distributed, multi-dimensional personality inventories and which are relatively often contained in psychological systems for describing the personality, appear here.

This group of variables primarily concerns personality characteristics. Characteristics are elements of the personality, which are relatively invariant according to time and situation. The probability of altering them, therefore, is extremely limited. The validity of premises implies that an unknown part of the assumed connection between personality ele-

ments and legal behavior cannot be altered by resocialization measures (see, Höhn 1980), thereby, reducing favorable expectations therefrom. The greater the covariance between personality characteristics and legal behavior, the smaller is the expected co-variance between resocialization measures and legal behavior.

Resocialization measures and associated evaluation criteria, therefore, cannot be restricted to personality characteristics. Other analytical units, such as attitudes and norms, which also belong to the class of empirically regognized determinants of individual behavior and which appear easier to alter, must be considered.

Furthermore, socialization and control theories indicate that the individual's position in society, as well as his social contact, are likewise important analytical units, which are empirically recognized determinants of individual behavior. For this reason, variables representing education, professional training, employment, and housing which certainly determine the individual's position in society, as well as the nature and quality of social contacts, will be introduced as elements of evaluation.

3. Independent variables of resocialization

All variables, which either directly or indirectly influence the evaluation criteria, viz., intermediate and legal criteria will be included here.

We first will consider the evaluation criteria. If variables of institutional life in no way influence the evaluation criteria and one can disregard learning and developmental processes, then the evaluation criteria would have the same value at the time of release from detention as at the time of incarceration.

Basically, we mean that the selection of prisoners for the social-therapeutic institution will be seen as a variable, which can contribute to possible differences in the evaluation criteria. Therefore, it is also important to record the evaluation criteria at the time of the prisoner's admission into this part of the institution. The importance of

this recording increases, when the selection of inmates for the social-therapeutic ward does not proceed randomly.

A second important class of variables concerns the motivation for resocialization.

Within the framework of institutional resocialization which is determined through organizational structure and patterns of interaction, the motivation for resocialization has special significance. Moreover, it has general relevance for the success of the resocialization efforts.

We will now discuss the significance of motivation for resocialization as represented by the motivation for therapy.

Two questions are significant for the evaluation of the variables relating to the inmate's motivation for therapy in prison:

1. What motives, in the sense of concealed therapy stratification, (Schmook et al. 1974) induce an inmate of a regular penal institution to apply for acceptance into a treatment institution?

As the results of psycho-therapy research indicate, almost "no reliable information" on the question of concealed therapy stratification is available (Schmook et al. 1974). It is assumed, however, that the stratification process, which affects the inmate's decisions and conceptions regarding release, "is guided by factors such as the inmate's expectations and motivations regarding therapeutic treatment, his personal assessment and evaluation of his disorder, and his experience with, and knowledge about, forms of treatment" (Schmook et al. 1974).

Depending upon the inmate's preliminary information and the effects of the above mentioned factors, an initial contact with the therapeutic institution could result.

This problem is even more complicated in the case of social-therapeutic institutions. It is fairly well recognized that the inmate's evaluation of treatment is not based only on realistic therapy-related motivations and expectations.On the contrary,the anticipated privileges,are strongly

motivating, although not therapy-related. Therefore, one must consider that a certain number of applicants, who are not primarily motivated for therapy, exist.

2. Which expectations and motivations regarding therapeutic treatment and the effects thereof does the inmate have upon entering therapy?

In contrast to concealed therapy stratification, plentiful, although sometimes contradictory, research is available regarding therapy motivation in the narrower and more basic sense. The significance of client's motivation recognized in the early stages of psychoanalysis (Freud 1969). The importance of the concept "Leidensdruck" (functional disability) for psychotherapy was first emphasized at that time and is still essential in the evaluation of therapy suitability (Heigl 1972), although this evaluation is placed under additional restrictions such as the simultaneous presence of ego-strength (see, Graupe 1978b).

Client-centered psychotherapy also recognizes a form of therapy motivation related to "Leidensdruck" in its reference to conflictive tension and psychic imbalance as criteria indicating psychotherapeutic treatment (see, Rogers 1957; 1976).

In spite of existing conceptual differences, one can generally maintain that therapy motivation involves "the patient's desire for change in the sense of active problem solving" (Graupe 1978a, p. 64).

Therapy motivation consists of at least two important components:

1. the desire to change, and
2. the desire for help.

The desire to change is seen as being dependent on "Leidensdruck", personal awareness of one's illness, strength of subjectively experienced anxiety and depression, and existence of positive perspectives in life (see, Graupe 1978b). The desire for help is affected by the patient's expectations of the roll of the individual offering help and the expectations of himself.

We will now consider the relevance of the concept of therapy motivation

for social therapy.

No special treatment procedure is incorporated in social therapy. It involves a compilation of various psychological methods of behavior and attitude alteration from the fields of psychotherapy and behavior modification. Social therapy, therefore, is the individual or offender-oriented institutional treatment of delinquent patients by means of multiple procedures (see, Steller 1977). The patient's therapy motivation is also a prerequisite for succeseful treatment. Consequently, among the indications for social therapy, suitability, which is pre-conditional thereto, is evaluated on the basis of the existence of patient motivation variables. Depending on the particular branch of social therapy, preparedness or willingness to undergo treatment is considered and defined as a partial criterion of material, in contrast to formal suitability (see, Egg 1979; Dünkel 1979).

In summary, from the considerations described regarding therapy motivation, one may conclude that the two components thereof should be measured in our investigation. This measurement is not only important for the evaluation of resocialization success for social therapy patients, but also for inmates in regular institutions. Furthermore, increased access to a control of systematic selection processes is offered hereby.

A third group of variables, which presumably influences the evaluation criteria and is influenced through selection, concerns prisonization.

In his fundamental work, "The Society of Captives", Sykes describes five components of the "pains of imprisonment" (Sykes 1958, p. 63 f.), viz., the loss of freedom, the deprivation of material and non-material goods, the denial of heterosexual relationships, the restriction of autonomy, and inadequate protection from dangerous co-prisoners.

According to Sykes, these components have two deprivational effects: frustration through insufficient satisfaction of needs, e.g., restriction on the availability of material goods, and, even more serious, damage to the individual's feeling of self-worth. He leaves the question open, however, as to which connection between deprivation variables will be accepted.

Sykes explains the social interaction patterns between inmates as the attempt at, and possibility of, reducing the deprivation of incarceration.

Consequently, Sykes' deprivation theory includes three groups of variables.

1. sources of deprivation from the institutional setting,
2. deprivation in the form of two components, and
3. social interaction patterns resulting from deprivation.

In the experimental plan for the empirical investigation of this approach, it should be guaranteed that all three groups of variables are represented and have sufficiently large variance. This requirement also applies to sources of deprivation from the institutional setting. Within one single type of institution, which can be described as lying somewhere on the continuum between "custodial to treatment-oriented", one is more likely to find homogeneous incarceration conditions. It, therefore would be logical to consider various types of institutions, which can be expected to present a heterogeneity of incarceration conditions. In fact, this heterogenous approach is used in very few investigations (Akers et al. 1977; Street 1965).

The third group of variables, which represents the effects of deprivation, is included in most prisonization studies. Here, considerable latitude exists in the selection of indicators, as would be expected from the complexity of Sykes' description thereof. The characteristics, "inmate solidarity", "inmate norms for the regulation of inmate behavior" and "degree of oppositional attitude toward the staff and institution" are usually selected.

The existing concrete prisonization scales, therefore, appear to measure completely different aspects (Akers et al. 1977; Garabedian 1963; Glaser 1964; Hepburn and Stratton 1977; Kassebaum et al. 1971; Rhodes 1979; Schwartz 1971; Thomas 1972; Thomas and Foster 1972; Tittle 1969; Ward and Kassebaum 1965).

Moreover, theoretically based and tested scale constructions and analyses are usually lacking. In the majority of publications either item and scale values are not reported or scales, which are defined differently in a conceptual sense, contain partially the same items.

A second theoretical approach to the explanation of prisonization is Irwin and Cressey's (1964) cultural transference theory. According to Irwin and Cressey, prisonization is primarily determined by the inmate's pre-institutional socialization.

In regard to this hypothesis Thomas and Foster (1972) maintained that "the normative content of the contra-culture is certainly not a logical outcome of the problems associated with imprisonment" (p. 231).

More interesting than this important, although somewhat obvious recognition by Irwin and Cressey, is Cloward's (1975) theoretical approach: the prisoner is stigmatized in an official court procedure and is degraded and isolated in prison. In these ways, his status is injured in an intolerable manner. He, therefore, rejects judgements of the court and the institution while he questions the legitimacy of these judgements. He considers the basis of the social control, which is exerted upon him during confinement, to be illegitimate. The main goal of the supervisory officials, however, is effective social control. Social control, which is maintained through force is basically not successful, particularly because prisoners also have good possibilities for exercising counterforce.

The most effective form of social control involves the motivation to want to do what one should do. Prisoners can be motivated through:

- the hope for resocialization,
- an agreeable institutional setting.

The hope for resocialization can be excluded since society denies prisoners access to legitimate means for securing one's own existence. Therefore, the only possible means of motivation remaining for the supervisory officials is an agreeable institutional setting. In light of institution rules, however, this means of motivation seems feasible only through the toleration and support of deviant behavior.

Many hypotheses exist within the framework of this theoretical orientation. They are almost always of a bi-variate nature. One finds,for example, five pages in Harbrodt (1972), which contain only hypotheses.

On the other hand, one finds multi-variate model formulations only in isolated cases. The work of Hepburn and Stratton (1977) is one of these exceptions.

Empirical support exists for both types of theoriee (cf. Annotated bibliography, Klingemann 1975). Few investigations, however, accept an integration of both theories as a point of departure.

On the basis of this research, we now will consider which variables we find to be important. Confinement expresses itself in one or more behavioral manifestations. The direct restoration of freedom, in the form of deviant behavior and aggression against the individuals and for institutions limiting freedom are particularly important.

Our hypothesis, therefore, is that a part of the inmate norms and behavioral manifestations, which are unfavorable for resocialization, can be justifiably interpreted as the psychological consequence of deprivation through the institution. The massive deprivations of incarceration also extremely limit the non-criminalized first-offender's chances of exhibiting behavior that conforms to institutional standards.

Every act by a prisoner, which attempts a direct elimination of this deprivation, is forbidden, deviant, and sanctioned behavior. Personified bearers of this threat are the supervisory officials. Hereby, caution is taught as the most advisable behavior in association with these officials.

Furthermore, this type of inmate behavior cannot remain unnoticed by coprisoners and usually requires the assistance of other inmates. Thereby, a certain degree of solidarity among inmates develops and the integration of new convicts into existing inmate groups is also furthered.

If these considerations are accepted, one must conclude that the initiation of social-therapeutic measures occurs in a very unfavorable institutional framework. It is, therefore, important to consider essential components of this complicated constellation so that therapeutic activities can be evaluated in a balanced manner.

Throughout our entire project the most important criterion variable is legal behavior after release. This variable is affected by the prisoner's criminal tendencies at the time of his release. According to our hypotheses, criminal tendencies at the time of incarceration directly influences:

1. integration in criminally oriented inmate groups,
2. oppositional attitudes toward staff and institution,
3. readiness to accept the institution's offer of resocialization.

This hypothetical effect is also to be expected according to the theory of culture transference.

All three of these variables have an effect upon the inmate's criminal tendencies at the time of release. A reduction in resocialization possibilities does not originate in institutional measures during the incarceration under consideration. The variables represent both the consequences of the inmate's pre-institutional biography, which are independent of the institution, and the consequences of previous incarceration, which are dependent on previous institutions.

The limits of possible prison resocialization will be designated here. These limits are primarily the result of institutional independent criminal tendencies.

The inmates willingness to agree to the institution's offer of resocialization additionally depends, according to our interpretations, on his integration in criminally-oriented inmate groups and his oppositional attitude toward the staff and institution. Hereby, according to our hypothesis, a further influencing of criminal tendencies occurs.

Furthermore, integration in criminally-oriented inmate groups may also be affected by contact possibilities, allowed by the institution. Contact possibilities are considerably greater in a social-therapeutic institution than in a custodial institution, e.g., through an open-cell policy. According to this hypothesis, increased freedom in a treatment institution may not be evaluated only positively. This freedom furthers integration in criminally-oriented inmate groups and influences criminal tendencies directly and indirectly through the resulting effects upon

willingness to accept the offer of resocialization and oppositional attitude toward staff and institution. Therefore, one condition of resocialization, which is considered necessary for therapy, is simultaneously unfavorable to resocialization.

A final hypothesis area concerns institutional dependent deprivations. To be stressed here are:

1. limitation of personal autonomy,
2. threat through co-inmates,
3. breaking-off of outside contacts.

According to our hypothesis, these three variables influence integration into criminally-oriented inmate groups and thereby criminal tendencies. Moreover, the limitation of personal autonomy appears to favor oppositional attitudes toward staff and institution and thereby, also to influence criminal tendencies. These affects are dependent on the institution under consideration.

It is hypothetically clear that the total influences on criminal tendencies, which are institution dependent, confront resocialization efforts in a custodial institution with great difficulties. The aspects described here certainly contribute to increasing the risk of recidivism.

At the same time, it is clear that therapeutic endeavours must be initiated in a situation involving tension through the inmate's social biography, which is independent of the institution, and his criminal tendencies, which are dependent on the institution. The organizational structure of penal institutions and the thereby resulting unfavorable interaction patterns between the persons concerned considerably reduce therapeutic possibilities. Therapeutic offers can be realized only within narrowly set limits.

The conflict existing between the institution's goals of security and resocialization is apparent. Furthermore, experience has shown that a part of therapeutic attempts toward resocialization must counteract certain processes, which occur in and through incarceration in the institution. It is thereby inevitable that the instituion's personnel, who con-

centrate upon security, and the therapists, who are obligated to resocialization, will have conflicting relationships stemming from their professional orientation.

The quality of the relationship between inmates and institutional personnel will be considered as a fourth group of variables.

Based on the considerations examined above one can easily conclude that resocialization measures in penal institutions are conducted in an extremely unfavorable institutional framework and thus are limited in their positive effects.

One factor, which reduces successful resocialization, is the oppositional attitude of inmates toward the staff and institution. This opposition requires increased skill by the institution's personnel since they must apply resocialization measures in a conflicting situation. This skill is particularly necessary since an essential condition of every treatment is the quality of the relationship between therapist and patient. We are assuming here that fundamental prerequisites can be formulated generally for every inter-personal relationship and more specifically for the relationship between therapist and patient. This assumption is supported through theory and empirical research on client-centered psychotherapy, through hypothetical suppositions concerning common basic conditions of various psychotherapeutic trends (Graupe 1977; Quekelberghe 1979; Strupp 1974; Teuwsen 1977) and through empirical investigations of model learning (Bauer 1979).

The quality of this relationship is affected by the conditions under which it occurs. A realization of external conditions, which, generally appear necessary for a therapeutic relationship, however, seems to be particularly limited in a total institutional setting. A relationship between personnel and inmates, which can be helpful and thereby favorable to resocialization, appears possible only in a therapeutic climate, in which the function of the classical inmate culture loses its significance (Binswanger 1979; Engesser, Huber and Lorenzen 1979; Leky and Mohr 1978; Quensel and Quensel 1971). Therefore, it is important to investigate the quality of the relationship between the various personnel and the inmates and the restricting or assisting conditions dependent on the institution.

pendent on the institution.

A fifth group of variables, which presumably influences the evaluation criteria, concerns the institution's resocialization measures. Within this group are individual oriented measures, e.g., resocialization, education, professional instruction, psychotherapy and social environment measures, e.g., employment, living conditions.

The beginning of social therapy in the Federal Republic of Germany, is characterized by individual attempts to convert traditional psychotherapy, with its various implications depending upon particular theoretical school, into social therapy. These attempts proved to be insufficient. Social therapy, with its particular patient group, different motivations and institutional situation, usually requires a phase and crisis orientation toward therapeutic or treatment levels, which range from traditional psychotherapy, rehabilitation, education, professional training to concrete assistance.

Of particular significance are measures, which prepare for the social integration of released prisoners, viz., employment, profession, social contacts, living facilities and finances.

Community release is provided for the purpose of furthering social integration. During this phase of release the prisoner spends his days and works outside the institution and returns to the institution at night.

This differentiation between social therapy and psychotherapy has been developed largely through practical application. The theoretical background therefore is fragmentary. Indispensable to future model-building appears to be an illumination of the implementation and effectiveness of the already existing measures.

The first four groups of variables described should not be measured only at the time of the prisoner's release but also before the implementation of social-therapeutic treatment. In this way, criteria relevant differences between experimental and control groups can be recorded. In addition, longitudinal analysis offers a better starting point for investigation of causal conditions for recidivism . Since community release can

be understood only within the limitations of institutional resocialization measures but in fact represents a different type of treatment during which essential apsects of post-release occur, one should also measure the variables shortly before community release is granted.

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SELECTION AND RECIDIVISM AFTER DIFFERENT MODES OF IMPRISONMENT IN WEST-BERLIN*

Frieder Dünkel

1. Aims of the Study

The main aim of the present investigation was the recording of all between 1971 and 1974 released inmates from the Berlin-Tegel social-therapeutic unit under consideration of three different social-therapeutic treatment models, according to certain characteristics of their registered criminal career and their subsequent legal behavior measured by means of registered reconvictions. The notion of recidivism was differentiated as to the seriousness and the time interval. Minor prison sentences of up to three months or up to 90 dayrates of fine were not taken into consideration.

The three treatment models which were to be distinguished within the period of our study showed differences as to their therapeutic intervention stricto sensu, but, at the same time, similar outward frame conditions (e.g., open living groups within the department, plain clothes, shared responsibility, work release etc.). The treatment model Social Therapy where the inmates receive the most intensive therapeutic treatment (ratio therapist-client 1:10 to 12,5) concentrates on individual therapy together with regular group therapy. Within the treatment model School (here,the corresponding ratio therapist-client is 1:15 to 20) the emphasis lies on the attaining of school-leaving certificates and, unsystematically, there take place most of all group discussions. The treatment model Social Training (ratio 1:14 to 19) offers group therapy furthermore extern run social-practical training-courses which

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deal with certain problems arising from the situation of released prisoners.

For this present study all inmates of the normal prison of Tegel who - according to formal criteria - could be considered as potentially suitable for social-therapeutic treatment were investigated and compared with the clients released from the three above-mentioned therapeutic treatment models. Here, another goal was to analyse the selection processes effected in the penal institution. For this purpose all inmates of the Tegel prison who at least had to serve a prison sentence of one year, and whose maximum age at the time of release was 50 years, and in consideration of the background of their social-biographic data entered in the penal register records have been studied as to the following questions: Who has been transferred to the social-therapeutic treatment unit and what was the result with regard to the subsequent legal behavior? Who has been transferred to an open prison? Who had to return to the regular prison and why? Whose application for social-therapeutic treatment had been rejected a priori? And finally: What is the structure of the prison population and the subsequent legal behavior of those other convicts who had to continue to serve their sentences within the regular prison institution?

Further selection processes effected in the penal institution which have been analysed within the scope of our investigation concern the number and structure of conditional releases, perhaps with supervision of a probation officer and the reconviction quota which emanates from the admission to work release as a special means of the social-therapeutic treatment.

The hypotheses which have been the points of departure for our investigation were elaborated on the basis of treatment evaluation studies and, in general, studies of recidivism effected in the Federal Republic and abroad. The central assumption of different quotas of subsequent legal behavior according to different modes of correction has been set into a theoretic model of differential processes of decriminalization within the execution of criminal sentences and after release. This model also comprises the theoretical assumptions as to the offender's rehabilitation in the sense of a positive development of his personality within the institutions offering to a larger extent social-therapeutic

treatment against ordinary penal institutions under consideration of theoretical definitions of interventions on the part of the institutions' staff especially of the therapists focusing on the elimination of the offender's stigma and on a breaking off of his criminal career. Corresponding different reactions have also been postulated in the time after release on the level of the police, the prosecutor, and the Court which are supposed to play a part in breaking off or at least in less intense officially registered criminal careers.

2. Methodology

From the register of releases of the therapeutic unit in Tegel were taken all German convicts released between 1971 and 1974 who had served a prison sentence of at least one year and whose maximum age at their release was 50 years. By this means there resulted a number of 1.503 sample cases from a total of 5.225 recorded releases in Tegel. With regard to prior convictions of these sample cases the population studied represents an extreme selection as compared with the total number of inmates of penal institutions in the Federal Republic. In general, the inquiry deals with distinct career offenders who at their release were on an average 33 years old and who were sentenced in 72,1 % of the cases for property offences (hereof 13 % for robbery and blackmail). Furthermore, the sexual offences (9,3 %), traffic offences (5,8 %), bodily harm (5,2 %) and criminal homicide (3,7 %) play an important quantitative role, too. On an average 5,3 previous convictions with a corresponding prison experience of 40,5 months and the present prison sentence of 30,6 months amount to a total prison experience of about 6 years, irrespective of a possibly not served remainder of sentence owing to its remission.

The investigation of the penal register records was done mostly from July to December 1977, and was finished in May 1978. Thereby our study covers a probationary period (years of release from 1971 to 1974) of from 3 1/2 years to 6 years on an average, and with regard to the total prison population a period of 4 1/2 years.

If, however, other informations not taken from the criminal register records were taken into consideration, as for instance, the duration of social-therapeutic treatment, the permission on work release, reasons

for rejected application respectively return to the normal prison etc., these informations resulted from a similar method, i.e., the analysis of documents (e.g., prisoner's file, records made by therapists or by the prison administration etc.). The total number of 1.503 cases registered formed part of ten different investigated groups, six of which concerned the three treatment models as mentioned above whereby the clients who had to return to the regular prison were taken into consideration here, too. The number of treated clients was 396, 323 of which were released from the treatment unit whilst the remaining 73 cases after having been returned were released from the regular penal institution. The largest group was represented by 889 convicts detained under normal prison conditions who were joined by 114 released prisoners who had applied for admission to the social-therapeutic department. The group of delinquents who served the last part of their sentence in open prisons comprised 104 cases.

3. Findings and Results

3.1 Characteristics of the Social-therapeutically Treated Convicts as Compared with Inmates of Regular Penal Institutions

Hypothesis

The social-therapeutically treated prisoners represent with regard to the data of their registered criminal career, i.e., age, criminal record, structure of crime, length of sentence, and the beginning of their criminal career, a representative selection of the inmates detained under normal prison conditions in Berlin-Tegel.

Results

In general, the hypothesis may be considered as confirmed, although, due to the great number of cases, there are in some cases significant differences but which, however, are mostly of no practical importance. Thus, certain selection tendencies - the extent of which depends on the different treatment models - are apparent in the application and choice for the social-therapeutic department. The clients of the treatment models Social Therapy and School are slightly younger and show a smaller number of previous convictions than the inmates of the regular prison, but this cannot be applied to the corresponding prison experience. The

age of the clients of the two treatment models mentioned tends to be younger at their first conviction, the present prison sentences are considerably longer. With regard to the specific crimes, there is within the treatment model Social Therapy an "over-representation" of robbery/blackmail, sexual offences, and criminal homicide to be seen - the latter within the treatment model School, too - whilst theft, however, is "under-represented". The essential criterion of the difference between the inmates of the treatment model Social Training and those of regular prison institution is the fact, that the first mentioned inmates register with 33 months of prison experience against 42,6 months of the latter group a slightly lower evidence of prior convictions.

Conclusions

The result which follows from our study is that on one hand it is true that prisoners with very serious previous convictions are admitted less often to that correction alternative applied in anticipation to § 9 German penitentiary law (StVollzG). On the other hand, however, prisoners who due to the characteristics of their criminal career are to be considered as difficult cases are generally admitted to the treatment unit. The "over-representation" of serious offences, for instance, in the treatment model Social Therapy, could be connected with longer criminal sentences of these cases and the correspondingly longer treatment period. Those cases have possibly been considered as especially in need for treatment and in so far they were selected by preference. But clear selection structures on the part of the therapists are, however, not apparent, particularly since the admittance depends on the number and structure of the applicants owing to the reigning principle of voluntariness.

3.2 Quota of Reconvictions After Social-therapeutic Treatment

Hypothesis

The quota of reconvictions of those prisoners who have received social-therapeutic treatment is lower than the corresponding quota of those released from normal penal institutions. In this, there are no significant differences between the three models of treatment.

Results

From the 323 clients released from the social-therapeutic unit, 35,9 % have been subsequently resentenced as opposed to 59,1 % of the 889 sample-cases of normal prisoners. Differences within the three modes of treatment are not apparent. This means a reduction of recidivism of about one third.

These figures have, however, a relatively small significance due to the different periods of time spent outside prison and group structures that are apparent in the period of release from 1971 to 1974. Therefore, by means of multivariate processes (analyses of covariance) that proportion of reconvictions which is due to the divergencies resulting from different group structures and different times of release, have been separated with the result that there could be seen a still significantly better subsequent legal behavior of 18 % in the treatment cases which, in detail, is in the case of the treatment model Social Therapy 17 %, in that of the treatment model School from 18 % to 20 % and within the treatment model Social Training 15 %.

Conclusions

By this method it was proved that by excluding the selection effects - which are to be considered as essential factors - there is a still considerably better subsequent legal behavior after social-therapeutic treatment. It is true that one cannot exclude that the not considered criteria, e.g., certain personal characteristics, treated and not treated inmates, might have been of a differentiating effect and explain perhaps partially the "success" - but, besides, this is the case for all such investigations where different groups are compared. On the other hand, arithmetically seen, there was made a parallelisation as to respectively five variables, a new method which has not yet been applied in other similar inquiries.

As there are no differences to be seen between the various models of treatment, we can conclude that an interchangeability of the sanctions is possible also within the different types of social-therapeutic treatment. It seems that psychotherapy stricto sensu does, however, not have considerably more preventive effects as compared with milieu therapeutic conditions of the social-therapeutic treatment in general. Due

to what special reasons there is resulting a lower subsequent reconviction quota, cannot be elucidated now, because of the type of our study, and because of the fact that the details of the therapeutical treatment could be registered only in a global and descriptive manner, and the intervening variables of the situation after release as well as further data of the pre- and institutional biography could not yet be registered.

3.3 The Quota of Reconvictions in Treatment Cases as Compared with Normal Prison Cases, Differentiated as to the Year of Release

Hypothesis

Irrespective of the different periods of subsequent legal behavior a partially increased quota of reconvictions is to be expected for treated ex-convicts released in the years 1972/73 due to the fact that at that time internal conflicts empeded the treatment programme. Contrary to that, one can assume that together with a later release a linear decrease in reconvictions for normal prison cases will be seen and even with long periods of subsequent legal behavior (five and more years) a lower rate than 80 % is to be expected.

Results

The hypothesis has been confirmed insofar as, in fact, the treatment cases showed according to the year of release in some cases contrary tendencies: from 1971 to 1974 that actual quota of reconvictions was 39,5 %, 47,5 %, 34,8 % and 28,9 %. The only quota with relatively high reconviction rates was that for 1972 and showed different concentrations: thus the focal point of increased reconvictions is to be found in the treatment models Social Therapy and School in 1972, and in the treatment model Social Training in 1973. Each year of release showed distinct differences between the treatment cases and the control group which were between 16,5 % (1973) and 26,9 % (1971). After a five years' period of subsequent legal behavior the reconviction rate for regular prison cases was found with 65,2 % (1972) to be clear below the often-quoted figure of 80 %, that which confirms our hypothesis. Contrary to expectation, the quota of reconvictions in the normal prison cases was, however, relatively low in 1973 (51,3 %) and in 1974 (50,3 %).

Here, the rough figures of the differences between the cases of the social-therapeutic treatment and those of normal penal institutions do not show exactly (because of the specific characteristics of the different groups) to what extend the data may be comparable, either. Therefore, here, too, analyses of covariance have been calculated with the following results of differences in reconvictions from 1971 to 1974: 23 %, 14 %, 17 % to 19 %. In the different treatment models the following tendencies became evident:

In the treatment model Social Therapy - under consideration of comparable group structures - the most distinct differences were apparent in 1971 (24 %), and 1973 (22 %). In 1974 (12 %) cases showing a favourable prognosis (increased number of first offenders) had a multivariate influence on the actually greater differences. In the treatment model School, there were in 1971 and 1972, arithmetically seen, only differences of from 11 % to 14 %, but, contrary to this, in 1973 and 1974 differences of 28 % and 24 %. In the treatment model Social Training, there are, like in the Social Therapy, in the initial state (1972) the most distinct differences as compared with the regular prison cases (26 %), which again in 1974 (19 %) were nearly approached after a smaller rate shown in 1973 (11 %).

Conclusions

The results imply that in spite of an existing comparable group structure there are still fluctuations to be seen, in explanation of which, we may quote the hindrances of the therapeutic programme caused by internal conflicts and restrictions made by political authorities. However, there are no exact data in this respect which could only have been registered by way of a research work going together with practice. At least, it seems that the declining tendency to reconviction which since 1973 is apparent mostly in the treatment model School, is connected not only with the shorter periods of subsequent legal behavior, but also with the intensification and extension of the therapeutic programme i.e., especially by means of offering work release as the final step of the training series. Corresponding explanations can also be given for the evidently lower rates of reconvictions appearing since 1973 in regular prison cases where perhaps the structural improvements in certain areas play a part.

3.4 Differentiation of the Recidivism Criteria Emanating from the Comparison of Treatment Cases with Regular Prison Cases

Hypothesis

The treatment cases differ from the control group cases not only by a lower rate of reconvictions, but also by less frequent reconvictions, by less harsh penalties, and by a longer time interval before the first subsequent reconviction. The actual quota of subsequent imprisonment is lower, too.

Results

In general, the hyothesis was confirmed. Recidiviets from the social-therapeutic unit (1971 to 1974) have been reconvicted on an average between 1,1 (School) and 1,4 (Social Therapy) times, whereas in normal prison cases 1,7 times, whereby the corresponding prison sentences had a median of 14,5 months (Social Therapy), 11,7 months (School), and 13,9 months (Social Training) as opposed to 21,3 months (control group). The treatment model Social Therapy was the only one which showed sporadically in some cases more considerable reconvictions covering more than three years of incarceration. These tendencies to less reconvictions in treatment cases were constantly apparent also through the different years of release. In spite of the less harsh sentences, there is, nevertheless, a partially remarkably longer time interval before the subsequent reconviction, whereby all groups investigated show an important decrease in the reconviction tendency after two years. It seems interesting that recidivists from the treatment unit do not only show less harsh penalties but also attain relatively more often a corresponding remission of sentence on probationary terms. This is the case most of all in the treatment model Social Therapy where, therefore, a return into jail was registered only for 27,2 % of the released clients what, opposed to the 53,2 % of the control group means a reduction of recidivism of about a half.

In total, 29,7 % of the clients who had received social therapeutic treatment had to return into jail in the period covered by our study.

Conclusions

The differentiation of the recidivism criteria has in some cases even reinforced the differences of the tendencies, i.e., even those who have been registered again, have committed either less frequently and less serious offences, or processes of differential decriminalization as to theoretical positions of a "delabeling approach" have been efficient even after the convict's release.

3.5 Characteristics of Clients Who Had to Return to the Normal Prison and Their Reconvictions

Hypothesis

Clients who after having been returned and released from the regular penal institution show no differences in their subsequent legal behavior as compared with other inmates of the same institution. The return depends under certain circumstances on the characteristics of the registered career. Negative transfer decisions made by the therapists are, however, mostly the reaction on objectively seizable incidents (e.g. escape etc.) and are applied in a restrictive manner.

Results

The quota of returned clients (18,4 %) seems to indicate a relatively restrictive application on the part of the therapists in the period covered by this study. Thereby, however, the internal difficulties which arose in the treatment model Social Training in 1973 became obvious, here the quota of returned clients reached its peak with 23,9 %. Correspondingly "only" two thirds of the retransfer decisions are based on non-return from furlough, work-release etc., whereas these were nearly the exclusive reasons for retransfer in the other treatment models.

The returned clients distinguish themselves only slightly from those who remained in the corresponding treatment models, whereby in some cases in regard to more serious cases of habitual criminals we can rather note a breaking off of the therapy.

The actual quota of reconvictions of clients returned to the normal pe-

nal institutions is 65,8 %. Analysis of covariance showed in comparison with the inmates of regular prison cases a no significant and about 8 % higher quota of reconvictions. Split up and allicated to the various treatment models, the client who interrupted the treatment in the Social Therapy showed by 7 % better results, and those of the Social Training by 15 % worse results (p.: 5,1 %) than the control group.

Conclusions

This reveals that in some cases clients having the stigma of being "failures" show an even greater tendency to reconviction than other prisoners detained under normal prison conditions. This, consequently, may reflect the difficulties of the clients in regard to their behavior pattern as well as to problems which can be defined as implications of labeling theory. On the other hand, we can see that the therapists in the years from 1971 to 1974 applied relatively prudently the corresonding sanctions.

3.6 Characteristics of the Rejected Applicants for the Social-therapeutic Unit and Their Reconvictions

Hypothesis

Applicants who have been admitted to the social-therapeutic unit do not show any distinguishing characteristics in their registered career as compared with those admitted and treated and with those detained under normal prison conditions. With regard to the latter ones, there is no difference to be seen in the recidivism, either.

Results

The group of applicants is, with regard to their individually committed criminal offences similar to the clients from the treatment model Social Therapy; with regard to the control group, there are no significant differences to be seen in the other variables registered. The reason for their rejection or non-admittance were in half of the cases objective hindrances (e.g., criteria of length of prison sentence, age etc.) and in a quarter of the cases positive decisions as,for instance, transfer into open prisons or early release. Only 13 % really negative decisions (missing motivation etc.) were apparent and based on applica-

tion discussions made by therapists, but which may also follow from the selective and rather accidental material which we disposed of. The real quota of reconvictions is 57 % and does not differ even arithmetically in multivariate analysis from the corresponding quota of the regular prison cases (+ 3 %). Nor a differentiation of the recidivism criteria shows any divergences.

Conclusions

This implies that the sole application for a social therapeutic treatment has no positive effects on the legal behavior, and this is true even then if the non-admittance is mostly due to causes others than negative decisions taken by the therapists but rather to objective hindrances or even to other positive decisions. On the other hand this is likely to confirm the assumption that no conscious and "skilful" selection on the part of the therapists has led to the differences as seen above in the subsequent legal behavior of the treatment cases and normal prison cases.

3.7 The Subsequent Legal Behavior of Released Inmates from Open Prisons

Hypothesis

Delinquents who serve the last part of their sentence in open prisons represent a positive selection as to the characteristics of the registered career and show consequently less reconvictions than inmates of normal prisons.

Results

In Berlin's open prison there are admitted on an average more criminals showing less previous convictions and shorter periods of imprisonment than those from other investigated groups whereby specifically the criminal offence of fraud is slightly "over-represented."

Therefore the subsequent legal behavior is with a rate of 43 % by 16,1 % lower than in regular prison cases. However, there are no significant differences to be seen as to the seriousness, frequency, and time-interval before the first instance of reconviction. In view of the group-opecifical differences, the analysis of covariance revealed a decline

of the different quotas reconvictions - as was to be expected - and that by 10 %.

Conclusions

It was shown here, that even open prisons without special therapeutic treatment can attain a decrease in reconvictions, and that by 10 % with a comparable group structure. This speaks in favour of an extension of this kinds of execution of criminal sanctions as provided for in § 10 of the German penitentiary law (StVollzG).

3.8 Bivariate Correlations Between Reconvictions and Officially Registered Characteristics of the Offenders Following from the Comparison of Social-therapeutic Treatment Cases and Regular Prison Cases

Hypothesis

The quota of reconvictions shows considerable differences according to certain officially registered convict's characteristics. This rate declines with growing age and longer prison sentences and rises with an increasing number of previous convictions, prison experience and with younger age at the beginning of the criminal career. Convicts sentenced for property offences show the highest rate, those sentenced for criminal homicide, for acts of violence and sexual offences register a relatively small rate of reconvictions. Consequently, we can assume that the subsequent legal behavior of those released from social therapeutic treatment is the better one and this irrespective of their characteristics.

Results

The hypothesis was confirmed only partly. A growing age was - contrary to the assumptions - only a very small indicator for a decrease in the tendency to reconviction and that is true in the same measure for all groups investigated. An increasing number of previous convictions results in a linear increase in reconvictions of 28,6 % for first offenders up to 76,9 % for those who show serious preconvictions. With regard to the treatment cases where the differences remained constantly the same, a comparable increase could not be seen. Here, however, even

those inmates showing very serious previous convictions were rather more prepared to break off their criminal career. The longer the prison sentences, the lower are the rates of reconvictions, but this is mostly due to the prognostically more favourable constellation of offences committed by the long-sentenced inmates (increased number of criminal homicide etc.). Even here, in all categories and all different treatment groups better results were attained. The same is true for the age at the first instance of conviction. In normal prison cases with regard to the specific offences, the rate of reconvictions for theft was - as was to be expected - with 71 % after a period of subsequent legal behavior of 4 1/2 years a relatively high one. Fraud (56,8 %), drunkenness (56,2 %), traffic offences (56 %), and robbery/blackmail (51,7 %) are also connected with a relatively high quota of reconvictions, whereas bodily harm, criminal homicide, and sexual offences seem to result in less reconvictions. Here, too, distinct differences in the social-therapeutic treatment cases were evident, and this after multivariate control of the differences between the various groups, between 17 % and 22 %. Sole exception were, however, the sexual offenders where, with a difference of 4 % no significantly better legal behavior became apparent.

Conclusions

The success of social-therapeutic treatment does not depend on the differences of officially registered characteristics of the criminals, i. e., even if prognostically more favourable cases for a social-therapeutic treatment were chosen, the quota of reconvictions was found to be correspondingly smaller as compared with the regular prison cases. Vice versa, this also implies that even those offenders who register very serious previous convictions are suitable for social-therapeutic treatment and that the breaking off of long criminal careers can be seen here, too. Contrary to that, such a treatment seems to be problematical for sexual offenders insofar as in these cases there could not be seen any success. On the other hand, this group of criminals shows even after normal prison conditions a very low reconviction rate (40,5 % thereof only 21,5 % for another sexual offence) so that here in the most cases rather the question of the necessity of treatment is to be posed.

3.9 Details on Social-therapeutic Treatment and Their Influence on the Recidivism Rates

Hypothesis

Within the groups treated, a longer stay in the social-therapeutic department and the permission of work release have positive effects on the subsequent legal behavior. Those, who received social-therapeutic treatment attain to a larger extent than the others a remission of the remainder of their sentences. This has no negative effects as to an increase in the reconviction rate. The attaining of school-leaving certificates correlates positively with a better subsequent legal behavior.

Results

The average duration of stay in the social-therapeutic treatment unit was according to the treatment models between 12,6 (Social Training) and 16,9 months (School) on average; here, no significant effects were apparent as to a lower reconviction rate with longer duration of stay. The work release, however, plays a great part for the rate of reconvictions. Two thirds of the clients released in 1973 and 1974 were allowed to work freely outside the institution, 23,9 % of which only relapsed into crime. That means in comparison with the control group of normal prison cases released in the same period (51 % of reconvictions) a reduction of the rate of reconvictions of more than a half. With regard to the treatment model Social Therapy the variable of work release plays the decisive part for the prediction of recidivism - even in multivariate analysis. Two thirds of the treatment cases enjoyed an early release whereas the normal prisoners showed only a corresponding rate of slightly more than one third. In all groups investigated, the prior record and the length of the prison sentence turned out to be the essential factors for the decision on conditional release, although, by means of the multivariate analysis, according to the data registered, only at most 29,4 % of the variance has been explained (regression analysis). The increased practice of early release in treatment cases does not show negative effects; the clients concerned did not show any worse subsequent legal behavior than those having served the total amount of their prison sentence. In the treatment model Social Training, even if the essential factors for the early release (analysis of covariance)

remained constant, the subsequent legal behavior of the clients who enjoyed early release turned out to be by 27 % better than that of the others. Even with the regular penal institution the corresponding cases with conditional release show a lower rate by 13 %. 86,2 % of the clients released from the treatment model School attained at least one school-leaving certificate; a significant correlation with less reconvictions was apparent.

Conclusions

The decline of reconvictions due to the integral enlargement of the treatment programme (work release) confirms the concept of in the course of the treatment increasing training areas outside of the institution which enables an easier transfer to freedom and guarentees, already in the last phase of the prison sentence a kind of crisis intervention, whereas a longer treatment period does not necessarily guarantee better results. In this respect the present practice, i.e., to offer the social-therapeutic treatment in the last phase of the prison sentence with a maximum remaining sentence of from 12 months to 24 months respectively 36 months, seems to be justified.

The conditional release turns out positively in treatment cases as well as in normal prison cases - in the first case even with more extensive application. The increase in the practice of early release mostly with regard to normal prisoners seems possible because of its individually preventive effects and last but not least this means a harmless method for averting the problem of prison overcrowding which is evident in numerous institutions.

3.10 The Recidivism Criteria of Delinquents who Come Within the Formal Criteria of § 65 German Penal Law (StGB)

Hypothesis

There is an equal proportion of those delinquents who come within § 65 StGB in the treatment groups and in the control group. The subsequent legal behavior of these clients shows also better results in treatment cases than in normal prison cases.

Results

Although the admission to the social-therapeutic treatment department was given by rejecting expressly the criteria of § 65 German penal law (StGB), there were particularly in the treatment models Social Therapy (56,8 %) and School (51,7 %) tendenciously a greater number of inmates who complied with the formal conditions of this law than in the regular prison. From all groups of delinquents who fall under § 65 German penal law (StGB) there are 41,1 % of the treatment cases and 63,7 % of the regular prison cases that are subsequently resentenced. These figures correspond to the total result of our investigation.

A surprising fact is that the greatest differences, i.e. 27 % appear in the serious cases of previously convicted offenders who fall under § 65 Art. I No 1 German penal law (StGB), whereas sexual offenders - as we have already seen above - do not show any improvement in their subsequent legal behavior.

Conclusions

Contrary to numerous assumptions, there is every indication to believe that the conception of the legislator as to give social-therapeutic treatment to especially seriously preconvicted offenders is not a priori a hopeless one. The question of if a similar success in these cases can possibly be attained even with assignment by the Court and on principle indeterminated duration of treatment cannot be answered by our present study. In addition to that, the conception of treatment of sexual offenders seems doubtful insofar as here in the most cases the question of the necessity of treatment within the scope of social-therapeutic institutions arises.

3.11 Multivariate Analysis in Order to Explain the Recidivism

Hypothesis

Factors of the criminal career recorded in the criminal register may to a great extent predict recidivism. In the treatment cases the mere global data as work release, duration of stay etc. give already a better explanation of the variance.

Results

The hypothesis was confirmed only partly. In various multiple regression analyses generally only the least portion of different legal behavior was explained. In this, all cases of the treatment group and of the control group were taken into consideration by using dichotomy codes and it was tried to estimate the importance of the criminal's belonging to one of these two alternatives as "treatment factor" against the other factors of the registered criminal career. Thus, analysis of regression according to the specific offences were computed, too. The result obtained showed us that the mere fact of belonging to a treatment or to a control group, in general, is bivariately of significant importance which even in multivariate analysis turned out to be decisive for the prediction of the criteria of recidivism. The explained variance in total was a relatively small one, for all offences 16,5 % respectively 17,6 %. Only certain groups of offences enabled us to explain by the registered data the different rates of reconvictions (bodily harm: 32,6 %, traffic offences: 34,2 %). Then, by means of another methodical step, the three treatment groups and the control group were studied separately. In this, special variables of the treatment cases were also taken into consideration for the regression. The result implied that in all groups of treatment the modalities of the social-therapeutic treatment even in multivariate analyses were of importance. Thus, the admission to work release within the treatment models Social Therapy and Social Training played an important role whereas within the treatment model School the question of the school-leaving certificate played the decisive part, here. But even here it became obvious that by means of the existing data,relatively few variances could be explained: in the treatment model Social Therapy at most 16,4 %, in the treatment model School 35 % and in Social Training 19 %. Within the control group where solely the factors recorded in the criminal register were taken into consideration for the iterative regression, a maximum rate of only 21 % of the different reconvictions could be explained.

Conclusions

These results imply that the reconviction is likely to depend essentially on other variables than those recorded in our present study. Here we must not only think of the biographical data of the time before and

after the integration into the institution, but also of the details of the proceeding of the execution of criminal sentences and especially of that of the treatment. Consequently, the direction of the further research is traced and its necessity confirmed by the present results.

4. Legal-political Conclusions

It is true that the present study could not elucidate any reasons for the different reconvictions with the various corrections' forms, but it could show coherences from which we can conclude the positive function of social-therapeutic institutions as well as that of open prisons. It seems that a corresponding reorganization of the execution of prison sentences not only comes up to more humane requisitions but that it is also in the point of view of efficiency and with regard to the reduction of recidivism criminality and consequently connected costs of a benefit for our society. Therefore it is sensible to offer a greater number of such treatment possibilities. The question of whether social-therapeutic treatment even against the criminal's will is advantageous or not - as this would be possible in accordance with § 65 German penal law (StGB) - cannot be answered on the basis of the present investigation but seems to be doubtful. The same is true for the generally indeterminated duration of the treatment, as provided for in this law. On the other hand, contrary to the negative assumptions of the critics of § 65 German penal law (StGB), the delinquents who fall under this provision seem apt to be treated - but, however, only on condition that they consent to their treatment - and this in a manner that the rate of reconvictions can be reduced. An exception to this may be the group of sexual offenders where the question of the necessity of treatment seems to require an explanation, as even in the case of normal execution of criminal sentences only a very small number of released offenders relapse into the same crime. There is no justification for restricting social-therapeutic treatment endeavours solely to criminals falling under § 65 German penal law (StGB) because of the success achieved in general so that at least the double strategy of giving treatment to a delinquent in virtue of a decision taken by the Court or the prison-staff remains desirable in spite of all legal and other objections.

The social-therapeutic treatment unit of Berlin should be regarded for several reasons as a model for the reorganization of further penal in-

stitutions. On one hand, this is the only institution in which to a large extent (230 places) such a treatment is given, and this with reasonable financial expenditure for the treatment personnel. It was shown here that most of all with the great personal activity and the solidarity of all those concerned and even under unfavourable accomodation conditions (wards of 30 to 45 places) there can be given a social-therapeutic treatment although the internal conflicts and the restrictions attempted by the political authorities in view of the security criterion might have in some cases negatively influenced the treatment results in 1972/73. On the other hand the nearness of the ordinary Berlin prison turned out to be an essential advantage as to the numerous working and professional training possibilities. We must also take into consideration the radiating capacity of the social-therapeutic unit onto the regular prison in Tegel, even though, vice versa, the great accentuation of the security criterion can be explained by the proximity of the normal prison.

There would not be any justification for continuing the restriction of the social-therapeutic treatment to only 1 % of the prison population and to create thereby the function of alibi for the otherwise unchanged normal prisons. On the other hand, we may not see in the social- therapeutic treatment within the penal institution the sole remedy for our struggling against recidivism. As much as ever we should apply a greater number of means of sanctions which are more humane and less drastic than incarceration and most of all we should create community based corrections. A quota of reconvictions of 65 % with normal prisoners could indicate already two different necessities which we should try to explain in our future research: On one hand that at least these prisoners who even under normal prison conditions did <u>not</u> relapse into crime did possibly not need incarceration as special means of preventive effect, and, on the other hand, that the traditional execution of criminal sentences even today is only to a limited extent suitable for achieving its purpose of rehabilitation as provided for in § 2 German penitentiary law (StVollzG). Therefore, and this might be, for instance, the consequence of the results obtained with the early release even in the present situation of long sentenced prison population, we could by means of community based corrections at least reduce the duration of stay (early release etc.) what consequently could mean a contribution of humane and cost-saving kind that at a time might help to reduce the problem of prison overcrowding, too.

REHABILITATION OF RELEASED PRISONERS

Wolf Blass

1. Problem

The appropriate conditions for successful rehabilitation of released prisoners are still fundamentally unclear. The following questions, for example, remain unanswered:

a. What social conditions are prisoners faced with after release?
b. What influence do these conditions have upon their decisions to engage in conforming or deviant activities?
c. What contribution is offered by post-release assistance in making these decisions?

Our use of questions indicates that we intend to follow a tradition of decisional theories known as the "economic theory of crime" (Frey and Opp 1979). In the social sciences, this research tradition is frequently designated as the "economic theory of behavior" (e.g., Opp 1978), "new political economy" (e.g., Riker and Ordeshook 1973). Kaufmann's "cognitive-hedonistic theory of behavior" (Kaufmann 1975; Kaufmann-Mall 1978) was drawn upon in the derivation of the "rehabilitation theory".

We will attempt to explain 7 more or less "conforming" and 7 more or less "deviant" activities. Since "recidivism", or more exactly "re-conviction" is not a dependent variable here, we are engaging in a study of unreported crime through the measurement of dependent variables in 14 different forms.

The conditions for the appearance of the determinants of these activities will also be analyzed through the application of a statical version of the rehabilitation theory. During the course of our study, this will be made dynamic and be tested through numerous measurements.

Important tools in this connection are indicators of daily careers of released prisoners and their use of time. The allocation of time and

activities, therefore, will be investigated and analyzed in connection with our data survey.

Since the extent of rehabilitation, i.e., "social integration", of released prisoners is also important, we plan to compare a group of released prisoners with a control group in regard to legally relevant factors.

Finally, we will consider the advantages to be gained through the use of post-release assistance and the released prisoner's emotional "ties" to the individuals offering this assistance in order to clarify the contribution of state and private intervention in the reduction of recidivism.

2. Theory of rehabilitation

The legislature was goal-oriented in its formulation of § 2 StVollzG as it maintained that the purpose of punishment is to assist the prisoner in living, according to the principle of "social responsibility", a life free of crime. We accept these goals as dependant variables of a theory of rehabilitation. In our search for pre-determined variables, we relied on the vast and thorough research on penal execution and post-release assistance. The following consequences for our project can be extracted from this research:

a. No general social scientific theories were utilized in previous research efforts in the explanation and prediction of rehabilitation efforts. This omission is certainly one of the reasons for the limited theoretical contributions of this research. Therefore, a general social scientific theory will be employed in the present project.

b. Current knowledge about the "typical careers" of released prisoners is fragmentary. We hope to make a contribution toward the description of these "micro-careers" through a time and activity allocation study.

c. Most of the bivariate research on the conditions for "maintaining legal behavior" has unacceptably simplified reality. We hope to achieve a more realistic impression through multivariate analysis.

d. Most of the studies on the maintenance of legal behavior after release from prison have analyzed only the conditions for the commission of criminal offences. Knowledge about the conditions for conforming behavior, however, is minimal. Therefore, we hope to illuminate an "unreported area" of research through a study of particular unreported deviant and conforming behavior.

e. Former studies on the social integration of released prisoners have been purely descriptive. Through a theory-oriented definition of the maintenance of "socially acceptable" behavior we hope to facilitate empirical analysis hereof.

f. The contribution of post-release assistance in the prevention of recidivism or the intensification of social integration is still largely unexplained. We hope to clarify this contribution through the adoption of a concept from psychotherapy research.

A comparison of behavior theories based on previous experience and those based on simultaneous psychic occurrences reveals that Kaufmann's hedonistic theory of behavior (Kaufmann 1975; Kaufmann-Mall 1978) has the greatest capacity for explaining and predicting the deviant and conforming behavior of released prisoners (Blass 1979). The axiom of the cognitive-hedonistic theory of behavior is:

Axiom: In decision-making situations the act, which has the greatest net utility, will be performed.
The following definitions apply to this axiom:

D_1: Decision-making situation = def.: situation in which a person has alternative possibilities for behaving.

D_2: Act = def.: reaction of a person, which is produced through the cortical or sub-cortical nervous system.

D_3: Net utility of an act = def.: Product of the experted consequences of this act and the utility of the consequences of this act.

D_4: Expected consequences of an act = def.: subjective probability of the occurrence of a consequence of an act.

D_5: Utility of the consequences of an act = def.: degree of pleasant-

ness or unpleasantness this consequence has for an individual (benefit or cost).

Since according to D_2 a person's act indicates physical as well as psychical reactions, the above-stated axiom can be applied to explain observable behavior as well as psychic reactions, e.g., valences, expectations, cognitions.

In light of the results of previous research, the following "theory of rehabilitation" can be derived in a strictly logical manner from the cognitive-hedonistic behavior theory through the application of reduction propositions.

The theory of rehabilitation has five levels, i.e., the occurrence of five dependent variables is explained therewith. The five parts of this theory are presented in the following discussion as the "theory of action", "theory of utility", "theory of expectation", "theory of cognition", and "theory of self-esteem".

The "theory of action" states:

TP_1: The act alternative with the greatest net utility will be performed.

$$\sum_{i=1}^{i} (E_H \cdot N_H) = \max \dashrightarrow H_i$$

Definitions:

D_1) Net utility of an act = def.: sum of the products of the expectations and utilities of the consequences of an act.

D_2) E_H: Expectation of the consequence of an act = def.: subjective probability of the occurrence of a consequence of an act.

D_3) N_H: Utility of the consequence of an act = def.: degree of pleasantness/unpleasantness of a consequence of an act.

D_4) H_i: Act = def.: activity of an organism which is released through the organism's cerebrum with its cortical and sub-cortical centers.

D_5) Act Alternatives = def.: objective possibility for an individual to act in various ways.

Value range of the variables:

The expectations of a consequence is a real number between 0 and 1. The utility of a consequence is a real number between -1 and +1.

Style:

R_1) Acts: 1) To force someone through threats or the application of force to hand over money. 2) To incur debts without intending to pay them back. 3) To take something from a store without paying. 4) To take someone else's wallet or handbag. 5) To enter into a place and take something away. 6) To break into an automobile in order to take away money or goods. 8) To utilize or sell one's own possessions. 9) To loan money with the intention of repaying the loan. 10) To accept help from friends or acquaintances. 11) To take credit from a bank or savings company without making false statements. 12) To buy things in installments. 13) To apply for social assistance. 14) To accept work. (Acts taken from Opp 1978b).

R_2) Consequences of the acts: All of the above-mentioned acts have one common consequence, viz., the acquisition of money. Additional consequences should be researched in a preliminary study.

The "theory of expectation" states:

TP_2) In cognitive situations the expectation with the greatest net utility will be acquired.

$$(K_E): \qquad \sum_{j=1}^{j} \qquad (E_E \cdot N_E) = \max \dashrightarrow E_j$$

Definitions:

D_6) N_E: Net utility of an expectation = def.: sum of the products of expectations and utilities of the consequences of an acquired expectation.

D_7) E_E: Expectation of the consequence of an acquired expectation = def.: subjective probability of the occurrence of a consequence of an acquired expectation.

D_8) N_E: Utility of the consequence of an acquired expectation = def.: degree of pleasantness/unpleasantness of a consequence of an acquired expectation.

The consequences of an acquired expectation can be defined through reduction propositions:

R_3) Consequences of the acquired expectation are:

"Similarities with the conceptions of other relevant persons regarding the acts (Ä)".

"Rewards for these similarities in conceptions through other relevant persons regarding the act (Be)".

"Knowledge and capabilities for the performance of acts (K)".

"Self-esteem (S)".

The expectations of the occurrence of these consequences are the values which will be achieved on the corresponding scales (EÄ, EBE, EK, ES). The utility arising from the occurrence of these consequences can be defined, through the perception of confirmation through these persons for the performance of these acts (NÄ, NBe) and the pleasantness/unpleasantness of the act in itself, in that this person has the knowledge and capability to exercise the act (NK), i.e., has a higher or lower feeling of self-esteem (NS).

The <u>"theory of utility"</u> states:

TP_3) The perception of utility involving the greatest net utility will be acquired.

$$\sum_{k=1}^{k} (E_N \cdot N_N) = \max \longrightarrow N_K$$

Definitions:

D_9) Net utility of a utility perception = def.: sum of the products of the expectations and utilities of the consequences of a utility perception.

D_{10}) E_N: Expectation of the consequence of a utility perception = def.: subjective probability of the occurrence of a consequence of a utility perception.

D_{11}) N_N: Utility of the consequence of a utility perception = def.: degree of the pleasantness/unpleasantness of a consequence of a utility perception.

The definition of consequences of a utility perception through reduction propositions in abbreviated form:

R_4) Consequences of a utility perception are:

"Ties to other individuals (Bi)"
"Degree of internalized norms (N)"
"Degree of future perspectives (Z)"

The expectations of the occurrence of these consequences are the values which will be achieved on the corresponding scales (EBi, EN, EZ).

The utility of "ties to other individuals" is measured through the degree of pleasantness/unpleasantness of these persons (NBi).

The utility of "internalized norms (NN)" and "future perspectives" will be measured through the evaluation thereof.

The "theory of cognition" states:

TP_4) The cognition with the greatest net utility will be acquired.

$$\sum_{l=1}^{l} (E_K \cdot N_K) = \max \dashrightarrow K_l$$

Definitions:

D_{12}) Net utility of a cognition = def.: sum of the product of the expectations and utilities, consequences of an acquired cognition.

D_{13}) E_K: Expectation of the consequence of an acquired cognition = def.: subjective probability of the occurrence of a consequence of an acquired cognition.

D_{14}) K_K: Utility of the consequence of an acquired cognition = def.: degree of pleasantness/unpleasantness of a consequence of an acquired cognition.

The difinition of the consequences of an acquired cognition through reduction propositions in abbreviated form:

R_5) Consequences of a (causal-) cognition are:

"Possibilities for the performance of an act (M)".
"Anticipation of possibilities for the performance of an act (A)".
"Anticipated preferences of relevant persons for certain acts (P)".

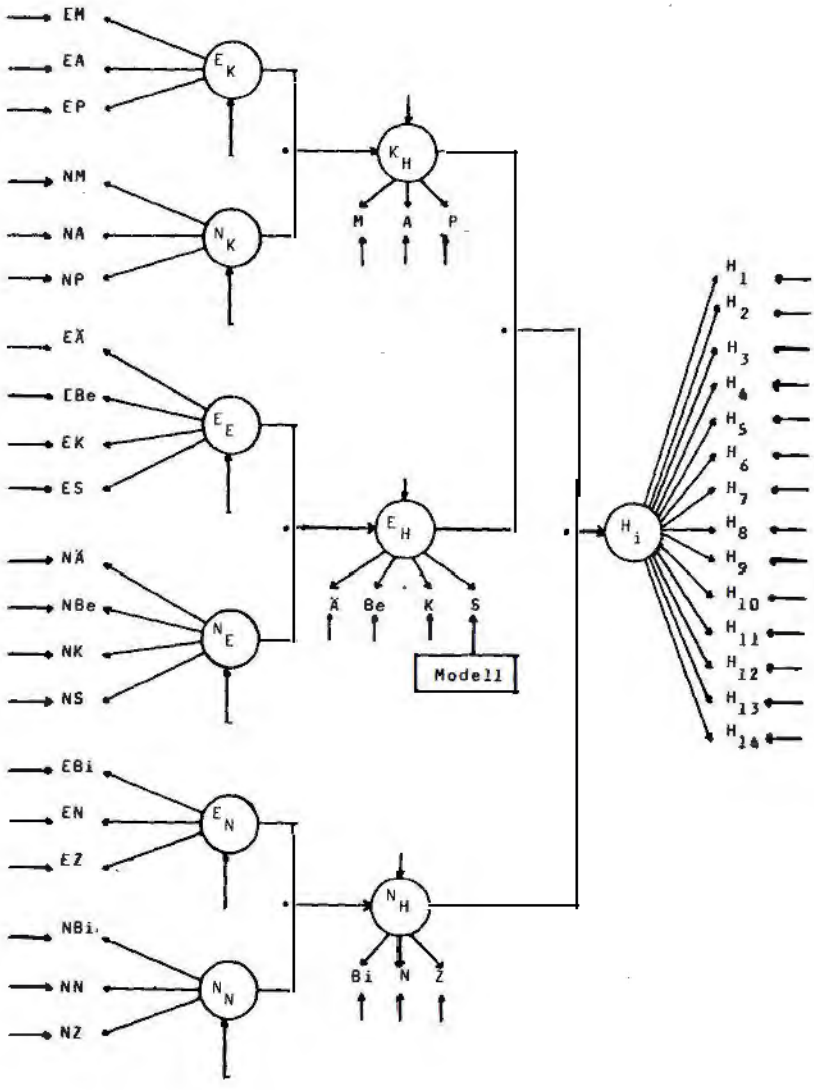
The expectations of the occurrence of these consequences are the scaled values (EM, EA, EP).

The utility of the "possibilities" is measured through the preference for these possibilities (NM), the utility of the "anticipation of possibilities" is measured through the preferences of these anticipations (NA), and the utility of the "anticipated preferences of relevant persons" is measured through the preferences for these anticipations (NP).

The causal model of the theory of rehabilitation will now be presented, i.e., the theories, which have been outlined, will be presented in an integrated fashion.

The relationships between theoretical variables and observed variables correspond to the abbreviations used in the theory presentation. "Model"

Diagram 1 A Recursive Model of the Theory of Rehabilitation



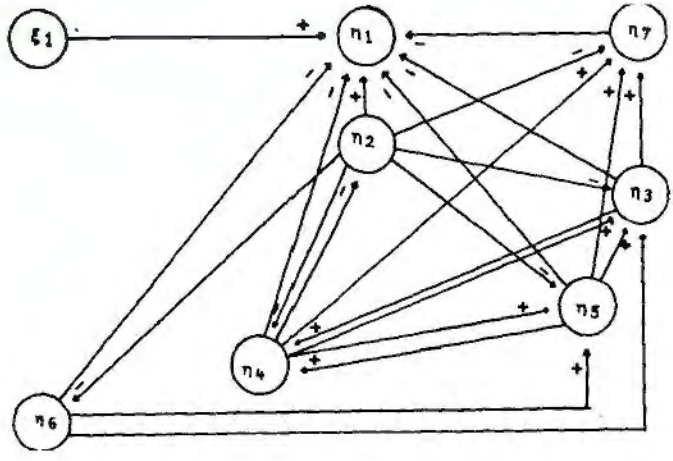
means that the "theory of self-esteem" is to be integrated here from Diagram 2. The "arrows", corresponding to path analysis, specify the directions of the causal effects. The "empty" arrows from the variables indicate residues of theoretical constructs and random measurement errors of the indicator variables.

"Theory of self-esteem"

The above mentioned theories mainly include intra-individual (psychic) variables. They, therefore, offer only limited information about social-technological rehabilitative measures. A point of approach for also integrating inter-individual (social) variables is offered by one of the consequences of an acquired expectation, viz., "self-esteem". We suspect that "self-esteem" is not only a consequence but also a condition for the formation of an expectation (see, Dillig 1977). The theory is expanded into a micro-theory with context effects ("meso-theory") through the postulation of a non-recursive relation between these variables (Diekmann and Opp 1979).

From the results of previous research, we have developed the causal model in Diagram 2.

Diagram 2 A Multivariate Model of the Conditions for Self-Esteem



This model explains and predicts the appearance of a particular feeling of self-esteem through socialization and labelling variables.

The theoretical postulate states:

TP_5) The older the individual "in relation to other family siblings" (ξ_1) and the higher the "socio-economic status" (η_2) and the lower the "public awareness of previous labellings" (η_3) and the lower the "frequency of previous labellings" (η_4) and the shorter the "duration of previous labellings" (η_5) and the lower the "structural disturbances in one's original milieu" (η_6) and the lower the "perception of labelling intensification through relevant persons" (η_7), the greater the feeling of "self-esteem" (η_1).

The pre-determined variables of the feeling of self-esteem are also partially explained in the model:

TP_6) The lower the "frequency of previous labellings", the higher the "socio-economic status" (η_2).

TP_7) The lower the "socio-economic status" (η_2) and the greater the "frequency of previous labellings" (η_4) and the longer the "duration of previous labellings" (η_5) and the greater the "structural disturbances in one's original milieu" (η_6), the greater the "public awareness of previous labellings" (η_3).

TP_8) The lower the "socio-economic status" (η_2) and the greater the "public awareness of previous labellings" (η_3) and the longer the "duration of previous labellings" (η_5), the greater the "frequency of previous labellings" (η_4).

TP_9) The lower the "socio-economic status" (η_2) and the greater the "frequency of previous labellings" (η_4) and the greater the "structural disturbances in one's original milieu" (η_6), the longer the "duration of previous labellings" (η_5).

TP_{10}) The lower the "socio-economic status" (η_2), the greater the "structural disturbances in one's original milieu" (η_6).

TP_{11}) The lower the "socio-economic status" (η_2) and the greater the "public awareness of former labellings" (η_3) and the greater the "frequency of previous labellings" (η_4) and the longer the "duration of previous labellings" (η_5), the greater the "perception of labelling intensification through relevant persons" (η_7).

In these theoretical postulates three non-recursive relations, which will be examined in our longitudinal study exists between constructs (η_2, η_3, η_4, η_5). In the present cross section model, however, the value and sign of these relations are ascertainable through the LISREL-Algorithm (Jöreskog and Sörbom 1979). Our suggestion for making this theory dynamic will be foregone because of space limitations.

The presentation of respective correspondence hypotheses has also been abandoned, a completion of Diagram 1 concerning the signs of correspondence hypotheses is also not expedient.

According to the suggested definition of "social probation", the degree of rehabilitation of released prisoners can be investigated easily:

Released prisoners are rehabilitated only when the distribution of their measured values for the variables of the "theory of rehabilitation" does not significantly deviate from the distribution of the reference population.
The individual "degree of rehabilitation", therefore, can be statistically determined according to the extent of these deviations.

Through this approach, the (moral/value) question regarding the released prisoner's maintenance of "socially acceptable" behavior can be empirically (value free) described.

The "theory of rehabilitation" also specifies the conditions for the occurrence of these deviations, i.e., the maintenance of "socially acceptable" behavior can be explained and predicted.

3. Methods and random sampling

The theory of resocialization will be examined through interviews of released prisoners and of a reference group within the population. A random sample of prisoners released from the institutions of Berlin-Tegel (treatment and custodial institution), Mannheim (custodial institution) and Freiburg (custodial institution) between 1979-1980 will be formed for this purpose. The reference population will be randomly selected from the same ecological surroundings as the released prisoners.

We plan to make the "theory of resocialization" dynamic as our research proceeds. In order to test these dynamic variants, releases in 1981 and 1982 will be included in our random sample. Thereby, we plan to conduct a penal study, with three points of measurement between 1980 and 1982, of this random sample.

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VII. RESEARCH INVENTORY PLANNING AND PROSPECTS FOR THE 1980'S

RESEARCH INVENTORY, PLANNING AND PROSPECTS FOR THE 1980'S

Günther Kaiser

1. Results of the criminological research work of the 1970's

As the individual reports on the procedure and results of our investigations reveal, empirical research at the MPI has brought forth a series of significant findings during the last decade. These findings, for example, relate to the notable extent of criminality, determined in our investigations, which for many offences, usually of a less severe nature, is several times greater than reported to the police. Further findings to be emphasized are: the high degree of juvenile victimization including juvenile delinquents themselves; the cumulative effect of primary conflict potential through socialization deficiencies and unemployment, as well as criminal liability; the considerable expansion of private crime control, in the case of petty crimes, through justice organs within the place of employment; the significant extent and selectivity of private complaints and the mainly reactive police investigations thereof; the actually considerable police potential to make decisions (potential to define) in cases of suspected premeditated murder; the extensive, although uniform, dismissal practices of the prosecutor's office; the extreme significance of the willingness to confess in conjunction with the defendant's social characteristics for the actual outcome of preliminary criminal proceedings; the high number of injuries and victimizations through serious economic crimes by individual offenders and the extremely long duration of criminal proceedings on these delict complexes; the economic and social acceptability of judicial fine collection; the relatively low increase in confinement for non-payment of fines in light of the considerable expansion on the use of fines over the last decade and, finally, the lower rate of recidivism and higher level of resocialization of prisoners, who underwent social-therapeutic treatment rather than traditional prison confinement. Parts of the following projects were excluded: criminal justice within the place of employment; the Stuttgart victimization survey; unreported and registered criminality; willingness to file, the filing of a criminal com-

plaint and police reaction thereto; the prosecutor's office and criminal legal social control; criminal prosecution of economic crimes; social and legal processes in defining murder; and recidivism after social-therapeutic treatment. Most of the material included concerns completed research reports or research which is almost completed and soon will be published. A further part of the research begun in the 1970's is still being carried out or evaluated: therapeutic treatment of juvenile offenders in pretrial detention, procedures in juvenile prisons and social-therapeutic institutions, recidivism and social integration of released multiple offenders, unexpected discontinuance of criminal careers, inventory of criminal law execution systems, and more in depth studies of serious economic crimes.

2. Credit and debit in criminological research

The research activities, on the whole, have developed positively during the 1970's. Nine larger projects were planned, implemented and concluded. In this regard, one must realize that the research group first achieved its full capacity of eight permanently employed researchers in 1975. In light of the present situation, one can assume that meaningful questions regarding relevant personality correlates, general prevention, and rehabilitation will be answered more closely through the results of projects still being pursued. Empirical research at the MPI has found considerable resonance both within and without our own country. Nevertheless, one must ask whether expectations in regard to credit or debit have been fulfilled.

The credit side of our research has already been indicated. One should not overlook the fact, however, that we remain in debit regarding several research tasks undertaken at the beginning of the 1970's. The planned auxiliary projects, relating to the school, community, charitable organizations, and military service as institutions of crime control, could not be realized in the form of mere dissertations. Even the extent to which these aspects were included in main projects, e.g., on unreported crime, was below the planed research goals.

The desired fluctuation in staff membership in intervals of three to five years negatively affected the conclusion of individual projects.

The reasons, therefore, were that former project supervisors either concluded plans and completed research reports in addition to other newly assigned projects or were forced to explain these tasks to new co-workers. The duration of individual projects was thereby extended considerably, i.e., beyond five years.

Furthermore, the simultaneous pressure on the researchers for academic qualification (15 concluded doctoral dissertations and 2 the qualifying treatise for professorship) was not always favorable since normally desirable academic competition interfered with the implementation of joint projects. Although group efforts proved to be fruitful in the planning, undertaking and solution of criminological research problems, the difficulties resulting from such team work could not be entirely avoided or satisfactorily overcome. Even when a researcher has group support, he still must achieve the desired level of group integration alone. Interdisciplinary activity, therefore, is only a possibility and function of empirical research.

Finally, the limited infra-structure in the computer area, overburdened in the past decade by increasing demands, impeded research since only a small computer was available in the institute. This deficiency was further intensified through the lack of a full-time computer operator. Only since 1980 could one expect that computer insufficiencies would be removed through the installation of a middle-sized computer and the employment of a competent data processor.

3. Deficiencies and research gaps

As may be recognized from our attempt to balance the credits and debits of the institute's internal research and our analysis of the general research situation, a series of problems, which urgently necessitate investigation, exist in spite of current research efforts. These problems primarily relate to the empirical investigation of punishment theories (resocialization, deterrence, and rehabilitation) and of the development of criminological theories in general. At the same time they concern, the multivariousness of crime control and crime prevention, including criminal prognosis and the dangerous offender. They include frag-

mentary knowledge about recent criminality committed by foreigners and the international comparison of crime. This profile of deficiency expresses itself not only in our intra-criminological research inventory but also in present criminal policy controversies.

If criminology is to be considered a science, then it must be able to present a theory of criminality in terms of various crime factors, which if existing result in crime - if lacking do not result in crime. Such a theoretical explanation should be based on a general theory of human behavior in which only crime-indicating conditions and processes are specific. This type of theory could simplify and stimulate criminological research and offer an orientation and convincing framework for the understanding and significance of all factual knowledge. For some time, attempts toward a systematic integration of crime and punishment theories from various relevant academic disciplines had negative consequences. Every effort reflected the basic danger of either ignoring criminal law principles or losing criminological self-sufficiency. A theory composed of various aspects of socialization and social control would probably offer the best solution. This type of theory could not only differing criminality trends, the offender's personal development, the situation in which crime is committed, and types of social reaction behavior, but also could sufficiently answer the question as to why, in spite of social structural differences, the majority of individuals conforms with the law. In contrast to other types of theories, it covers not only prevention, but also includes criminogenic structures for primary, secondary and tertiary prevention. Furthermore, it offers a logical explanation why the closer primary group relationship, greater consensus and solidarity in Japan, for example, as opposed to western countries, result in significantly less officially registered criminality. Finally, it makes an encounter between penal theories of resocialization, which correspond to the control theory, and positive general prevention possible. According to the basic assumption of the control theory, behavior is determined through the individual's ties to other persons and to society and the social value system through the internalization of prevailing norms and through conventional activities. Theoretical elements of socialization, moral development and social control coincide accordingly. One may assume that long-term cohort studies, as well as victimization surveys and international crime comparisons, further the deve-

lopment of theory and thereby open new paths to knowledge.

4. The necessity for comparative investigation

As in criminal law, comparative investigation is also essential in criminology since it enhances knowledge. The comparative method compels criminologists to look beyond the narrow scope of their own experiences and to consider the superior methods, investigative approaches and emphases, and the findings of researchers from other countries. Through comparison, the criminologist becomes aware of the limited perspectives in his own work. Furthermore, he is required to define more exactly what is to be researched and how it will be investigated.

For some time, white-collar crime in Europe, for example, was considered neither as an element nor subject of empirical research. Contrarily, in North America, traffic offences and politically motivated crimes were included within criminological research much later and more gradually than in Europe.

Furthermore, comparison permits the use of empirical findings in situations in which nationally limited research is lacking in approach or results. This advantage was offered, for example, by investigations of deterrence and the death penalty, of organized crime, or the influence of architecture and city structure upon criminality and by treatment research. The international division of labor and comparative analysis, therefore, widen one's field of vision. Single phenomena, such as robbery or blackmail, cannot be viewed in isolation. On the contrary, they appear to be imbedded in the socio-cultural system in which they occur. For this reason, the social system has become the subject of more and more investigations. Because of the world-wide nature of criminality and significant differences in national crime rates, one cannot dispense with an international approach to criminological problems. Victimization surveys and determinations of the severity of committed offences close gaps, which official crime statistics cannot close. Comparative criminology also compels one to examine theories and models, which have been developed in a particular cultural system, for their empirical significance and validity in other systems. The comparative method often raises

legal policy questions, which on the international level might seem explosive. It offers the occasion to examine, compare, and evaluate the currently practiced sanctioning strategies and alternatives in various countries. An international comparison of prison rates is not exhausted merely in a descriptive contrast. On the contrary, such a comparison increasingly raises questions as to the necessity and legitimacy of the relatively high rates. At the same time, it is difficult to empirically compare different socio-cultural and political systems.One cannot transfer results, which have been acquired in one system, to another. This difficulty is clearly revealed in investigations of violence assessment, victimization, and in general investigations of attitudes toward criminal law. Comparative criminology, therefore, represents more of a challenge for the future than a clearly outlined research approach according to theory, method and established truths.

5. Tasks for the 1980's

Considering the above-outlined research situation, particularly the profile of deficiencies, the question arises "how shall we proceed". According to which program do our research plans for the 1980's result.

Five current, major projects must first be continued and concluded. The completion of these projects demands the efforts of the largest part of the research group for the next three years. Investigations of imprisonment and penal execution will also take the requirements and problems of an extensive MPI project on imprisonment into consideration.

Our latitude for new plans, therefore, will remain very limited until the middle of the 1980's. Available resources should be used to investigate sentencing practices associated with long prison terms and the observed gradual increase in these terms, to implement an international victimization survey, to empirically assess the effects of the First Law for Combating Economic Crimes, and to initiate a cohort study. Moreover, an empirical investigation and evaluation of alternative sanctions, such as night school courses for traffic offenders, could be considered. Of all these investigations, victimization surveys and cohort studies will be the most devoted to basic research and, thereby, to theory development. A new light will be shed, hereby, upon the temporarily neglected

question of the causes of crime. Extensive consideration will be given to national and international research priorities (see Kaiser, G.: Kriminologie, ein Lehrbuch, Heidelberg 1980, p. 111 et seg.). The German Research Society's emphasis on "Empirical Research on Sanctioning and the Genesis of Norms" and our efforts at the MPI emphasize this consideration.

As the history of science in general has taught us, future questions can scarcely be predicted, not to mention planned. Many of the criminological questions considered today were neither recognized as research questions a quarter of a century ago nor even foreseen as possible questions. Nevertheless, the rough structure of research problems here does not differ significantly from that of the first post-war period. This similarity primarily exists since scientific changes in criminal law usually proceed more slowly than in the natural sciences or medicine. Criminology is clearly interested in the search for new evaluations of solutions to substantially constant problems.

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Eine empirisch vergleichende Untersuchung anhand der Strafregisterauszüge von 1503 in den Jahren 1971-74 entlassenen Strafgefangenen. Von Frieder Dünkel. Duncker & Humblot, Berlin 1980, 430 S.

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IX. INDEX OF THE SCIENTIFIC COLLABORATORS OF THE CRIMINOLOGICAL RESEARCH UNIT FROM 1971 TO 1980

Director of the Criminological Research Unit:
Professor Dr. Günther Kaiser

Members of the Criminological Research Unit:

Albrecht, Hans-Jörg, Dr. (lawyer)	since 1973
Arnold, Harald (psychologist)	since 1978
Baumann, Ulrich (sociologist)	1974-1978
Benninger, Manfred (psychologist)	since 1978
Berckhauer, Friedrich Helmut, Dr. (lawyer)	1972-1978
Blankenburg, Erhard, Professor, Dr. (sociologist)	1973-1975
Blass, Wolf, Dr. (sociologist)	since 1978
Brauns-Hermann, Christa (psychologist)	since 1975
Busch, Bernd (psychologist)	1976-1981
Carl, Anemone (secretary)	1970-1972
Dinse, Hartmut (psychologist)	since 1976
Dünkel, Frieder, Dr. (lawyer)	since 1974
Engelbert, Monika (lawyer)	1978-1980
Eyer-Auerbach, Ulrike (psychologist)	since 1976
Feest, Johannes, Professor, Dr. (lawyer/sociologist)	1970-1974
Fehérvary, Janós, Dr. (lawyer)	1974-1976
Fenn, Rudolf, Dr. (lawyer)	1976-1979
Flümann, Bernhard (lawyer)	since 1980
Gläser, Rudolf (lawyer)	1976-1979
Gnielka, Jürgen (psychologist)	1974-1976
Grimm, Annette (lawyer)	1980
Hartwig, Roland (lawyer)	since 1980
Heidel, Rosemarie (secretary)	1971-1982
Hermanns, Jürgen (lawyer)	1980-1982
Humbert, Edda (secretary)	1976-1977
Kaspar, Jacqueline (secretary)	since 1972
Kießner, Ferdinand (lawyer)	since 1980
Kürzinger, Josef (Dr. (lawyer)	since 1971
Kupke, Rainer (sociologist)	1974-1978
Kury, Helmut, Dr. (psychologist)	1973-1980
Lamp, Rainer (economist)	since 1979
Liebl, Karlhans, Dr. (sociologist)	since 1977
Marker, Hartmut (math. techn. assistant)	since 1980
McNaughton-Smith, Peter, Professor, Dr. (sociologist)	1974-1976
Meier, Peter, (lawyer)	1980-1981
Metzger-Pregizer, Gerhard, Professor, Dr. (sociologist)	1972-1978
Middendorf, Wolf, Professor, Dr. (lawyer)	since 1970
Ortmann, Rüdiger, Dr. (psychologist)	since 1978
Otto, Hans-Jochen (lawyer)	1975-1981
Prinz, Martina (lawyer)	1978-1980
Rada, Horst (lawyer)	1976-1979
Rosellen, Richard, Dr. (sociologist)	1975-1977
Rosner, Anton (psychologist)	since 1980
Scheer, Gabi (psychologist)	1975-1978
Scheerer, Bernd (lawyer)	since 1980
Schöpperle, Horst (lawyer)	1976-1979
Schulz, Ekkehard (lawyer)	1975-1978
Sessar, Klaus, Professor, Dr. (lawyer/sociologist)	1971-1982
Spieß, Gerhard (sociologist)	1976-1981
Steffen, Wiebke, Dr. (sociologist)	1973-1978
Steiner, Erika (secretary)	1972-1981

Stephan, Egon, Professor, Dr. (psychologist)	1971-1977
Teske, Raymond, Dr. (sociologist)	1980-1981
Walter, Jutta (sociologist)	1975-1981
Villmow, Bernhard, Professor, Dr. (lawyer)	1972-1979
Wissler, Trudi (secretary)	1978-1982

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