SENTENCING IN SINGAPORE

Sentencing offenders is one of the most important tasks performed by courts exercising criminal jurisdiction. What those courts do in the execution of that task is done in the name of the public. Probably one of the most frequently cited passages reported in Singapore and Malaysian cases dealing with sentencing law and practice is that part of the judgment of Hilbery J. in the English case *R.* v. *Ball*,[1] which begins

> "In deciding the appropriate sentence, a court should always be guided by certain considerations; the first and foremost is the public interest. The criminal law is publicly enforced, not only with the object of punishing crime, but also in the hope of preventing it".

Hilbery J. spoke of "certain considerations" that should guide the court. In this area of its work a court is not guided by clear rules of law and procedure to the same extent that it is in other areas. In sentencing, the court's powers are much less trammelled. Usually the only *legal* limitations are the powers of the court itself — for example the Magistrate has lesser sentencing powers than the District Judge[2] — and the statutory maximum punishment available under the legislation for the offence in question. That is why Hilbery J. said, later in the oft-quoted passage,

> "Our law does not, therefore fix the sentence for a particular crime, but fixes a maximum sentence and leaves it to the court to decide what is, within that maximum, the appropriate sentence for each criminal in the particular circumstances of each case".

The introduction, in Singapore in recent years, of mandatory minimum sentences has, with regard to some offences, robbed that observation

[1] (1951) 35 Cr. App. R. 164, at p. 165.

[2] See s. 11 of the Criminal Procedure Code (Cap. 113) (1980 Reprint) hereinafter referred to as C.P.C. A District Court may impose up to five years imprisonment, a fine of up to $5000 and caning of up to twelve strokes for any offence — subject always to the maximum penalty for that offence. A Magistrate's Court's powers are two years, $2000 and six strokes. The High Court — where only a small minority of Singapore's criminal cases are tried — may pass any sentence authorised by law. Where a person is convicted of two or more distinct offences the sentences may be made consecutive but the aggregate punishment of imprisonment is not to exceed twice the amount normally permissible — s. 17 C.P.C. S. 17 was discussed in *Harry Lee Wee* v. P.P. [1980] 2 M.L.J. 56. The proviso to s. 17 in its un-amended form prevented the aggregate punishment exceeding twice "the normal punishment" permissible. The C.P.C. (Adt) Act 1976 (Act no. 11 of 1976) inserted the words "of imprisonment" thereby removing any upper limit on the aggregate amount of any fines. The amendment came into force after the offences committed by the appellant in *Harry Lee Wee* but before his trial. It was held, by Choor Singh J., *ibid*, at p. 62 *et seq,* that the District Court was, in law, not restricted by the un-amended form of s. 17. The fines were, however, reduced at the appeal hearing. The normal powers may also be exceeded where the offender has previous convictions — 11(3) and (5) C.P.C. Reference here, and throughout this article, to the $ is reference to the Singapore dollar.

of some of its force.[3] Yet for a large number of offences the comment remains valid. The court usually has a very wide discretion within which to operate. It is guided not by rules but by the "certain considerations" of which Hilbery J. spoke.

It has been said that, "it is impossible to lay down rules for fixing sentences".[4] That may well be so but the considerations that should influence sentencers, the principles and guidelines they should follow, the factors they should take into account, have been, by now, well indicated by appellate court decisions. The very words just quoted were followed by these:—

> "There are certain factors such as prevalence, difficulty of detection and injury to the public revenue which operate in the direction of severity and others such as leniency to first offenders which operate in the other direction and where, as frequently happens, a number of these factors apply in one case the court must balance them as best it can."

How the courts perform this difficult task is a matter of interest to the academic and practising lawyer and to the ordinary citizen — who, in Singapore travels not on the Clapham omnibus but, one supposes, on the Jurong bus! Newspaper accounts of court business provide information about the bulk of sentencing work in Singapore, which is performed in the Subordinate Courts. An avid reader can soon form an impression of the general level of sentences. The lawyer, professionally involved in criminal cases, will gain, from his or her work, a more precise impression, deriving from cases in which he or she has been involved or from "general knowledge" amongst practitioners. To gain a really clear and accurate picture of sentencing practices and policy in Singapore one would, ideally, seek the details of a large number of cases, the sentence imposed in each case and the reasons for that sentence. Information regarding the details of cases and the sentences imposed is available in police and court files but it would require large research resources and efforts to un-earth such information and to present it in any systematic form.[5] Even then such information would not provide the stated reasons for the court's sentence — unless the researcher had been present in court on each occasion and been able to record the oral reasons given by the District Judge or Magistrate. Written reasons for the sentence are to be found set out in the "Grounds for Decision"[6] provided by the Subordinate Court if the convicted person appeals against the conviction and/or sentence. If there is no appeal there is no obligation on the sentencer to provide written reasons. Indeed it would be an intolerable burden on sentencers to have to provide such written reasons in all cases. A pointless burden too, it could be argued,

[3] In 1973, for example, the Penal Code, Cap. 103, Singapore Statutes Rev. Ed. 1970 (hereinafter referred to as P.C.) was amended so as to make caning mandatory for a number of robbery offences. (Act no. 62 of 1973). In the same year the Arms Offences Act (Act no. 61 of 1973) and the Misuse of Drugs Act (Act no. 5 of 1973) were passed, both including some mandatory minimum sentences. (Hereafter Chapter numbers of statutes will be references to Singapore Statutes Rev. Ed. 1970, unless otherwise stated.).

[4] By Taylor, J. in *Low Oi Lin* v. *Rex* [1949] M.L.J. 210, at p. 211.

[5] Some information about sentencing emerges from the Annual Reports of the Probation and Aftercare Service. The *Report of the Prisons Inquiry Commission* (1960) contains, at p. 19, an analysis of the use of imprisonment by the courts in the years 1955-9.

[6] Hereafter the abbreviation G.D. will be used.

inasmuch as appeal against sentence is only taken in a small minority of cases.[7]

Where appeal *is* taken the G.D. materialises, so to speak, and constitutes a document which is valuable in any study of sentencing practice. A collection of these documents provides information not merely about the actual sentences passed in particular cases, but also statements of *why* they were passed. In the belief that perusal of such a collection, together with the associated court files, could provide some insight into the sentencing practices and philosophies in operation in the Subordinate Courts of Singapore, the writer engaged in a limited study of certain files relating to "Magistrates' Appeals".[8] As the outcome of the appeal was recorded in each case it was possible to note that outcome and be able, perhaps, to draw some inferences as to the extent to which the High Court approved the sentencing work of the lower courts.

The High Court hears appeals, in criminal cases, from the Subordinate Courts. It thus occupies an important position in supervising sentencing in the Republic. Appeals are normally determined by a single Judge.[9] That was so in all the cases which were examined for the purposes of this article. During the period in question there were seven judges serving on the High Court bench but only four of them were involved in the cases under review. One judge heard four appeals, another five, and six appeals were determined by a different judge. The remaining eighty-seven cases were decided by another member of the Bench — the Chief Justice.

The study

The files of cases involving appeals heard by the High Court between 19th April 1978 and 5th March 1980 were examined. Where the appeal was successful in the sense that the *conviction* was quashed the case was excluded from consideration for the purposes of this article. So too were eleven cases in which the appeal appeared principally to be against *conviction* rather than sentence. It was considered that in those cases the High Court's attention would have been directed chiefly to the conviction, and considerations of sentencing

[7] The actual proportion of cases in which the offender appeals, from the Subordinate Courts to the High Court, against sentence is not known. Appeals in this study were heard in the period between April 1978 - March 1980 and the appeal files 'produced' just over one hundred 'sentence appeals' — see *infra.,* n. 10. It appears from the *Statistical Report on Crime in Singapore, 1979* (prepared by the Criminal Intelligence Unit of the C.I.D.) that 3,346 persons were convicted for seizable offences and 12,605 were convicted for non-seizable offences in 1979. The vast majority of these convictions would have been in the Subordinate Courts *i.e.* the District or Magistrates' Courts.

[8] The term "Magistrates' Appeals" is used to cover appeals from District Courts as well as those from Magistrates' Courts. Subsequent reference to the number of a particular case is reference to the "Magistrate's Appeal" number assigned to the case. The writer was much assisted by the kind co-operation of Mr. Roderick Martin, Registrar of the High Court, and his staff. Their courtesy, patience and friendliness was much appreciated. Warm acknowledgements also go to A. Balasubramaniam, then a graduating student of the Faculty of Law, National University of Singapore. He did much work in studying the files and extracting from them the relevant information. The writer is very grateful for his valuable assistance.

[9] Appeal lies under s. 246 C.P.C. The High Court's powers, on appeal, derive from s. 255 read with s. 260. S. 251(3) provides that appeals shall normally be heard by a single judge.

policy might not have been uppermost in the Court's mind. In the result one hundred and two cases comprise the subject matter of this study.[10]

Each of these one hundred and two 'cases' usually involved an appeal by an individual appellant. In some instances however more than one appellant was involved. Where it seemed clear that the High Court was dealing with the two appeals in the same manner, they are considered as one 'case'. For example one case concerned two youths who had been convicted under the Dangerous Firework Act[11] and each had received identical sentences from the trial court. In another instance two customs officers had been separately convicted, on different dates but before the same judge, of accepting small bribes to neglect to check vehicles passing over the Causeway. Each received a four month prison sentence and the High Court reduced both sentences to one month's imprisonment. That is treated here as one case. Two other appeals however involved defendants who had been sentenced together for their joint involvement in drug trafficking. The sentences were not the same and whereas one defendant lost his appeal the other was successful — to a limited extent — so these two, albeit connected, appeals, are treated as two separate cases.

The reader will note that it was said that one defendant's appeal was successful to a "limited extent." The grounds on which the High Court may vary a sentence passed by a District or Magistrate's Court are set out in section 260 of the Criminal Procedure Code:—[12]

> "No judgment, sentence or order... shall be reversed or set aside unless it is shown to the satisfaction of the High Court that the … sentence. .. was ... manifestly excessive or inadequate in the circumstances of the case."

If the High Court intervened only when the original sentence was *manifestly* wrong one would not expect to find cases in which the original sentence was only slightly varied. However much the High Court might, let us say, think that five months imprisonment would have sufficed instead of seven that is a long way from saying that seven months was *manifestly* excessive.[13] The appellant will doubtless be grateful but perhaps not even he would assert that the strict letter of section 260 was being followed. Of the one hundred and two cases studied the High Court varied the sentence in thirty three instances. Three were cases in which, in the writer's opinion, the variation was slight. In the trafficking case earlier mentioned a sentence of three years and four strokes of the cane was varied to three years and three strokes — the mandatory minimum (128/79). In another trafficking case a sentence which totalled six years and $4,000 fine was

[10] The writer and Mr. Balasubramaniam worked through the Magistrates' Appeals flies for 1979 aiming to get a collection of about one hundred sentence appeals. In the event 1979 did not yield sufficient such cases so we "went back" into 1978 and "forward" a little into 1980 until the present collection was complete.

[11] The charges were under s. 3 of the Dangerous Fireworks Act 1972.

[12] That the sentence was "wrong in law" would be a further ground for disturbing it under s. 260.

[13] For a discussion of the principles upon which the High Court will interfere with the lower court's sentence, see *Lee Yew Siong* v. P.P. [1973] 1 M.L.J. 37, and *Tiong Chi Seng & Anor.* v. P.P. [1973] 2 M.L.J. 106.

lowered to five years and the original fine (125/79). In a motoring case (29/78) the defendant was convicted of two charges of driving whilst disqualified, and related offences. He was fined, further disqualified and sentenced to two months' imprisonment and given a further one month's term to run consecutive. The High Court affirmed the fines and disqualification, enhanced the one month sentence to two months, but ordered it to run concurrently with the other two month sentence. So the total prison sentence fell from three months to two.

There are then a handful of cases in which the terms of section 260 of the Criminal Procedure Code may not have been rigidly adhered to — and that perhaps is no bad thing. Yet the very small number of such cases surely indicates that the prospects for an appellant who seeks a minor alteration of his sentence are not great.

Appeal by the P.P.

An appeal against sentence may be brought not only by the defendant but also, of course, by the Public Prosecutor.[14] The burden of his complaint, put in the terms of section 260, is that the sentence passed was "manifestly *inadequate"*. Of the one hundred and two cases under consideration, six were appeals by the Public Prosecutor. That the figure is so low would suggest that there is no great dissatisfaction in the P.P.'s office at the general level of sentences imposed in the Subordinate Courts. In three of these cases the appeals were dismissed while in the other three cases the sentences were enhanced. The appeals were dismissed in the following cases. Two seventeen year old youths were each given a six months conditional discharge for an offence under the Dangerous Fireworks Act 1972.[15] The P.P.'s petition of appeal stressed the dangers involved in the firing of crackers and the mischief the Act was designed to eradicate. It was argued that the trial court's sentence did not adequately reflect the needs of the public interest. The argument did not however prevail in the High Court. In the second case (20/79) a thirty-two year old lawyer had received two terms of three years imprisonment, to run concurrently, on two charges of Criminal Breach of Trust.[16] The sums involved were $115,000+ and $66,000+ of clients' money. In his G.D. the trial judge noted that the defendant was a first offender, whose career would end with the conviction, and who had committed the offences because he himself had been cheated by others. The P.P. claimed

[14] Under s. 335 C.P.C., the Attorney General is the Public Prosecutor and has control and direction of prosecutions. He is assisted by a staff of deputies. The abbreviation P.P. will be used hereafter.

[15] See n. 11 *supra.* One youth was charged under s. 3(l)(a) and the other under s. 3(1)(b). S. 3(1) provides "No person shall (a) keep or have in his possession or under his control; or (b) discharge or let off, any dangerous firework". The maximum penalty, under s. 5, is two years' imprisonment and a $5,000 fine. S. 10 of the Act repeals s. 6 of the Minor Offences Act (Cap. 102) which provided a maximum penalty of six months imprisonment and a $500 fine for letting off any firework: (116-7/79).

[16] S. 405, P.C. The maximum penalty is three years' imprisonment and an unlimited fine — s. 406. There are heavier maximum penalties where the offence is committed by servants — seven years and a fine — s. 408. Where the maximum penalties for particular offences are mentioned, here and later, it must be remembered that the sentencer in the Subordinate Courts would be restricted by his usual sentencing powers — see n. 2 *supra.* Hereafter the abbreviation C.B.T. will be used for "Criminal Breach of Trust".

that the sentence was inadequate because of the gravity of the offence, the large sums involved and the fact that no restitution had been made although adjournments had been granted during the trial to permit that. In the remaining case (98/78) in which the P.P.'s appeal failed, the complaint was not so much concerned with the high value of the property taken — the defendant, aged 25, had been convicted of stealing a $50 watch from a dwelling.[17] Rather, the P.P. urged that the trial judge paid too much regard to the low value of the item stolen and to the facts that the offence was not premeditated and the defendant had pleaded guilty. More regard, the P.P. argued, should have been paid to the defendant's previous convictions (three similar convictions between 1974 and 1977, two of which resulted in six and nine months imprisonment respectively) and to the fact that the instant offence was committed shortly after his last release from prison. Nevertheless the High Court did not enhance the sentence of three months' imprisonment that had been imposed.

Of the three cases in which the P.P.'s appeal was successful, two involved violence and one involved motoring offences. In the first case of violence (108/78 and 110/78) two men aged 33 were convicted of voluntarily causing grievous hurt with a chopper.[18] The accused attacked their victim, an illegal book-maker, after a dispute concerning debts of a friend of one of the accused. The attack was vicious and premeditated and some blows were inflicted while the victim was on the ground. Neither accused had previous convictions. The High Court enhanced the sentences, on each accused, of eighteen months imprisonment and two strokes of the cane, to three years imprisonment and two strokes. In the other case of violence (94/78) two defendants, one aged thirty-one the other twenty-six, had been convicted of voluntarily causing hurt.[19] An altercation had arisen after a motoring incident. The defendants struck and kicked the victim, who fell to the ground, fractured his skull and died. Originally the defendants faced a murder charge and spent five to six weeks on remand in custody, but as is seen, the ultimate charge was less serious. The sentencing judge noted that the death was entirely unforeseen, that on a charge under section 323 of the Penal Code a defendant should only be punished for the intended or likely harm and that in two similar earlier cases non-custodial sentences had been passed. The judge sentenced each man, each of whom was a first offender, to $1,000 fine or six months in default. On appeal, the P.P. stressed the unprovoked nature of the attack and that a kick had been inflicted on the victim after he had fallen down. Deterrence was needed against such conduct. The High Court enhanced the sentences by adding one month's imprisonment to one sentence and three months to the sentence of the defendant who had inflicted the kick. In the motoring case (63/78) a fine of $1,000 and three years' disqualification had been imposed for an offence of dangerous driving.[20] The defendant, aged twenty and with no previous convictions, had been stopped,

[17] S. 380 P.C. — maximum is seven years and unlimited fine.
[18] S. 326 P.C. — maximum is life imprisonment together with liability to fine or caning. Though two men are involved this is treated as one case.
[19] S. 323 P.C. — maximum penalty is one year's imprisonment and $1,000 fine. This P.P.'s appeal, though involving two defendants, is treated as one case.
[20] S. 26(1) of the Road Traffic Act (RS(A) 1/73). The maximum penalty is six months and $1,000 fine and twelve months and $2,000 fine on a second or subsequent conviction.

early in the morning, by the police because of a defective headlight on his motor-cycle. He sped off, pursued by the police, drove through several sets of traffic lights showing red, drove against the flow of traffic in one road and finally collided with a car injuring himself, his pillion passenger and a passenger in the car. In his G.D. the trial judge stated that he had considered the English case of *Guilfoyle* [21] which discussed the circumstances in which custodial sentences are appropriate in motoring offences. He noted that the accused had suffered injury himself (sufficient punishment itself?) and concluded that the case did not have the serious aggravating features which would warrant a custodial sentence. Apparently, (for this is mentioned in the P.P.'s petition of appeal) the judge concluded that the defendant did not realise that the police were pursuing him. This was an erroneous conclusion, argued the P.P., who further stressed that this piece of dangerous driving had lasted for quite a long time and resulted in injuries to others. The High Court varied the sentence to one of one month's imprisonment and six years' disqualification.

SENTENCES REDUCED

Of the total of thirty-three cases in which the original sentence was varied, three cases, as has been seen, involved enhancement of the sentence. In the remaining thirty cases the variation involved a reduction of the penalty (including three cases mentioned earlier in which the reduction was of a minor nature). The following discussion will examine these cases.

Robbery cases

There were sixteen such cases in the total of one hundred and two appeals studied. In only one was the sentence reduced (92/79). Five years imprisonment and ten strokes of the cane had been ordered for a twenty-seven year old man convicted of robbery while armed with a screw-driver.[22] He had a previous conviction, in 1970, for possession of an offensive weapon and in 1973 had been sentenced to three years and six strokes for two armed robberies. In justifying his sentence the judge noted the prevalence of the offence, the defendant's previous convictions and the fact that earlier sentences had not deterred him. The judge thought that a sentence of five years would prevent him robbing in the near future and might deter him from any future offences. There are here the elements of two of the well-recognised aims of punishment, namely protection of the public and individual deterrence. On appeal the sentence was reduced to nine months and ten strokes — the latter being the mandatory minimum number of strokes for armed robbery. What prompted the reduction? Possible factors are that the earlier offences had been committed some years before the instant offence and the low value of the property involved in the offence — the contents of a lady's handbag and $40 cash.

[21] [1973] 2 All E.R. 844.

[22] S. 397 P.C., as amended by s. 19 of Penal Code (Amendment) Act (Act no. 62 of 1973), provides for a minimum of ten strokes of the cane in addition to other punishments where the offender was armed with or used any "deadly weapon". What the other punishments may be will depend on the form of robbery he committed when armed. If it was 'simple' robbery the maximum prison term would be ten years. It would be fourteen years if committed between sunset and sunrise — s. 392 P.C. as substituted by s. 14 of the Penal Code (Amendment) Act.

Drug cases

These comprised a group of twenty-five, ten involving trafficking and fifteen consumption and/or possession. There was a reduction in sentence in seven cases — in three of the trafficking cases and in four of the consumption and/or possession cases. One of the trafficking cases was unusual (74/79). The mandatory minimum of five years and five strokes had been ordered for an offence involving diamorphine.[23] The defendant, aged forty-five, was found to be medically unfit for caning, brought back to court and sentenced to a further twelve months' imprisonment in lieu of caning. This the High Court reduced to six months' imprisonment. If an offender is not medically fit to endure caning the punishment is not to be inflicted.[24] The fact is reported back to the court and (under section 232) the court may either cancel the sentence of caning, or, in lieu, sentence the offender to up to twelve months' imprisonment.[25] Section 228 of the Criminal Procedure Code provides that "in no case shall the caning awarded at any one trial exceed twenty-four strokes in the case of an adult...". Hence an offender who had originally been awarded twenty-four strokes should, if he proved unfit for such punishment, receive, at most, an extra twelve months' imprisonment. It is not surprising therefore that the High Court reduced this twelve months' sentence which was a substitute for only five strokes of the cane. Another case has been already mentioned in the discussion of minor variations when the sentence was varied by the deletion of one stroke of the cane. In that case (128/79) the defendant, age twenty, received three years and four strokes for trafficking in 2.08 gms of cannabis.[26] He was involved with another in the affair and that other had played the leading role. This defendant had served time in the Singapore Boys Home after court appearances for theft in 1975. The sentence for trafficking was reduced to the minimum of three years and three strokes. In the third trafficking case (125/79) a fifty-eight year old man, with two previous convictions for drug offences, was sentenced to five and six years (concurrent) for two offences of trafficking in cannabis and a fine of $4,000 (two years in default) for cannabis possession.[27] The six year sentence was reduced to five years and left concurrent. The accused had chronic asthma and the earlier convictions had been in October and November 1974. As a result of one of them he had

[23] S. 3(a) of the Misuse of Drugs Act (Act no. 5 of 1973), as subsequently amended and published in 1978 Reprint — hereinafter referred to as M.D.A. If the drug concerned is a "Class A" drug, under the First Schedule, the minimum penalty is five years and five strokes of the cane. The maximum is twenty years and fifteen strokes — see M.D.A., Second Schedule. Diamorphine is a Class A drug. Heavier penalties apply where large quantities are involved. This man sold a 'straw' containing 0.06 gms. of diamorphine.

[24] S. 231(1) C.P.C.

[25] S. 232 C.P.C. The appellant, in this case, had earlier appealed, unsuccessfully, against the original sentence. That was before he was found to be medically unfit for caning.

[26] S. 3(a) M.D.A. Cannabis is a "Class B" drug. The minimum penalty for trafficking in cannabis is, under the Second Schedule M.D.A., three years and three strokes, the maximum is twenty years and ten strokes.

[27] S. 3(a) M.D.A. The possession charge was under s. 6(a). The quantities involved in the two trafficking charges were 1.23 and 1.47 gms. respectively and 7.46 gms. were involved in the possession charge. Possession carries a maximum penalty of ten years and $20,000 fine and a minimum of two years or $4,000 fine for a second or subsequent offence. No corporal punishment was ordered. S. 230 C.P.C. prohibits any sentence of caning on females, males sentenced to death and males over fifty years of age.

received a three year sentence but in his favour it might be said that he had kept out of trouble for nearly three years prior to the instant conviction (on 5.9.79) [assuming he had been released from prison in October 1976 after earning remission].

Let us consider now the four possession/consumption cases. In 11/78 a forty-one year old man, with thirteen previous convictions for drug offences since 1966, received six months for consumption of morphine,[28] the sentence to commence after the expiry of a two year sentence he was currently serving. The trial judge in the G.D. noted the man's list of previous convictions and the need for deterrence. The sentence was however reduced to one of three months. In 87/78 the offence involved was consumption of morphine while being under supervision under the drugs legislation. Under section 29(3) of the Misuse of Drugs Act imprisonment for a minimum period of three years is prescribed for such an offence (ten years is the maximum). This was noted by the trial judge. He also noted the defendant's record. He had been convicted for drug offences on four previous occasions since 1972 and had served three prison terms. He had reverted to drug misuse shortly after his release from a Drug Rehabilitation Centre. Five years imprisonment was ordered but the High Court reduced it to three and a half years. His age was 23.

The two remaining cases (159/79 and 136/79) each involved foreign nationals. In the former case a twenty-year old European with no previous convictions was found in possession of 13.13 gms of diamorphine. In view of the amount involved the trial judge said that a considerable custodial sentence was called for and his sentence was three years' imprisonment.[29] Just over three months later the High Court heard the appeal and varied the sentence so as to permit the man's immediate release. The man had been addicted to heroin for two years and the High Court file included letters from a psychiatrist confirming his condition and treatment that he had received. In the other case a fifty year old American woman with no criminal record was found in possession of 11.51 gms of morphine. In his G.D., justifying his sentence of twelve months' imprisonment, the judge noted that though the charge was not one of trafficking, the defendant had had a large amount of drugs in her possession. He cited two cases in which the gravity of the offence of possession of morphine had been stressed.[30] When the appeal was heard, some four months later, the sentence was varied so as to enable her to be immediately released.

Such cases as the last two raise difficult, and perhaps delicate, matters for the courts. Neither, let it be stressed, involved offences of trafficking where in any event the courts' hands are tied by the mandatory punishments provided by legislation. Even with the less

[28] S. 6(b) M.D.A. Same maximum as for s. 6(a) but no minimum penalty prescribed unless, as in the case discussed next in the text, the consumption occurred while the person was under supervision.

[29] The maximum under M.D.A. could have been ten years and the District Court which tried him could have imposed such a penalty notwithstanding s. 11 C.P.C. This is because s. 30 M.D.A. provides that "notwithstanding anything to the contrary contained in the Criminal Procedure Code" a District Court may impose any penalty, except death, provided for in M.D.A.

[30] The cases cited were *Oloofsen* v. *P.P.* [1964] M.L.J. 305 and *Chan Sit Hoong* v. *P.P.* [1975] 1 M.L.J. 261.

grave offences of possession the courts would obviously not wish to be seeming in any way to countenance any relaxation of the stern and firm stand taken against drug abuse by the authorities in Singapore. There could be dangers if it appeared that a softer line was taken with visitors than with residents. It could be against the public interest if that was thought to be the case. Yet a court may well think that a lengthy spell in prison — where the foreigner is detained at the Republic's expense — might not be necessary. The public interest might equally be served by a shorter spell followed by the visiting offender's immediate removal — presumably never to return again.

Motoring offences

Of these nine cases, in one, as has already been noticed, the sentence was enhanced on appeal. In the two other cases in which the High Court varied the original sentence the outcome was a reduction of the penalty. In 64/79 the defendant aged twenty-seven was convicted of driving while disqualified and uninsured. Noting that the P.P. had argued that the type of offence was on the increase and that deterrence was needed the trial judge imposed a sentence of two months' imprisonment and a $700 fine (or two months in default) and a further fine of $150 (fifteen days in default).[31] The defendant was disqualified for three years — his original period of disqualification had been for one year. In the High Court the period of disqualification was not varied but the rest of the penalty was altered to one day's imprisonment and a fine of $1,000 (with three months in default). The other motoring case (29/78) has already been noted in the discussion of 'minor' variations. It will be recalled that the outcome was that sentences totalling three months' imprisonment, two one thousand dollar fines and ten years' disqualification were varied to the extent that the term of imprisonment was reduced to two months. The defendant had been convicted of an offence under 304A of the Penal Code[32] in 1976 and disqualified for three years. In his G.D. the trial judge had carefully reviewed some English cases concerning the sentencing of motoring offenders, and concluded that there were no special circumstances justifying the non-imposition of a custodial sentence.[33] Also the defendant needed to be 'kept off the roads' for a long period. Clearly, the High Court was in substantial agreement with the trial judge's approach. The only difference concerned the precise length of the period of imprisonment.

Acquisitive offences

In this category — hopefully a convenient one albeit that it is not as such to be found in penal legislation — there were twenty-nine cases, in eight of which the sentence was reduced. There were seven cases of Criminal Breach of Trust (two reductions), three cheating cases

[31] S. 22(3) of the Road Traffic Act (RS(A) 1/73). The maximum penalty is six months imprisonment. See n. 33 *infra.* The uninsured driving offence was charged under s. 3 of the Motor Vehicles (Third Party Risks and Compensation) Act (Cap. 88) which carries a maximum penalty of three months' and $1,000 fine.

[32] Causing death by a rash or negligent act not amounting to culpable homicide.

[33] S. 22(3) of (RS(A) 1/73) provides that the penalty for driving while disqualified shall be imprisonment for a term not exceeding six months or, "if the court thinks that having regard to the special circumstances of the case it is not necessary to impose a sentence of imprisonment", a fine of up to $1,000 or both.

(two reductions), four cases of criminal misappropriation (two reductions), six cases of theft (two reductions), eight cases involving breaking offences (no reductions) and one case of receiving (sentence not reduced).[34]

Criminal Breach of Trust[35]

In 34/79 a twenty-eight year old woman was sentenced to twenty months' imprisonment for CBT of nearly $159,000. Before the district court it was urged, in mitigation, that she had not personally benefitted from the frauds — the money had been taken to help meet the obligations of a former employer. She was the sole bread-winner supporting a daughter, younger sister and aged mother. In the G.D. it was noted that the Court of Criminal Appeal[36] had recently stated that imprisonment should be regarded as the norm for 'white collar crime' — the length of the term of imprisonment "depending on the particular circumstances of the case". On appeal, the twenty month term in this case (i.e. 34/79) was reduced to one month's imprisonment.

A reduction of sentence also occurred in the appeal of a fifty-one year old man convicted of CBT of $15,000 (114/78). He had abused a power of attorney in relation to the business affairs of a widow aged over eighty.[37] The defendant had for years been employed by the widow's husband. Noting that persons occupying such positions of trust in relation to elderly women should be deterred from such conduct, and also noting the defendant's lack of remorse, the District Judge imposed a sentence of fifteen months' imprisonment. It was varied to one month's imprisonment and a $5,000 fine (with five months' imprisonment in default).

In neither of these two cases did the defendant have any previous convictions.

Cheating [38]

In 2/78 two men, one aged thirty-nine, the other aged forty-four, were sentenced to nine and eight months respectively for cheating the complainant of $6,000 cash on the pretence that it was to be used for the purchase and re-sale of watches. Both men were married with families and the second accused claimed he needed cash for his sick wife's medical expenses. The G.D. acknowledged that each was a

[34] Robbery, though an "acquisitive" offence has been discussed separately.
[35] See *supra* n. 16.
[36] The Court of Criminal Appeal hears appeals from the High Court when that court sits in its trial capacity — see Part V of the Supreme Court of Judicature Act (Cap. 15), as amended by S.C.J. (Adt) Act 1973) (Act no. 58 of 1973). The High Court, sitting in its appellate capacity may reserve a question of law of public interest for the decision of the Court of Criminal Appeal, and must do so if the P.P. makes the request — s. 60 S.C.J. Act.
[37] The charge was under s. 409 P.C. viz. C.B.T. in relation to property entrusted to a person in his capacity as factor, attorney or agent etc. The maximum penalty is life imprisonment.
[38] S. 415 P.C. defines cheating. S. 417 punishes it with a maximum of one year and an unlimited fine. Cheating by personation is punishable with up to three years' imprisonment and a fine (s. 419) and cheating which induces the delivery of property can attract up to seven years imprisonment and the fine (s. 420). The charge in 2/78 was under s. 420 and in 35/79 it was under s.417.

first offender and that the complainant had received restitution of nearly $2,000. The fact that the offence was meticulously planned and executed was also noted. On appeal the High Court reduced each sentence to two months' imprisonment.

In 35/79 a sentence of six months' imprisonment was varied to a fine of $10,000 (with six months in default). The accused, a forty-seven year old accountant of previous good character, had abetted a cheating by issuing three reports which enabled another to get lawyers' practising certificates and thereby have the opportunity to commit fraud involving $1.4 million. The sentencing court commented that most white collar crime would be exposed if accountants carried out their professional obligations properly. Such an observation seems, in the sentencing context, to be an allusion to the 'aggravating' factor of breach of positions of trust or public responsibility. Hence, perhaps, the custodial sentence imposed at trial. One factor which may have influenced the outcome of this appeal was the health of the defendant. Notes on the appeal file indicate that he collapsed on being sentenced, and it seems that subsequent psychiatric reports, indicating the state of his depression, were available to the High Court.

Theft[39]

Reductions of sentence occurred in two of the six theft cases. In one (167/78) the defendant had been convicted of attempted theft of $6 worth of petrol — he was a petrol pump attendant who had left the nozzle of the pump tube in a can so that petrol dripped out. He hoped to purloin the accumulated petrol. He was aged thirty with previous convictions, four of which involved property crime. The last such conviction had been in 1969 when he had received eighteen months' imprisonment. The sentencing magistrate noted that the defendant had not learned his lesson from his earlier sentences and that he had only expressed regret *after* he had been convicted. A sentence of nine months imprisonment was imposed. The High Court, at the appeal hearing in May 1979, reduced this to a term which allowed the man's immediate release. The sentence had been imposed in November 1978. Bail pending appeal had been granted but the man had gone to prison — presumably having been unable to raise bail. How long he actually served did not emerge from the file so it is not possible to know how much of an *actual* reduction in sentence this appellant obtained. It is clear though that the High Court considered a nine months' sentence excessive. This may have been because of the low value of the property involved and because of the fact that though the man had earlier convictions for dishonesty, the last of such convictions had been over eight years earlier.

In 46/79 a sentence of seven years' Corrective Training[40] imposed on a twenty-eight year old man for theft of a motor car (with three

[39] S. 379, P.C. provides a maximum punishment of three years' imprisonment and unlimited fine for theft. Theft by a servant is punishable, under s. 381, with up to seven years' imprisonment and fine. An attempted s. 381 was the charge in 167/78. The maximum punishment for an attempt is, normally, the same as that for the full offence but any prison term imposed is not to exceed one half of the maximum term of imprisonment provided for the offence— s. 511 P.C.

[40] S. 12(1) C.P.C. makes orders of Corrective Training — of not less than three nor more than seven years — available for offenders of eighteen and over who have the requisite previous convictions.

similar offences taken into consideration) was reduced to one of five years Corrective Training. The defendant had a criminal record going back to 1966, had served time in reform school and prison and his last sentence had been one of six years' imprisonment. He clearly merited the District Court's description of him as a "persistent recidivist" whose past sentences had not been "effective in his reformation". Seven years is however the maximum period of corrective training and it may be that the High Court did not feel that this defendant was a suitable candidate for the maximum on the basis that the maximum should be reserved for the worst type of case of its class.

Criminal misappropriation [41]

Two of the four appeals in cases involving criminal misappropriation resulted in a reduction of the original sentences. In 25/79 a thirty-one year old man, a first offender, received two months' imprisonment for misappropriating naval engine spare parts to the value of $1,187. His position, as technical manager concerned with vessels under repair, was such that trust was placed in him, stated the G.D. Offences of such a nature were difficult to detect. A custodial sentence would act as a deterrent. The High Court altered the sentence to one of a $3,000 fine with two months in default.

In 11/79 the defendant, a man of thirty-three with no criminal record, was a housing agent who misappropriated $6,000 worth of furniture which the complainant had instructed him to sell. Noting that no restitution had been made and that the value of the property exceeded the maximum fine available to a magistrate's court,[42] the magistrate passed a sentence of five months' imprisonment. This was varied to one day's imprisonment and a $500 fine.

The solitary appeal involving an offence of receiving,[43] and the eight appeals involving breaking offences [44] resulted in no alterations in sentence.

Miscellaneous

There remain to be considered the twenty-five cases which for convenience's sake the writer has collected together under the heading "miscellaneous". The range of criminal conduct involved included violence, sexual misbehaviour, bribery and violations of the immigration laws. In fourteen instances the High Court varied the original sentence reducing in twelve cases and enhancing it in two other cases which were discussed earlier. The twelve instances of reductions in sentence will now be considered. In none of these cases did the appellant have any previous convictions.

[41] S. 403 P.C. The maximum penalty is two years' imprisonment and an unlimited fine.

[42] $2,000. See *supra* n. 2.

[43] S. 411 P.C., as amended by Penal Code Amendment Act (Act No. 62 of 1973). The maximum penalty is five years and an unlimited fine.

[44] There is a variety of breaking offences under P.C., but all these cases involved charges under s. 457 *viz.* house-trespass or breaking by night, "House" in this context includes buildings used for the custody of property (s. 442) and hence includes business premises. Where the purpose of the trespass or breaking is theft (as was so in all these eight cases) the maximum penalty, under s. 457, is fourteen years and an unlimited fine.

In 77/78 a twenty-two year old postman was sentenced to a $500 fine for accepting an apparently unsolicited gift of an *ang pow* (red packet) containing $2.[45] The court thought that such acts, though 'customary', should be discouraged in order to deter others and so more than a 'nominal' fine was called for. The High Court reduced the fine to $25. In 82/78 and 89/78 sentences of four months' imprisonment imposed on each of two customs officers were reduced to one month.[46] The officers, each in his early twenties, had accepted small sums of money for neglecting to perform a proper check on lorries coming across the Causeway. Apparently $1 a time had been given by lorry drivers who did not want the delay that a proper check would have caused. The District Court had thought that these serious offences by public servants merited deterrent sentences in the public interest. Presumably the High Court did not dissent from that view but considered that one month in prison would meet the public interest.

Two appeals arose from convictions under the Immigration laws. In 16/78 a thirty-five year old woman had remained in Singapore after her visitor's pass expired in 1968.[47] She was arrested in 1978. The District Court referred to reported cases and noted various categories of illegal immigrants. One such category embraced immigrants who remained unlawfully after an initial *lawful* entry. Normally a non-custodial sentence would be imposed in such a case unless there were aggravating features. The court considered such features were present inasmuch as the accused had escaped detection for so long and established a family in Singapore. A sentence of three months' imprisonment was imposed. The appeal petition drew attention to the fact that she had, since 1963, borne six children to her Singaporean husband — a fact which had not been put to the District Court. The sentence was varied to a fine of $2,000 or two months in default. In 150/79 a twenty-nine year old Indonesian woman had been sentenced to one month's imprisonment for illegal entry.[48] She arrived in 1968 and had subsequently married. The High Court reduced the penalty to one day's imprisonment and a fine of $2,000 with two months in default.

A violation of the Enlistment Act came up for consideration in 39/79. A twenty-four year old reservist had remained in Australia for eleven months without a valid exit permit.[49] He had been earning much better wages there than he had been getting in Singapore and

[45] S. 6(a) Prevention of Corruption Act (Cap. 104) *viz.* an agent accepting a gratification in relation to his principal's affairs. The maximum is five years and $10,000 fine.

[46] S. 125(1)(b) of the Customs Act (Cap. 133). The maximum penalty is three years' imprisonment and $5,000 fine.

[47] S 15(1) Immigration Act (Cap. 81). Penalties are provided under s. 56 of the Act (as amended by the Immigration (Adt) Act 1973 (Act no. 60 of 1973)). Unlawful entry can attract up to two years' imprisonment and $6,000 fine. It is not apparent from s. 15(1) and s. 56 whether unlawful remaining is to be treated as akin to unlawful entry — the marginal note to s. 15 says "Unlawful entry or presence...". If not, then presumably the offence was punishable under s. 57 which provides a maximum of six months and $2,000 fine for offences under the Act for which no specific penalty is provided.

[48] The charge was laid under s. 6(1)(c) of the old Immigration Ordinance, Cap. 102 of the 1955 Edition of Laws of Singapore, under s. 57 of which the general maximum penalty was six months and a $2,000 fine.

49 S. 32(b) of Cap. 229. Maximum penalty is three years and a $3,000 fine.

was remitting money to his family — he was the eldest of six children. The magistrate, citing *Yeo Tuan Paul* v. P.P.,[50] stressed that national preparedness demanded compliance with military obligations from National Servicemen and reservists alike. A deterrent sentence was needed for the accused and others. Five months' imprisonment was imposed. The High Court varied that to a fine of $1,500 (with four months in default). The appellant's petition had mentioned a similar case two days before the sentence imposed on this appellant in which a District Court imposed a fine of $1,200 on someone who had been absent for over three years.

The High Court, in the appeals under consideration, heard two cases involving sexual crime. In one (40/78 and 41/78) sentences of six months' imprisonment were varied to fines. A thirty-nine year old man had been convicted of carnal connection with a fifteen year old girl. A forty-three year old woman — a masseuse — was convicted of abetting that offence.[51] The girl's mother had been instrumental in arranging the transaction. Even so, the District Court considered that the serious nature of the offence required more than a nominal prison sentence "and a stiff fine". Hence the six months sentences, stated to be deterrent ones. The High Court varied the man's sentence to a day's imprisonment and a fine of $10,000, with six months in default. In the woman's case (she was a forty-three year old widow with four children to support) a fine of $5,000, with six months in default, was substituted. It might occur to the reader that if the man had not the means to raise $10,000 he would serve six months in any event. The court file disclosed that he was a pork seller with a wife and six children to support. The file also revealed that he had paid $3,100 for the opportunity of deflowering the girl, so his means were probably adequate to meet the fine.[52] The financial element in the transaction might for some be sufficient justification of the original prison sentence. On the other hand it was the girl's mother who had set up the transaction — the defendants were not the originators of the sordid scheme.

In the other case (100/78) a twenty-five year old final-year student had received a four months prison sentence for using criminal force to outrage the modesty of a female.[53] He had pushed a nineteen year old girl to the ground and fondled her breasts. The victim struggled and was able to escape. The District Judge noted in the G.D. that no mitigation plea had been made (the defendant had not been represented at trial) and that deterrence was needed against this sort of offence committed, as it was, in a dark street. On appeal — where the defendant was represented — it was urged — in the petition

[50] [1974] 1 M.L.J. 161.

[51] S. 128(1)(j) of the Women's Charter (Cap. 47). A person guilty *"shall* be punished with imprisonment for a term not exceeding five years" (emphasis supplied) and is also liable to a fine of up to $10,000. The man in this case asked for a similar offence against the same girl, committed the next day, to be taken into consideration. A person who abets any offence, is, if the offence is committed in consequence, normally liable to the penalties for the offence; s. 109 P.C.

[52] In fixing the quantum of a fine the court should have regard to the offender's means. See *Yoh Meng Heng* v. P.P. [1970] 1 M.L.J. 14; *Tan Kah Eng* v. P.P. [1965] 2 M.L.J. 272.

[53] S. 354, P.C. Maximum punishment is two years and unlimited fine. Caning is also possible.

— that a prison sentence would lead to his expulsion from the institution at which he was studying. The court file does not indicate whether this was a persuasive point but the sentence was varied to a day's imprisonment and a fine of $2,000, with six months in default.

In 21/78 a forty-nine year old washer woman had been sentenced to a $7,000 fine (with seven months in default) for possession of slips relating to an illegal lottery.[54] She had been collecting stakes for a 10,000 Characters lottery syndicate. The total value of the bets to which the slips in her possession related was $179. The fine was reduced on appeal to $3,000. No "in default" order was made because the original fine had been paid. Only the naive will devote much time to speculating how a "a poor washer woman" had been able so promptly to pay the original fine!

Bigamy was the offence in issue in 121/79. A thirty-six year old man was sentenced to six months for that offence and three months concurrent sentence for an offence under section 36 of the Women's Charter (making a false declaration).[55] The appeal petition argued that the District Judge had "failed to maintain a consistent approach" in sentencing such offenders, citing two cases, in the preceeding months, in which non-custodial sentences had been imposed. The offender in the instant case had lived separately from his wife for over seven years. In the High Court the sentences were altered. The order was, for bigamy one day's imprisonment and $3,000 (three months in default), and five days imprisonment and $2,000 (two months in default) for the section 36 offence.

Unlicensed operation of a fishing vessel resulted in a fine of $400 for the defendant in 135/78 and a further fine of $350 for operating a trawl net without being registered.[56] The defendant had supported a family of eleven since his father died when he was twenty-three — he had resorted to fishing to support the family. On appeal the second fine was reduced to $100. In 119/78 conviction on four charges of failing to pay C.P.F. contributions for an employee led to the defendant, the sole proprietor of a business, being sentenced to a

[54] S. 4A(a) of the Common Gaming Houses Act (Cap. 96), as amended by s. 3 of the C.G.H. (Adt) Act 1971 (Act no. 25 of 1971), *viz.* assisting in the carrying on of a public lottery. An offender is liable to a fine of not less than $2,000 and not exceeding $20,000 and up to three years' imprisonment.

[55] Under s. 494 P.C. whoever commits bigamy "shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine". This form of wording is taken to require the court to impose some prison sentence. It is to be contrasted with another common form of words to be found in P.C. "shall be punished with imprisonment for a term which may extend to — years, *or* with fine, or with both" (Emphasis supplied). However the difference between the two forms of wording is more apparent than real. For long, the courts have accepted that a nominal sentence of one day's imprisonment (taken to have been "served" by the offender's appearance in court) can satisfy the strict letter of the law when the statute uses the form of words one finds, for example, in s. 494. Since no minimum term of imprisonment is prescribed a nominal term, in law, suffices. The offence under s. 36 of the Women's Charter (Cap. 47) attracts a maximum penalty of three years imprisonment and a fine of $3,000.

[56] Fisheries Act (Cap. 294). S. 14(1) and (2) provide a maximum penalty of one year and $1,000 fine for offences under the Act and non-compliance with rules and regulations under the Act. At the trial a charge under s. 13A — added to Cap. 294 by the Fisheries (Adt) Act 1973 (Act no. 30 of 1973) — was withdrawn. Punishment under s. 13A is imprisonment for "not less than three months nor more than three years" with no option of a fine.

$150 fine on each charge.[57] The magistrate noted that the defendant had been in financial difficulty, but commented that the defendant had "unscrupulously deprived a minor" [the employee] of his C.P.F. entitlements. Deterrence was needed for the accused and others who might be minded to default. The appeal petition argued that the fines — totalling $600 — were excessive in view of the fact that the amount of the unpaid contributions was $93.89 cents. The High Court halved each fine.

In the final appeal under consideration nine months' imprisonment had been imposed on a twenty-eight year old Indonesian man who had been convicted under section 13(1)e of the National Registration Act (186/79) .[58] A further offence under the Registration of Births and Deaths Act[59] (wilfully furnishing false information) was taken into consideration. He had come to Singapore at the age of fifteen, had been given a forged identity card by his uncle and had since married and had two children. The sentencing judge said that illegal immigrants must be discouraged from entering and "assuming the identities of citizens" with the aid of forged identity cards. In the High Court the sentence was reduced to three months' imprisonment.

SENTENCES AFFIRMED

These, then, are the thirty-three cases, in the one hundred and two studied, in which the High Court varied the original sentence. The writer has attempted, in discussing them, to highlight what seemed to him to be the important facts of each case and what appeared to him to be the significant points, in terms of sentencing policy, mentioned by the Subordinate Court judge or magistrate in the G.D. In all these cases the sentence was varied on appeal but *why* it was varied is not known because of the absence of written reasons for the High Court's decision. At times the writer has engaged in some tentative speculation as to what those reasons might have been. The reader is naturally free to form different conclusions.

In the remaining sixty nine cases the High Court affirmed the original sentence. In most cases this was in the face of an appeal by the offender but in three instances it was in the face of an appeal by the P.P. arguing that the original sentence ought to be enhanced. It would have presented a distorted view if only those thirty three cases in which the Subordinate Court's sentence was varied on appeal had been the subject matter of this study. Accordingly, the table at the end of this article sets out the basic details of these sixty nine cases and an attempt is made in the final column to summarise what seemed, from a reading of the G.D., to be the principal matters influencing the Subordinate Court in its justification for the sentence.

In all these cases the High Court confirmed the sentence imposed. Whether the *reasons* for the sentence were also being endorsed cannot

[57] S. 14(b) of the Central Provident Fund Act (Cap. 121). Under s. 17 of the Act (as amended by the C.P.F. (Adt) Act 1973 (Act no. 42 of 1973) the maximum penalties are a fine of $2,500 and $10,000 on a second or subsequent conviction. S. 17(2) empowers District and Magistrates' Courts to impose the full penalties.

[58] Cap. 45. Maximum penalty is five years imprisonment and a $5,000 fine.

[59] Cap. 46.The offence was under s. 27(1)(b) which carries a maximum penalty of twelve months imprisonment and a $1,000 fine.

be known but it must be a fair inference that that was so in many, if not in most, of the appeals. It has already been noted that the High Court gave no written reasons, so far as the writer is aware, in any of the cases reviewed in this study. Oral reasons were delivered at the end of the hearing of an appeal. The practice, during the period in question, was for the Judge's words to be tape-recorded.[60] The actual result of the appeal was handwritten on the cover of the appeal file. The tapes were erased after a few days. Further appeal — that is beyond the High Court — would rarely be legally possible in any sentencing appeal from the Subordinate Courts so that the High Court would scarcely ever be under an obligation to set out its "Grounds for Decision" for the consideration of a higher court.[61] In the absence of such an obligation it is not to be wondered at that written reasons were not forthcoming from the members of a small and busy High Court Bench. If however the reasons had been written, and perhaps reported in the Law Reports, that could well have provided valuable guidance for the Subordinate Courts in future similar cases. Such guidance, one imagines, would have been especially welcome in those cases where the sentence imposed in the Subordinate Courts had been varied.

This is not to suggest that every High Court decision on an appeal against sentence needs to be reported. If, for example, a non-youthful offender committed an offence which attracted a mandatory sentence and there were no special mitigating circumstances, it is most unlikely that the Subordinate Court sentencer could feel able to do other than impose the mandatory sentence. An appellate decision confirming that sentence could probably have little to say that would usefully add to our stock of knowledge about sentencing principles. In less straightforward cases however the appellate court's reasons could be worthy of report. Sometimes there arises a point not just of sentencing *practice,* but of *law.*

One of the cases, included in this survey, involved a seventeen year old male who had pleaded guilty to three armed robberies (109/78). Armed robbery carries a penalty of imprisonment and not less than ten strokes of the cane.[62] At the hearing before the District Court the prosecution asked for a deterrent sentence in view of "the increase of this sort of offence". These were robberies in lifts. The victims had been women and a knife had been used to threaten them. The court imposed prison sentences of three years, two years and eighteen months (concurrent) and ten strokes of the cane on each charge. The corporal element of the punishment was ordered to be 'consecutive', making thirty strokes in all. The petition of appeal urged that probation should have been ordered but it was also argued that a sentence of thirty strokes was legally improper inasmuch as section 220 [63] of the Criminal Procedure Code prohibited an order of anything more than twenty four strokes at any one trial. The G.D. stated that the court, having decided upon a custodial sentence, was obliged to impose the mandatory sentence of ten strokes on each of the three charges.

[60] This has been the practice for many years. See T.T.B. Koh "The Sentencing Policy and Practice of Singapore Courts", (1965) 7 Mal. L.R. 291, at p. 294.
[61] See *supra n.* 36.
[62] S. 397 P.C., as amended by s. 19 P.C. (Adt) Act (No. 62 of 1973).
[63] The reference to s. 220 relates to the 1970 edition of C.P.C. In the 1980 Reprint it is s. 229.

It was added, "… the court is aware of section 220 which however has been judicially interpreted in *Chai Ah Kau* v. P.P. [1974] 2 M.L.J. 191." In that case an eighteen year old was sentenced to eighteen months imprisonment and ten strokes for armed robbery. Later that day, but at a separate trial, he received three years imprisonment and ten strokes for another armed robbery. This sentence was ordered to be consecutive to the sentence imposed at the earlier trial. On appeal it was argued, that as an eighteen year old this youth was a "youthful offender" and by virtue of section 220 should not have been ordered to receive more than ten strokes.[64] The High Court rejected the view that an eighteen year old could be a "youthful offender"[65] but also pointed out that the total of twenty strokes of the cane resulted from *two* trials. The Chief Justice stated; "The short answer is that section 220 is applicable only in the case where a person is convicted *at one tried* (the italics are mine) of two or more distinct offences."[66] It is difficult therefore to see how an awareness of *Chai Ah Kau v. P.P.* could, of itself, determine the result in this case where the youth was convicted of three armed robberies but *at one trial.* An interesting legal point for argument one would have thought. How the argument proceeded in the High Court is unknown to the writer. The outcome of the appeal he does know. On the cover of the case file the result is laconically stated — "Appeal dismissed".

SENTENCING POLICY

Writings and reported appellate decisions on sentencing show that though sentencing is acknowledged to be a difficult task with each case calling for individual consideration, there are nonetheless some basic guidelines. There are the well recognised "classical principles of sentencing" to use the words of Lawton L.J. in *R.* v. *Sargeant*[67] — a case which may come to occupy the pre-eminent position hitherto occupied by *R. v. Ball* in the reserves of judicial wisdom drawn upon by sentencers in Singapore and Malaysia. Those principles, said Lawton L.J., "are summed up in four words: retribution, deterrence, prevention and rehabilitation".[68] Courts are fully conscious of those principles and of the fact that adherence to the demands of any one of them may lead to conflict with the demands of another. To assist in the resolution of such conflict courts have, long since, sought to identify "aggravating" and "mitigating" features in cases which come before them. At the risk of over-simplification and generalisation it may be said that the presence of aggravating features is likely to incline the court to put uppermost in its mind the demands of deterrence, retribution and prevention. If mitigating features prevail in the case then the principle of rehabilitation is likely to loom largest in the court's thinking.

[64] The relevant words of the section are, "Where a person is convicted at one trial of any two or more distinct offences … the combined sentence of caning … shall not… exceed … ten strokes in the case of youthful offenders".

[65] His Lordship pointed to s. 2 C.P.C. which defines "youthful offender" as including any child between the ages of seven and sixteen, convicted of an offence. His Lordship concluded therefore that any person over sixteen was an "adult" for the purposes of s. 220.

[66] [1974] 2 M.L.J. 191, at p. 192.

[67] (1975) 60 Cr. App. R. 74. Mr. Justice Abdoolcader has spoken of Lawton L.J.'s "delightful analysis of the classic principles of sentencing and general aspects of punishment..." in *P.P.* v. *Teh Ah Cheng* [19761 2 M.L.J. 186 at p. 187.

[68] (1975) 60 Cr. App. R. 74, at p. 77.

What is likely to be considered an "aggravating" feature? Any of the following: that the offence was pre-meditated and well executed; that the offender has previous convictions; that the offence is of a type which is prevalent; that the public feels especially 'threatened' by the type of offence *(e.g.* robberies in lifts in Singapore in recent years); that the offender abused a position of trust; that others may need to be deterred from committing such an offence.[69] If any of such features — and others, for this list does not purport to be exhaustive— is present then, to put it bluntly, the offender can expect to be dealt with sternly. At any rate, his chances of receiving the more 'lenient' sentences like probation, conditional discharge, a fine (rather than custody) or a light fine (rather than a heavy one) are considerably reduced.

If, by contrast, 'mitigating' features are present then the prospects for leniency improve. Well recognised mitigating features are these: that the offender is youthful; that the offence was spontantous; that the offender pleaded guilty; that the offender has no previous convictions.[70] There are others but these will suffice as examples for the present.

The real dilemma for a sentencer arises in the case which presents a mixture of features, some 'aggravating' some 'mitigating': the youthful first offender, for example, who pleads guilty to having robbed a woman victim in a lift and it transpires that such offences have been on the increase. Should the mitigating features weigh more or less heavily in the scales than the aggravating ones? Faced with such a quandary the sentencer might well turn his mind to that "first and foremost consideration" in sentencing of which Hilbery J. spoke, namely "the public interest".[71] But what does the public interest demand in any given case? The maximum penalty provided by the legislation affords some indication of how seriously the public's representatives viewed the offence type in question when the law was passed.[72] That may however have been decades earlier. The legislative perceptions formed in that era about the comparative gravity of offences, as indicated by the different maximum penalties then provided, might not be in tune with contemporary thinking. If a mandatory *minimum* penalty is laid down in modern law for certain crimes that is an indication from the legislature that those offences are, now, to be viewed seriously. The legislature in Singapore has, in recent years, introduced mandatory sentences for some crimes —

[69] See D.A. Thomas, *Principles of Sentencing* (2nd ed., 1979) at pp. 14 *et seq.* where he discusses how certain features of an offence are likely to attract a "tariff" sentence *i.e.* a stern one. Some examples of judicial recognition, in Singapore and Malaysia, of aggravating features are: *Koh Seng Wah* v. *P.P.* [1966] 1 M.L.J. 12 ("cool and calculated" frauds); *Mohamed Noor v. P.P.* [1966] 2 M.L.J. 173 (the offence was prevalent and the defendant had a previous similar conviction); *Tay Choo Wah* v. *P.P.* [1976] 2 M.L.J. 95 (abuse of a position of trust).

[70] See Thomas, *ibid.*, Chap. 4 "Mitigation" at p. 194 *et seq.* Recognition of the mitigating effect of some aspects of a case is to be found, for example, in *Chan Sit Hoong* v. *P.P.* [1975] 1 M.L.J. 261 (defendant a first offender) and *Melvani* v. *P.P.* [1971] 1 M.L.J. 137 (defendant pleaded guilty).

[71] *R.* v. *Ball, supra.*, n. 1.

[72] See *Sentences of Imprisonment — a review of Maximum Penalties.* Report of the Advisory Council on the Penal System (H.M.S.O. London, 1978). Chaps. 3 and 4 provide a review of the history and function of maximum penalties within the English sentencing system.

robbery and drug offences for example.[73] Not often, it is submitted could the existence of mitigating features outweigh the view that the public interest, evidenced by the legislation, requires such offenders to be dealt with sternly. Orders like probation or conditional discharge can legally be made. They are orders "in lieu" of the normal punishments but it will be an infrequent occurrence. In 1978 in Singapore only eight juveniles and ten adults were placed on probation for robbery.[74]

Another consideration which may operate as a guiding light for sentencers was aptly described in the words of Low in 1976.[75] "The sentence must also reflect the exercise of moderation, keeping in mind a sense of proportion". In a sense this is the claim of "equity", of "just deserts" in the sentencing process. Petty crime needs to be deterred as well as major crime and the pursuit of the aim of deterrence could lead to the imposition of stiff penalties on petty criminals. The sentencer who is alert to the need to keep a sense of proportion would however say that petty crime needs to be deterred 'as well' as major crime but not 'as much'.

It seemed to the writer, from the evidence of this study, that sentencers in Singapore are fully mindful of established wisdom in this area. A typical "Grounds for Decision" would carefully record the "aggravating" and "mitigating" features of the case. In the earlier discussion, of cases in which the High Court varied the sentence, the writer has tried to indicate, where possible, the factors which seemed to be significant in explaining the initial sentence and the subsequent variation. The table below, of cases where the High Court confirmed the sentence, seeks to set out the salient facts of each case and those points, mentioned in the G.D., which related to general sentencing policy.[76] It is hoped that sufficient information has been given to enable the reader to form his or her own impression of prevailing practices and philosophies but in conclusion the writer will venture some general observations of his own.

The High Court takes a serious view of violence. Two of the three successful appeals by the P.P. involved assaults. In 108/78 and

[73] See *supra,* n. 3.

[74] *Annual Report of the Probation and Aftercare Service, 1978* (Singapore) at p. 27. S. 5(1) Probation of Offenders Act (Cap. 117) provides, "Where a court by or before which a person is convicted of an offence (not being an offence the sentence for which is fixed by law) is of the opinion that having regard to the circumstances … it is expedient to do so, the court may, instead of sentencing him, make a probation order...." Even though a mandatory minimum sentence is prescribed that does not render the sentence one "which is fixed by law". Those words mean "fixed both in quantum and kind" — *R.* v. *Goh Boon Kwan* (1955) 21 M.L.J. 120. Cf., also, s. 8 of the Act (absolute and conditional discharge) where the words are "Where a court … is of opinion … that it is inexpedient to inflict punishment", and s. 12(1), C.P.C. (corrective training) where one finds the words "in lieu of any sentence of imprisonment".

[75] Low Hop Bing "Principles of Sentencing as applied to Offences relating to Bribery and Corruption", [1976] 2 M.L.J. xcvii, at p. xcix, adopting the sentiments of Ong Hock Sim, J. in *Yoh Meng Heng* v. *P.P.* [1970] 1 M.L.J. 14, at p. 16.

[76] Mention of the mitigating factor of a guilty plea *(Melvani* v. *P.P.* [1971] 1 M.L.J. 137) featured very frequently, so frequently that it has not been noted in the discussion or the Table. It may be taken that where there was a guilty plea that fact was duly acknowledged in the G.D.

110/78 a vicious and premediated attack was punished, after the enhancement, with three years' imprisonment and two strokes of the cane. In 94/78 the attack was unpremeditated but unprovoked. It involved kicking. The High Court added a short custodial sentence to the fine imposed at trial. The attack had caused the victim's death but a homicide charge was not appropriate on the facts. Courts do, though, have regard to the actual results of the offender's conduct and that might well have been a factor in the decision to enhance. Likewise it might explain the enhancement in 63/78 where a month's imprisonment was substituted for the original fine imposed on a motor cyclist whose dangerous driving led to injuries to others.

Mention of "the public interest" was not infrequent in the G.D.s. It has already been remarked that the existence of mandatory sentences for certain offences may well be taken by the courts as an indication that the public interest requires stern measures to be taken against those crimes. Judges and Magistrates will feel a pressure to impose the statutory minimum. In none of the cases under review did the High Court resort to the "in lieu" orders of probation or conditional discharge, which would, of course, have been a way of "avoiding" the mandatory sentence.[77]

As well as "the public interest" there is, as was earlier mentioned, that consideration for sentencers that is expressed in the view that they should maintain a "sense of proportion". Some of the cases studied provide good examples. In 98/78, despite the P.P.'s appeal, a sentence of three months' imprisonment for theft of a $50 watch was affirmed. The trial court had noted the low value of the property and the spontaneous nature of the offence. The offender had previous convictions but the instant offence was not particularly serious and a *short* custodial sentence seemed right. The High Court agreed. Corruption is threatening to society and therefore deserving of condign punishment. But there is a whole range of corruption and it is at the lower end that one encounters a postman accepting an *ang pow* gift of $2. It is not surprising therefore that the High Court reduced a $500 fine to one of $25 (77/78). Similarly, the paltry sums involved in the case of the two Customs officers (82/78 and 89/78) may well have been a factor in the reduction of the prison term from four months to one month. It had only been proved that they gained $44 and $11 respectively. Where, as in 175/78, the sum involved was many thousand dollars, or as in 160/78, was a 'loan' of $50,000 together with the element of corruption within a prison, substantial custodial sentences were given and affirmed by the High Court.

In non-violent acquisitive offences one may see the "sense of proportion" in operation. The offender "pays" for his "gains". The greater the gain, the greater the "payment" — in terms of length of prison term or the amount of the fine. A glance at the Criminal Breach of Trust cases in the table below shows that where large sums were involved ($180,000+ in 20/79) the prison sentence did not exceed three years — despite an appeal by the P.P.[78] When, as in 114/78, the fraud produced a gain of only $15,000 to the accused, a sentence

[77] See *supra,* n. 74.

[78] The charge was under s. 409 P.C. *viz.* C.B.T. by an attorney or agent etc. See *supra,* n. 37.

of fifteen months was reduced to one month and a fine, even though the defendant had defrauded an elderly woman. In 34/79 a woman was convicted of C.B.T. of nearly $159,000 but it transpired that she obtained no personal benefit. The High Court reduced the original twenty months' imprisonment to a term of one month. In the case of violent acquisitive crime — robbery — the matter is different. Because of the violence used or threatened the robber cannot expected to persuade the court to be guided principally by the amount of his gain. More than nominal prison sentences are imposed, in addition to the corporal punishment, even though only a small amount of property has been taken. Even so, and not surprisingly, the length of the prison term does seem to increase when large amounts were involved. Breaking offences are a form of acquisitive crime but the law has always viewed them more seriously than ordinary theft. The invasion of another's residential or other property has always been viewed as the aggravating feature. So, as with robbery, prison sentences are to be expected even though the offender may only have taken a small amount of property. But, also as with robbery, the length of the prison term will be greater in those cases where the offender's spoils were greater.

Writing in 1965 Professor T. Koh, whose published work in this field has been a great source of inspiration to this writer, said this:

> "My impression is that the dominant penal philosophy of our judiciary is a retributionist one... our judges generally give greater emphasis to retaliatory and quantitative retribution and deterrence than to other objectives such as the needs of the individual offender and how best to reform him."[79]

Professor Koh did add that he was not suggesting that courts in Singapore were unresponsive to the aims of rehabilitation, but that it seemed to him that other aims were given greater emphasis.

The present writer's impression is that such a comment would be apt, some fifteen years later, but that some slight additional comment might be merited.

The words "retaliatory and quantitative retribution", though carefully chosen, could conjure up a vision in the less careful reader of severe sentences and severe sentencers. Retribution seems at first sight to be an aim of punishment which will inevitably lead to tough penalties. Yet to be guided by retribution is not always to be led into severity in sentencing. Retribution may be seen as a double-edge sword but with edges of different sharpness. The sharp edge of the blade strikes, sternly, at those who, having gained much from their crime or having displayed particular malignity in its commission, are seen to deserve to pay heavily for that crime. The blunter edge deals less painful blows to those offenders whose criminal gain was small and whose wickedness was not so serious.

[79] "The Sentencing Policy and Practice of the Singapore Courts" (1965) 7 Mal. L.R. 291, at p. 294. Other publications by Prof. Koh, in this area, include "Sentencing the Five Kidnappers" [1974] 1 M.LJ. xxx, and "A Plea for Penal Reform" [1972] 1 M.L.J. lvii.

Deterrence does feature largely in the Courts' thinking.[80] Time and again the necessity to deter the particular offender and others was mentioned in the G.D.s. Singapore's courts are not unique in placing faith in the value of deterrent sentences but if it be thought that they sometimes place too much faith in that direction it must be said that the Legislature in Singapore has adopted a similar attitude. The extent of mandatory punishments for certain crimes is explicable on the basis that the legislators believe in the efficacy of deterrent sentences.[81] It amounts in effect to an assertion that the public interest requires such measures. Courts, it has been said, "may not perhaps have to wholly reflect public opinion but they certainly must not be indifferent or disregard it".[82] Nor are courts likely to be indifferent to or disregard clear indications of the views of the elected representatives in the Legislature. It is not surprising therefore that deterrence continues to be an important element in sentencing practice in Singapore.

In a truly memorable phrase, a Malaysian judge Mr. Justice Abdoolcader, encapsulated what he saw to be the dangers of handing out lenient sentences to persons convicted of serious offences. With serious crime "deterrence and prevention assume positions in the forefront" of the various theories of sentencing. To deal with those offenders by way of binding them over would, said his Lordship, "be about as useful and effective as clouting a cobra with a clothes-peg".[83] In this writer's opinion the Singapore courts could not be accused of such ineffective gestures. The serious offender — the cobra in the Garden City — is likely to be "clouted" with something much more significant than a clothes-peg.

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[80] For recent discussions of deterrence see Molly Cheang "Crime Control: the Case for Deterrence" [1975] 1 M.L.J. xiii, and Nigel Walker "The Efficacy and Morality of Deterrents" [1979] Crim. L. Rev. 129.

[81] See the discussion in the legislative debates on the passing of the Arms Offences Bill, the Penal Code (Amendment) Bill and the Corrosive and Explosive Substances and Offensive Weapons (Amendment) Bill, *Singapore Parliamentary Debates, Official Report,* Vol. 32, cols. 1344-1356. See also at Vol. 32, cols. 414 *et seq.,* the discussion during the debate on the Misuse of Drugs Bill.

[82] *per* Abdoolcader, J. in P.P. v. *Teh Ah Cheng* [1976] 2 M.L.J. 186, at p. 188.

[83] *Ibid.* The case involved an eighteen year old male found in possession of a pistol and six rounds of ammunition. The Sessions Court, at Ipoh, bound him over for two years but, on appeal, Abdoolcader, J. varied the sentence to three years' imprisonment.

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APPENDIX

Col. 1 File No.	Col. 2 Sex Age	Col. 3 Charge(s)	Col. 4 Offences T.I.C.'d	Col. 5 Total Sentence	Col. 6 Occasions on which defendant had previously been sentenced	Col. 7 Factors noted in G.D.
ROBBERY						
174/79	M 21	Robbery at night		9 mths.+6 st.		6 st. the mandatory minimum.
177/79	M 21	2 Robberies at night	One robbery on same occasion	18 mths.+12 st.	4 — 1976-1978, inc. robbery. C	Previous convictions indicated def. had not learned from his past mistakes.
185/79	M 24	2 Armed robberies	4 similar on same evening	2 yrs.+20 st.		Prev. D.
191/79 (a)	M 17	2 Armed robberies committed jointly	4 similar) on same	2 yrs.+20 st.		Prob. not recced, nor R.T.C. Offenders Malaysians, supervision difficulties. Conditional discharge would be wholly inappropriate.
190/79	M 18		4 similar) evening	2 yrs.+20 st.		
56/79 (b)	M 25	2 Armed robberies	6 similar over 1 yr. period	8 yrs.+20 st.		Both involved in series of armed robberies in homes over period of months. Gang, to which they belonged, had netted over $600,000 worth property. Offences were daring and well planned.
63/79	M 22	2 Armed robberies	3 similar	7 yrs.+20 st.		

(a) These two appeals have, in the discussion in the article, been treated as one "case". These offenders had been involved together with the appellant in 185/79 in the robberies concerned. 185/79 is however treated as a separate case because the man there was older than these two appellants. Hence Reformative Training, which would have been a possibility in 190-191/79, would not have been a sentence available to the court in 185/79 — he was too old; see s. 13 C.P.C. The offenders had robbed a courting couple and others in a park area.

(b) These two appeals were treated, for the purposes of the discussion in the article, as two separate cases. Though the defendants were partners in crime the sentence imposed on each was not the same.

Col. 1 File No.	Col. 2 Sex	Age	Col. 3 Charge(s)	Col. 4 Offences T.I.C.'d	Col. 5 Total Sentence	Col. 6 Occasions on which defendant had previously been sentenced	Col. 7 Factors noted in G.D.
67/79	M	19	Robbery at night Robbery with hurt	5 similar and theft over 2 mths. period	4½ yrs.+14 st.		Attacks on women in lifts. Public ought to feel safe in lifts. The offences were planned. D.
95/79	M	28	2 Armed robberies	6 similar over 2 mths.	4 yrs. 8 mths.+ 20 st.		Attacks on women in lifts. Public ought to feel safe in lifts. D.
44/78	M	19	Armed robbery		12 mths.+10 st.		Victim a taxi driver working at night. Such attacks are threat to people working at night.
20/78	M	27	Armed robbery	Theft	3 yrs.+10 st.		$25,000 cash in robbery $35,000 cash in theft (c) The offences were serious.
1/78	M	26	Robbery Violating police supervision requirement (2 charges)		5 yrs.+10 st.	6 — 1963-1977, inc. armed robbery. C	Def. did not appear to have learned his lesson from previous sentences.
141/78	M	40	2 Armed robberies	51, inc. robberies, cheating, theft in dwellings.	7 yrs.+24 st.	2 — 1952-74. C	Two yrs. activity — posing as official and stealing and robbing in flats etc. Victims mainly old women. Offences displayed a careful modus operandi. Despite earlier sentences def. had not mended his ways: severer punishment now needed.
183/79	M	21	Armed robbery	Robbery	3 yrs.+10 st.		Well planned robbery of fishing boat equipment worth over $30,000. Deadly weapons were carried.

(c) These figures represent the total haul in the offences. Others were involved. This man's personal gain was said to be only $2,000.

Col. 1 File No.	Col. 2 Sex Age	Col. 3 Charge(s)	Col. 4 Offences T.I.C.'d	Col. 5 Total Sentence	Col. 6 Occasions on which defendant had previously been sentenced	Col. 7 Factors noted in G.D.
109/78	M 17	3 Armed robberies	2 similar 1 consuming morphine	3 yrs.+30 st.		Lift robberies committed over 15 days period. Where a def. was young rehabilitation was usual course but with serious offences deterrence was needed. Def.'s youth was no comfort to his victims who suffered the traumas.
39/78 (d)	M 28	2 Armed robberies Robberies were committed in houses. $22,000 cash and goods taken in one raid		10 yrs.+12 st.	2 — 1971-74 — armed robberies. C	Previous prison sentences and canings had not deterred him. Def. joined a gang which included men who had previously been imprisoned.

(d) This appellant had been tried with six others for a series of robberies, some committed on victims in their homes. Between them they asked for thirteen similar offences to be T.I.C.ed. Five of the six had previous convictions, including, in the case of four of them, convictions for robbery offences. Sentences imposed on this gang ranged from two years and six strokes to ten years P.D. At the hearing of the appeal in 39/78 the appeals of two other members of the gang were dismissed. They have not been included in this study. In the appeal files studied, this was the only instance encountered of a sizeable gang being brought to justice. In a small study, the number of robbery cases will be small so it was thought best to include only one of the three appeals which resulted from the sentencing of this gang. One feature of the case which might puzzle the reader is that though the charges were of armed robbery the mandatory ten strokes were not ordered — only six on each of the two charges, making twelve strokes in all. The precise charge against the defendant in 39/78 was that by virtue of s. 34 P.C. he was party to armed robbery. In such situations it has been argued that s. 34 cannot make the accomplice liable to the corporal punishment prescribed by s. 397. Some controversy surrounds the point — see K. L. Koh "Joint Liability and section 397", (1977) 19 Mal. L.R. 383. Perhaps the sentencing judge subscribed to the view that s. 34 does not render the accused liable to the s. 397 punishment but the matter was not mentioned in the G.D.

Col. 1 File No.	Col. 2 Sex Age	Col. 3 Charge(s)	Col. 4 Offences T.I.C.'d	Col. 5 Total Sentence	Col. 6 Occasions on which defendant had previously been sentenced	Col. 7 Factors noted in G.D.
DRUGS OFFENCES						
Possession/consumption						
96/79	M 40	2 — Consuming morphine while supervisee. Possessing 0.03 gms. of substance containing heroin	4 similar	4 yrs.	2 — 1974-78 — both re. drugs. C	Previous sentences had not deterred him. He took drugs while on bail. Minimum sentence for consumption while under supervision is 3 yrs.
6/79	M 31	Consuming morphine while under supervision		3 yrs.		Minimum sentence.
35/78	M 64	Consuming controlled drug. Possession 433.7 grm. raw opium		6 mths.	2 — 1957-1974 — both re. drugs. C	1st previous convictions 20 yrs. ago so disregarded. Trial ct. took as mitigation his age and dependancy on opium.
148/78	M 34	Possession 244.2 gms. cannabis		18 mths.		Def. was doing a favour for a friend but helping drug users is against public interest.
149/78	M 43	Consuming morphine while under supervision		3 yrs.	1 — 1975 — re. drugs.	Minimum sentence.
147/78	M 24	Consuming morphine while under supervision		3 yrs.	4 — 1975-76 — all re. drugs. C	Minimum sentence.

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164/78	M 33	Possession 1.64 gms. cannabis		2 yrs.	1 — 1978 — re. drugs.	Minimum sentence in view of earlier conviction.
151/79	M 26	Consuming morphine while under supervision		3 yrs.	1 — 1979 — re. drugs.	Minimum sentence.
54/78	M 17	Possession 0.13 gm. morphine. Consuming morphine on same day		Reformative training		On appeal High Court called for report — indicated satisfactory progress. Trial ct. noted that pre-sentence report indicated an ineffective family influence, so probation unlikely to succeed. Def. needed to be removed from peer group. R.T. would best serve def.'s interests.
107/78	M 26	Possession 0.04 gm. diamorphine. Consumption of morphine on different occasion.		2 yrs.	1 — 1978 — re. drugs.	Min. sentence on possession charge in view of earlier conviction was 2 yrs.
162/78	M 52	Possession 21.6 gms. opium & utensils. Consuming morphine. All arising from one incident.		$3,100 fine — 13 mths. i/d.	3 — 1971-2 — re. drugs.	Def. had been an addict for 20 yrs. but court must make clear that the drug problem is viewed seriously.

Col. 1 File No.	Col. 2 Sex Age	Col. 3 Charge(s)	Col. 4 Offences T.I.C.'d	Col. 5 Total Sentence	Col. 6 Occasions on which defendant had previously been sentenced	Col. 7 Factors noted in G.D.
Trafficking						
78/79	M 23	Sale of 0.20 gms. cannabis		3 yrs.+3 st.		Minimum sentence.
97/78	M 42	Trafficking in 25.19 kilos raw opium.		20 yrs.+15 st.		Minimum sentence.
45/78	M 23	Trafficking in 0.06 gms. diamorphine		5 yrs.+5 st.	1 — 1975 — re. drugs.	Minimum sentence.
6/78	M 33	Trafficking in 2.62 gms. diamorphine Consuming morphine.		5 yrs.+5 st.		Minimum sentence on principal charge.
5/78	M 38	Trafficking in 0.04 gms. diamorphine		5 yrs.+5 st.		Minimum sentence. Probation would not be appropriate.
7/79	M 20	Trafficking in 0.34 gms. cannabis		3 yrs.+3 st.		Minimum sentence.
129/79	M 21	Trafficking in 2.08 gms. cannabis		4 yrs.+8 st.	3 — 1971-77 — inc. theft & robbery. C	Sentence exceeds the mandatory minimum. Of two men involved *this* one played the leading part and needs more deterrence than his co-def.

Col. 1 File No.	Col. 2 Sex Age	Col. 3 Charge(s)	Col. 4 Offences T.I.C.'d	Col. 5 Total Sentence	Col. 6 Occasions on which defendant had previously been sentenced	Col. 7 Factors noted in G.D.
MOTORING OFFENCES (e)						
10/79	M 17	304A, P.C.		$1,000 7 yrs. disqualification		Collided with pedestrian. Probation inappropriate as accused not a 'criminal'. Ct. notes high incidence of traffic accidents.
101/79	M 26	304A, P.C.		$4,000 3 yrs. disqualification		Bus driver. Three lives lost as result of def.'s negligence.
28/79	M 17	Speeding. Failure to stop at red traffic light.		$550, i/d 55 days		Driving motor-bike at 135+kph at 2.00 a.m. Accused was a youthful offender.
22/79 (f)	M 25	Speeding. Failure to stop at red traffic lights. Driving disqualified & uninsured.		3 mths. $2,100 6 yrs. disqual.	1 — 1977.	Motor cyclist — chased by police at 130+kmph, early hours of morning. Did not halt when first signalled by police.

(e) Two cases, each involving a charge under s. 304A P.C. are included as the deaths resulted from motoring incidents. The maximum penalty is two years' imprisonment and an unlimited fine.

(f) The total fine here resulted from several separate fines each of which carried its own i/d order. The aggregate i/d order was 7½ months. The 3 months prison sentence was imposed for the offence of driving whilst being disqualified.

Col. 1 File No.	Col. 2 Sex Age	Col. 3 Charge(s)	Col. 4 Offences T.I.C.'d	Col. 5 Total Sentence	Col. 6 Occasions on which defendant had previously been sentenced	Col. 7 Factors noted in G.D.
37/79	M 21	Speeding. Failure to stop at red traffic light		$600 1 yr. disqualification. 60 days i/d of fine.		Motor cyclist at 140+kmph early hours of morning. This was not a normal case of speeding. Ct. considered English Magistrates' Assn. guidelines for penalties for motoring offences, April 1975.
83/78 (g)	M 52	Driving disqual. & uninsured. Failure to conform to traffic sign. Taking and driving		1 mth. $1,175 10 yrs. disqual.	2 — 1974-5 — motoring offences. C	Accused knew from previous experience the gravity of the offence. Ct. considered *Lines* v. *Hersom* [1951] 2 All ER 650. In view of his age only 1 mth.'s custody ordered.
ACQUISITIVE OFFENCES						
20/79	M 32	2 CBTs involving $180,000+	Sec. 31 Enlistment Act. (h)	3 yrs.		Def. a lawyer. A first offender who himself had been cheated by others. P.P.'s appeal.
131/78	M 34	CBT of $69,000+		30 mths.		CBT by servant. Inc. No restit. D.
138/79	M 32	CBT of $47,000+		30 mths.		CBT by servant. Abuse. CBT on increase. No restit. D.

(g) The appeal, in this case, appears to have been only against the one month prison sentence which was imposed for the offence of driving whilst being disqualified.

(h) Cap. 229. Leaving Singapore without an exit permit.

Col. 1 File No.	Col. 2 Sex Age	Col. 3 Charge(s)	Col. 4 Offences T.I.C.'d	Col. 5 Total Sentence	Col. 6 Occasions on which defendant had previously been sentenced	Col. 7 Factors noted in G.D.
57/79	F 36	2 CBTs involving $64,000+	2 similar involving $2,700	2 yrs.		CBT by servant. Inc. Some restit. made.
129/78	M 38	2 abetments of CBT involving $248,000+		3 yrs.		Def. a lawyer. Many such crimes would be impossible but for sort of help def. gave.
176/78	M 32	3 Cheating by personation, involving $730+		6 mths.		Using another's credit card. Credit cards are in common use. PI.D.
98/78	M 25	Theft in dwelling $50 watch		3 mths.	3 thefts in buildings — 1974-1977. C	P.P.'s appeal. Unpremeditated offence. Watch recovered.
170/78	M 27	Theft of motor cycle worth $2,300		5 yrs. C.T.	7 similar — 1963-1975. C	Offence motivated by sheer avarice.
156/78	M 20	Theft of motor cycle valued at $1,000		4 mths.		Prev. D.
16/79	M 21	Theft of woman's handbag		12 mths.	3 — theft and robbery — 1973-78. C	Offence committed within 6 months of conviction for similar crime.
158/79	M 25	Housebreaking by night — business premises. $3,000 & cheque book taken		3 yrs.	2 — 1971-75 — theft, robbery & force to outrage modesty. C	Previous sentences had not altered him.

Col. 1 File No.	Col. 2 Sex Age	Col. 3 Charge(s)	Col. 4 Offences T.I.C.'d	Col. 5 Total Sentence	Col. 6 Occasions on which defendant had previously been sentenced	Col. 7 Factors noted in G.D.
17/78	M 31	2 housebreakings by night. $35,000+ cash taken	2 similar involving $6,900 cash and $19,000 valuables	7 yrs.	6 — 1958-1971 — including theft, trespass & armed robbery. C	Sentencing ct. invoked Sec. 11(3) C.P.C. Previous sentence of CT had not reformed him.
48/78	M 24	Housebreaking by night. Cash & property to value at $170		3 yrs.	1 — 1975. Robbery and resistance to lawful apprehension. C	Offence was premeditated and committed shortly after release from prison. D.
76/78	M 32	Housebreaking by night. $200 property. Violation of police supervision requirements	One similar	8 yrs. P.D.	8 — 1959-73. Thefts and breakings. C	Obvious that accused does not intend to change way of life. For public protection he should be put away for substantial time.
188/78	M 24	2 housebreakings by night, involving $5,000 property	Five thefts and breakings.	6 yrs.	2 — 1973-7 — housebreaking & theft. C	Accused an habitual housebreaker. D.
126/79	M 34	Housebreaking by night	Two similar	7 yrs. P.D.	4 — 1963-68 — including theft and armed robbery. C	Past sentences had not deterred him.
122/79	M 28	Housebreaking by night — $50 cassette recorder taken		7 mths.	1 — 1965 — theft.	

Col. 1 File No.	Col. 2 Sex Age	Col. 3 Charge(s)	Col. 4 Offences T.I.C.'d	Col. 5 Total sentence	Col. 6 Occasions on which defendant had previously been sentenced	Col. 7 Factors noted in G.D.
84/78	M 27	Housebreaking by night — bottles of liquor from supermarket		6 yrs. C.T.	3 — robbery and causing hurt in order to extort — 1972-74. C	Accused a persistent recidivist. Ordinary prison & caning had not reformed him. Exposure to training may be useful.
Receiving						
27/78	M 22	Receiving — involved in disposal of $450 cash & valuables — the proceeds of robbery		6 mths.		Had originally been charged with involvement in the armed robbery. A first offender but circumstances warranted custodial sentence.
Criminal Misappropriation						
118/79	M 55	Criminal misappropriation of rings of nearly $2,000 value		$1,000 fine — 3 mths. in default.		
72/78 (i)	M 29	Sec. 37 H.P. Act ie disposing of $3,000 TV set which was on hire		3 mths.		Legislature intended a serious view to be taken of such frauds. Ct. [a Mag. Ct.] can only fine up to $2,000. HP Co. had lost over $2,600. It would be travesty if accused profited by his crime.

(i) The charge was not under s. 403 P.C. (dishonest misappropriation) but was so similar — fraudulent disposal of good by a hirer — that this case has been included with s. 403 cases. Under s. 37 of the Hire Purchase Act (Cap. 192), as amended by the H.P. (Adt) Act 1975 (Act no. 12 of 1975), the maximum penalty is three years imprisonment and a fine of $3,000.

Col. 1 File No.	Col. 2 Sex Age	Col. 3 Charge(s)	Col. 4 Offences T.I.C.'d	Col. 5 Total sentence	Col. 6 Occasions on which defendant had previously been sentenced	Col. 7 Factors noted in G.D.
MISCELLANEOUS						
Violence						
144/78	M 22	Affray—fighting in hotel lounge. (j)		$600 i/d 2 mths.		Serious view should be taken of such incidents. This fight could have got out of hand.
Bribery						
160/78	M 50	S. 6(a) Prev. of Corruption Act. Prison superintendant accepting "loan" of $50,000 from prisoner in return for privileges		30 mths.		Privileges granted to prisoner would affect discipline and morale in prison. P.I.
175/78	M 44	3 x S. 6(a) Prev. of Corruption Act. Making payments on behalf of company for work not performed. $76,000+ involved in charges. Def. was company's accountant	13 similar	4½ yrs.		Total loss to def's company was $456,000+. Abuse.

(j) S. 160 P.C. which provides a maximum penalty of one year's imprisonment and a fine of $1,000.

Col. 1 File No.	Col. 2 Sex	Age	Col. 3 Charge(s)	Col. 4 Offences T.I.C.'d	Col. 5 Total sentence	Col. 6 Occasions on which defendant had previously been sentenced	Col. 7 Factors noted in G.D.
Dangerous Fireworks							
116/79 117/79	M M	17 17	Sec. 3 Dangerous Fireworks Act.		6 mths. Conditional Discharge		P.P.'s appeal.
Offences re. National Service							
168/78	M	30	Sec. 32(d) Enlistment Act — refusing to accept enlistment notice. (k)		6 mths.		A serious offence.
47/78	M	27	Sec. 15(1) Vigilante Corps Act — absent from 138 training sessions over 33 mths. (l)		6 mths.	1 — 1971 — gang robbery. C	A mandatory prison sentence required by the Act.
Betting and Gaming							
164/79	M	40	Sec. 5(3)(a) Betting Act. (m)		3 mths. + $2,000, i/d 3 mths.	1 — 1978 — Same offence as current one.	3 mths. imprisonment required by the Act in view of previous conviction.

(k) Cap. 229. Maximum penalty is three years' imprisonment and a $5,000 fine.

(l) Cap. 80. Unlawful absence in circumstances which show that he does not intend to return to duty. This is deemed to be desertion and is punishable with up to twelve months' imprisonment. There is no provision for fining.

(m) Cap. 95. Acting as a bookmaker — punishable with a fine of not less than $2,000 (unless the court records reasons for doing otherwise) and not more than $20,000 and imprisonment not exceeding two years. On a second or subsequent offence the court must impose a three months' sentence (unless it gives reasons for not doing so) and may sentence the offender for any term not exceeding two years, together with a fine of up to $20,000.

Col. 1 File No.	Col. 2 Sex Age	Col. 3 Charge(s)	Col. 4 Offences T.I.C.'d	Col. 5 Total sentence	Col. 6 Occasions on which defendant had previously been sentenced	Col. 7 Factors noted in G.D.
Touting						
70/78	M 47	S. 44(i) Minor Offences Act — being a tout. (n)		5 mths.	Six previous similar. Latest in 1976. C	Def. had not shown efforts to avoid offences. Custodial sentence appropriate.
Unlicensed Travel Agent						
8/79	A firm	S. 6(i) Travel Agents Act — unlicensed agent. (o)		$4,000		Public may be prejudiced by bogus firms. D.

(n) Cap. 102. The offence is punishable with imprisonment for any term up to six months and a fine of up to $500.

(o) Act no. 41 of 1975. The maximum penalty is two years' imprisonment and a fine of $10,000.

Explanatory Notes

In Column 1 of the Table the Magistrate's Appeal file number of the case is given. Column 2 states the age and sex of the appellant. Column 4 indicates those offences which, at trial, the defendant had asked to be "taken into consideration" under s. 177 C.P.C. For a discussion of this aspect of sentencing, see D. A. Thomas, *Principles of Sentencing* (2nd ed., 1979) at p. 374. It may be surmised that where several offences are "TICed" the defendant, though he may, technically, be first offender, can expect sterner treatment than one who is a 'genuine' first offender. Column 5 records the *total* sentence. Sometimes this resulted from two or more sentences ordered to run concurrently with each other. On other occasions sentences were ordered to be consecutive. In those cases the total sentence is the product of two or more distinct sentences, the one added to the other. Where consecutive sentences are imposed the court ought, it is submitted, to look at the final result and decide whether the totality is excessive or not: see *Sentences of Imprisonment — a review of Maximum Penalties,* Report of the Advisory Council on the Penal System (H.M.S.O., London, 1978), Appendix M at pp. 211 *et seq.*

In column 6 the *occasions* on which the defendant had previously been *sentenced* are noted. It is not a record of previous *convictions.* In some cases several convictions were recorded on one occasion.

The maximum penalties for some of the offences involved in the cases listed in the Table have already been noted in the footnotes to the main text. Robbery penalties are noted at n. 22 and penalties for drug offences are set out in n. 23 and ns. 26-29. Mention of the penalties for the variety of "acquisitive" offences will be found at ns. 16, 37-39, 41 and 44. In ns. 20, 31 and 33 some of the relevant penalties under the Road Traffic Act are given and penalties under the Prevention of Corruption Act are noted at n. 45. For other cases the Table's own footnotes seek to supply information concerning the maximum penalty for the offence in issue.

Abbreviations used in the Table

Abuse	—	The court noted that the defendant had abused a position of trust.
C	—	The defendant had previously received a custodial sentence, whether as an adult or a juvenile. Prison terms served in default of payment of a sentence of fining are *not* included.
CT	—	Corrective Training —see s. 12(1) C.P.C.
D	—	The court stated that deterrence was needed for the type of offence that the defendant had committed.
i/d	—	"In default" *i.e.* the prison term the defendant was ordered to serve if he did not pay the fine imposed.
Inc	—	The court noted that the type of offence, committed by the defendant, was on the increase.
No restit	—	The defendant had made no restitution to the victim.
P.D.	—	Preventive Detention — see s. 12(2) C.P.C.
P.I.	—	The court noted the need to have regard to the public interest,
Prev	—	The court noted that the type of offence committed by the defendant was prevalent.
Prob	—	Probation.
R.T.	—	Reformative Training.
R.T.C.	—	Reformative Training Centre. See s. 13 C.P.C. which provides for an order of Reformative Training "in lieu" of any other sentence, if the court thinks it expedient.
st	—	Strokes of the cane —corporal punishment.