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The Pharaoh said to Aaron:
Entreat the Lord; for there has been enough of this thunder and hail; I will let you go, and you shall stay no longer.
Exodus 10:27

I. INTRODUCTION

A decade after *Gault* raised the issue of the disparity in the potential period of imprisonment of similarly situated juvenile and adult offenders, the California legislature, appellate courts, and the California Judicial Council attempted to resolve the problem. The United States Supreme Court was faced with the factual pattern in the case of *In re Gault*[1] in which the potential for sentencing disparity was well illustrated. Fifteen year old Gerald Gault made a phone call to a woman which Arizona state

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1. 387 U.S. 1 (1967).

law prohibited. It was a misdemeanor to "use vulgar, abusive or obscene language" in the hearing or presence of women or children. Gault was convicted of the offense and sentenced to the Arizona State Industrial School for a period not to exceed that of his minority. This could have resulted in his incarceration for a maximum of six years. An adult convicted of the offense would have served a maximum period of confinement of two months in jail for the violation of the statute.

Rather than addressing this discrepancy by reviewing the Arizona sentencing scheme, the United States Supreme Court used the inequity as the basis for an examination of the procedural due process issues raised by the adjudicatory stage of the juvenile court proceedings. The Court found that certain due process guarantees attached at that stage of the proceedings because of the magnitude of the resultant sentence. Many other courts have followed this approach and have resolved weighty substantive or procedural problems of sentencing at a point in the juvenile justice system which precedes the dispositional phase. Consequently, the appellate review of the full scope of sentencing issues within the juvenile court has been more limited than has its examination of arrest or adjudicatory issues.[2]

Nine years after *Gault*, the California Supreme Court decided the case of *People v. Olivas*[3] and held that the sentence of a "youthful offender," who was committed to the California Youth Authority, could not exceed that period of physical confinement which a similarly situated adult who was committed to the California state prison system could receive. As a youthful offender, the nineteen year old Mr. Olivas was not a minor and was not sentenced by the juvenile court. He was a young adult and within the statutory criteria[4] which allowed the superior court of the county to sentence him either to the state prison system or to the California Youth Authority. In contrast to the superior court, the juvenile court could not sentence a juvenile to the state prison system but could commit a minor to a county correctional facility or to the California Youth Authority.

2. "The problems of pre-adjudication treatment of juveniles and of post adjudication disposition, are unique to the juvenile process; hence, what we hold in this opinion with regard to the procedural requirements at the adjudication stage has no necessary applicability to other steps of the juvenile process." 387 U.S. at 31, n.48.

3. 17 Cal. 3d 236, 551 P.2d 375, 131 Cal. Rptr. 55 (1976).

4. CAL. WELF. & INST. CODE § 1731.5 (West 1972).

Despite the fact that *Olivas* was not a juvenile case, its impact on the juvenile justice system was significant. The California legislature incorporated the philosophy of the unanimous California Supreme Court and required equal treatment in the term of incarceration for similarly situated offenders from juvenile and adult court.[5] This legislation introduced the same maximum period of physical confinement for juvenile and adult offenders. It was conceptually and practically easy to apply during the first half of 1977. Administrative rather than judicial bodies set the release date for both adult and juvenile offenders within the state prison or California Youth Authority systems under the indeterminate sentencing model. No hypothetical release date was required at that time for those sentenced in the juvenile court but not committed to a term of physical confinement. Now a determination of the maximum period of incarceration is required by the Juvenile Court Rules.

On July 1, 1977, two monumental additions to the law became effective which affected a substantial modification in the operation of both the adult and the juvenile court sentencing processes. The first was the premiere edition of the statewide Juvenile Court Rules[6] promulgated after two years of study by the California Judicial Council. These rules carry the weight of law when not in conflict with existing statutory or case law.[7] Simply stated the Rules require the maximum period of physical confinement of a minor not exceed that of a similarly situated adult offender. Additionally, the process used by the juvenile court in the determination of that term of incarceration must follow the procedure required in the adult court.

The first of July was also the effective date of Senate Bill 42[8] which converted the prison sentencing structure in the adult court from the indeterminate to the determinate model. A court is now required to set a specific term of confinement at the time

5. 1976 Cal. Stats. ch. 1071.

6. 1977 ANNUAL REPORT TO THE GOVERNOR AND LEGISLATURE, CALIFORNIA JUDICIAL COUNCIL, Ch. 2, (1977); *note also*, the May 25, 1977 amendments to the Rules. The legislature passed Assembly Bill 3121, which incorporated the Judicial Council's recommendation in 1976 and the bill became effective the first day of 1977.

7. Clinton v. Shaw, 57 Cal. App. 2d 630, 135 P.2d 172 (1943).

8. 1976 Cal. Stats. ch. 1139.

the sentence is pronounced. No longer acceptable were the broad parameters set by the judiciary (e.g. five years to ten years) which could then be modified by an administrative body such as a parole board. Although Senate Bill 42 did not, on its face, apply to the juvenile court, it was extended to the juvenile court by Assembly Bill 3121 and by the Juvenile Court Rules.

Later in 1977, a third legislative act modified the sentencing process of the juvenile court. Assembly Bill 1756[9] eliminated, in juvenile court, the requirement of a sentencing hearing as a prerequisite to imposing a maximum sentence. It allowed imposing the maximum adult sentence on a juvenile without the adult court procedural protections. This bill was passed as an urgency statute and became effective October 1, 1977.

The impact of these diverse procedural changes on the quest for substantive and procedural due process as well as equal protection of the law will be the subject of this article.[10]

II. SENTENCING PRACTICES: DETERMINATE OR INDETERMINATE

From the creation of California's first juvenile court in 1903 until the middle of the 1950's, the laws in California which regulated operation of the juvenile court process grew haphazardly, more from necessity than design. A Juvenile Justice Commission was formed as an advisory group by Governor Knight in 1957, which was continued by Governor Brown in 1959. The Commission inquired into the status of the juvenile justice system in California and presented its findings and recommendations to the California legislature. The submission of the Commission's report appeared to have been a pivotal factor in the formulation of the comprehensive revision of the California juvenile court law in 1961.[11]

The 1961 revisions to juvenile law had a central philosophical thrust, a sequential mode of organization, and provided little detail. This made it a body of law which was easily understood by the layman and adapted to the needs of the local community on a county by county basis. The 1961 act has been frequently amended since then to bring it into conformity with the growth

9. 1977 Cal. Stats. ch. 1238.

10. The dispositional alternatives for the status offender, CAL. WELF. & INST. CODE § 601 (West Supp. 1977), do not include any form of secure physical confinement; therefore, this examination is limited to sentencing practices concerning minors who violate a criminal law, CAL. WELF. & INST. CODE § 602 (West Supp. 1977).

11. 1961 Cal. Stats. ch. 1616.

in the field of decisional law, to reduce the regionalized character which was emerging from county to county, and to introduce new directions in correctional programming. These situational changes were made in the climate of ever increasing social, political, and economic polarization concerning the purposes and methods of the juvenile justice system both in California and nationally.

While the purposes of juvenile court were undergoing intense review, there was a growing concern over indeterminate sentencing practices in the adult criminal justice system in California. Indeterminate sentencing was criticized as unjust, allowing too much unstructured discretion, and capable of being manipulated and abused.

Functionally, the sentencing process which results in physical confinement has two basic elements. First, the removal of the offender from the community and second, his or her return to the community. A multitude of factors affect both elements. Before the Civil War, both functions rested in the court alone. Antebellum social and correctional thought suggested that the point at which rehabilitation of the individual was complete, rather than a set calendar date should prompt the release. This was viewed as humanitarian reform and an economic measure. It resulted in reduced prison terms for many. Under the indeterminate sentence model, a court sets a maximum period of confinement, while institutional authority is authorized to effect release at some point less than maximum sentenced time. In this manner, the court began to share its authority in the area of sentencing with an independent administrative body.

Within the juvenile justice system the indeterminate sentence model has been the traditional method of ordering institutionalization. The end of minority or a set statutory age[12] marks the maximum term of commitment to a county or state correctional facility. Determinate sentencing has been used in juvenile court only for extremely short commitments (e.g. ten days in the juvenile home).

A. Juvenile Court Rules Regarding Sentencing

The Juvenile Court Rules provide a concise, statewide guide

12. *See, e.g.*, CAL. WELF. & INST. CODE §§ 1770 and 1771 (West 1972).

outlining procedures to be followed in sentencing in juvenile court together with alternatives from which the court may select in formulating an individualized course of action. Rule 1372 details dispositional alternatives from which the court may choose. Three noncustodial alternatives are available: (1) the court may set aside the jurisdictional finding and dismiss the matter. Prior to *In re W.R.W.*,[13] the juvenile court had relied upon its assumption of implied power to dismiss a case as a dispositional alternative. *In re W.R.W.* expressly validated the trial court's power, and the Juvenile Court Rules simply codify the decision;[14] (2) the court may order a period of probation to be undertaken, without a declaration of wardship with probation not exceeding six months in duration;[15] (3) the court may order wardship and establish certain terms and conditions of probation to which the minor must adhere.[16]

Rule 1372(b) requires the juvenile court to make several specific findings before it can remove a juvenile from his or her home for placement or commitment. First, the court must find that the notice provisions of Rule 1310(a) have been complied with. The court must also make a substantive finding that the parent(s) or guardian is unable or unwilling to provide for the proper maintenance, training, or education of the minor; that the minor has been tried on probation in the custody of the parent or guardian and has failed to reform; or that continued custody by the parent or guardian would be detrimental to the minor and that the welfare of the minor requires that he or she be removed from the custody of the parent(s) or guardian.[17]

The court may, after removing the minor from parental custody, order the minor "placed" in a foster home, group home or private institution,[18] or it may order the minor "committed" to a county ranch, camp, forestry camp, or juvenile home.[19] Finally, the court may "commit" the minor to the state correctional facility, the California Youth Authority.[20] These custodial dispositional alternatives are available to the court irrespective of

13. 17 Cal. App. 3d 1029, 95 Cal. Rptr. 354 (1971).
14. CAL. PENAL CODE § 1385 (West Supp. 1977).
15. CAL. WELF. & INST. CODE § 725(a) (West Supp. 1977); *see* In re Bacom, 240 Cal. App. 2d 34, 60, 49 Cal. Rptr. 322, 337 (1966).
16. CAL. WELF. & INST. CODE § 782 (West 1972).
17. CAL. WELF. & INST. CODE §§ 726, 727 (West Supp. 1977) and In re B.G. 11 Cal. 3d 679, 523 P.2d 244 (1970) to be read *in pari materia* with CAL. CIV. CODE § 4600 (West Supp. 1977) which requires a finding of detriment before awarding custody of a child to a non-parent in a dependency matter.
18. CAL. WELF. & INST. CODE § 727 (West Supp. 1977).
19. CAL. WELF. & INST. CODE § 730 (West Supp. 1977).
20. CAL. WELF. & INST. CODE § 731 (West Supp. 1977).

whether the juvenile is a first time offender, or has already been declared a ward of the court by virtue of a prior act or event.[21]

Additionally, the Juvenile Court Rules provide three dispositional alternatives to deal with juveniles, currently on parole from the California Youth Authority, who commit crimes as parolees.[22] The court may "recommit," as a duplication of the initial court order committing the minor to the California Youth Authority; "return" the minor to the California Youth Authority for that agency to initiate whatever administrative proceeding it elects, including a recommendation by the court as to what action it views as appropriate; or it may simply make the "return" order without comment. Finally, the court may act as it would for any other juvenile, without making any recommendation on the juvenile's parole status.

In making any of the several alternative dispositional orders available to it, the court must inform the juvenile, and his or her parent(s) or guardian, of their right to appeal, the steps necessary to effect that appeal, the right of an indigent to have counsel appointed by the reviewing court, and the right of an indigent to have a free transcript on appeal. Notice of the right to appeal is mandated by Rule 251 of the California Rules of Court which have been incorporated into the Juvenile Court Rules.[23]

To complete the procedural protection of the juvenile, the court is required to take added action if the dispositional order will require the juvenile to remain in custody or be taken into custody after the sentence is pronounced. The court must calendar a review hearing within fifteen days after the dispositional order is made, if the juvenile is required to remain in custody pending placement. Where the disposition is non-custodial, placement alternatives include foster home, group home, private institution, or other noncustodial facility. A custodial disposition placement may be at county ranch, camp, forestry camp, juvenile home, or the California Youth Authority.

This review hearing ensures that a juvenile is not "lost," that all efforts are made to effect the court order in a timely manner,

21. CAL. JUV. CT. R. 1372(a)-(c) (1977).
22. *Id.* at 1372(d).
23. *Id.* at 1372(e).

and to ensure that time in custody is kept at a minimum. The probation officer is required to make a report to the court at each fifteen day review hearing on what efforts have been made to implement the court's dispositional order. Should the minor still be in custody for the fifteen day review hearing, another such hearing will be calendared an additional fifteen days hence.[24]

An added quality control which is available to the court is requiring a periodic progress report, made to the court concerning those juveniles placed in a foster home, group home, or private institution.[25] The reporting option, as stated in the Juvenile Court Rules,[26] is applicable only if the juvenile is placed in the custody of the probation officer, another responsible person, or other public agency.[27] The Rules are silent as to authority of the court to require reporting where placement is made in a private society.[28]

In the adult court, the time in custody computation is controlled by Senate Bill 42, which calculates time in custody only after a prison commitment is actually made. It is not calculated if a county jail term is ordered or if probation is granted. In contrast, the juvenile court sets this maximum period in all sentencing matters, even if the juvenile is not then sentenced to a term of physical confinement. This computation of the maximum period of incarceration is an area of the greatest complexity and confusion in the California juvenile court system. The mandate of Assembly Bill 3121 was that "the minor may not be held in physical confinement for a period in excess of the maximum term of imprisonment which could be imposed upon an adult convicted of the offense which brought the minor under the jurisdiction of the juvenile court."[29] The Juvenile Court Rules provide for the implementation of this objective.[30]

First, the court must make a finding that the criminal offense was either a felony or a misdemeanor. Within its statutory scheme, California has three ways of designating offenses which may result in physical confinement upon conviction. They are misdemeanors, felonies, or "wobblers." Those known as "wobblers," may be treated as either a felony or as a misde-

24. *Id.* at 1372(f).
25. CAL. WELF. & INST. CODE § 727 (West Supp. 1977).
26. *Ibid.* at 1372(g) and CAL. WELF. & INST. CODE § 365 (West Supp. 1977).
27. CAL. WELF. & INST. CODE § 727(a), (c), (d) (West Supp. 1977).
28. CAL. WELF. & INST. CODE § 727(b) (West Supp. 1977).
29. CAL. WELF. & INST. CODE § 726, 731 (West Supp. 1977).
30. CAL. JUV. CT. R. 1373 (1977).

meanor. It is the object of Rule 1373 to remove any ambiguity as to the status under which the offender is convicted and sentenced. The classification of the offense provides the foundation from which the maximum term of physical incarceration is calculated. If a "wobbler" is viewed as a misdemeanor, that term may not exceed one year. However, if it is viewed as a felony then the appropriate range of incarceration is in multiple years.[31]

Rule 1373 next requires the court to set forth the maximum period of physical confinement in all sustained juvenile petitions based upon criminal allegations,[32] except those which are dismissed by the court. Requiring a statement of the potential maximum term of physical confinement goes far beyond the mandate of Assembly Bill 3121 which only requires that physical confinement, actually ordered, not exceed the maximum term of imprisonment which could be imposed on an adult. The statute does not require the juvenile court to go through the calculations required of the adult court in fixing a felony sentence to state prison and make an order which contains a specific number of months or a calendar date for release. The statute could as easily be read to require a court only to direct that a juvenile not be confined longer than a similarly situated adult and thereafter delegate calculation and enforcement of the court imposed limit to an administrative body charged with care of the offender. Assembly Bill 1756 no longer permits this practice.

The ambiguity in the statutory phrase "the offense which brought the minor under the jurisdiction of the juvenile court" compounds the difficulty in calculating a sentence. The ambiguity emerges where there are multiple offenses before the court or where the juvenile has prior convictions which have not resulted in physical incarceration. Ambiguity could even emerge where one offense is charged, but the charge is reduced, and the juvenile is thereafter convicted of the reduced offense. Only a very extended interpretation of Assembly Bill 3121 could suggest the initially petitioned charge, rather than the sustained charge, should provide the basis for sentence computation.

31. *Id.*; CAL. WELF. & INST. CODE § 702 (West Supp. 1977).
32. CAL. WELF. & INST. CODE § 602 (West Supp. 1977).

III. THE APPELLATE VIEW OF SENTENCING DISPARITY: TRADITIONAL AND REFORM

During 1977, one major California case presented both equal protection and due process challenges to the disparity in the length of physical confinement which the juvenile court may order in light of the extensive statutory changes to the juvenile court law.

Prior to passage of Assembly Bill 3121 a juvenile could be institutionalized for a longer period of time than could a similarly situated adult. *In re Aaron N.*,[33] initially decided in the California Court of Appeal, First District, applied traditional testing in reviewing sentencing disparity. The court's opinion, sustaining the juvenile court, came down twenty-seven days after Assembly Bill 3121, which forbids disparity in sentencing, became effective. The First District granted a rehearing, applied the statutory scheme set forth in Assembly Bill 3121, reversed its prior opinion and released the youth.[34] The two opinions will be individually examined because they provide both the traditional view and the view required by the statutory modification of the juvenile court law presented in Assembly Bill 3121.

In both appeals, the juvenile[35] challenged his commitment to the California Youth Authority, for a period of from two to five years,[36] for conviction of two misdemeanor offenses, trespass and petty theft. These would have resulted in a maximum period in the county jail of three or six months, respectively, for an adult.[37] Both challenges to the commitment were based on equal protection and due process grounds. The two opinions, both written by Justice Kane, reach very different results.

A. Aaron I

When first heard by the court of appeal, the court applying traditional review of juvenile sentencing, rejected the equal pro-

33. 66 Cal. App. 3d 564, 136 Cal. Rptr. 102 (1977).

34. 70 Cal. App. 3d 931, 139 Cal. Rptr. 258 (1977).

35. As a point of interest, the California appellate courts have adopted the use of the minor's first name and last initial, as here, or the minor's initials alone, as in *In re L.L.* or *T.N.G. v. Superior Court* rather than the minor's full name as in *Gault*. This approach comports with the statutory plan to shield the minor's identity from the public view, unless circumstances warrant disclosure.

36. CAL. WELF. & INST. CODE § 1769 (West Supp. 1977); CAL. WELF. & INST. CODE § 1802 (West 1972).

37. CAL. PENAL CODE §§ 490, 602(j), 664(l) (West Supp. 1977); CAL. PENAL CODE §§ 19, 488 (West 1970).

tection and due process claims advanced by defense counsel. The analysis and authority from the first opinion offer an excellent statement of the justification for the distinctly different treatment of the juvenile offender.[38]

The first contention advanced by Aaron argued a denial of equal protection inherent in his commitment to the California Youth Authority because, as a class, juveniles were treated differently than similary situated adults. The court began its analysis by reviewing the equal protection guarantee that no person, or class of persons, may be denied equal protection of the law that is enjoyed by other persons or classes in like cirsumstances.[39] It noted also that equal protection does not require absolute equality[40] and that a state may differentiate between classes as long as it does not create invidious discrimination.[41]

The appellate court rejected Aaron's argument that *Olivas* was applicable. Aaron argued the philosophy in *Olivas* should bar an extension of his term of physical confinement beyond that which a similarly situated adult would encounter. The court explained that creation of two sentencing schemes within the adult court system did constitute an equal protection problem for Mr. Olivas, but concluded that Aaron found himself within the juvenile court system which had only one sentencing scheme, not two.[42] Juveniles before the juvenile court constituted one class. The court continued by noting that all offenders sentenced by the adult court constituted one class whether they were sentenced by the adult court under its traditional sentencing processes or under the "youthful offender" provisions of the California Penal Code. Under this characterization, *Olivas* could be explained without extension of its protection to a juvenile appearing before juvenile court. As such,

38. This traditional view is still followed in many other states to justify the inequities in the term of physical confinement between juvenile and adult offenders.

39. Truax v. Corrigan, 257 U.S. 312, 336-38 (1921); Kentucky Co. v. Paramount Exch. 262 U.S. 544, 550 (1923); Purdy & Fitzpatrick v. State of California, 71 Cal. 2d 566, 456 P.2d 645, 79 Cal. Rptr. 77 (1969).

40. Douglas v. California, 372 U.S. 353, 357 (1963); In re Antazo, 3 Cal. 3d 100, 110, 473 P.2d. 999, 1005, 89 Cal. Rptr. 255, 261 (1970).

41. Gray v. Whitmore, 17 Cal. App. 3d 1, 21, 94 Cal. Rptr. 904, 915 (1971).

42. CAL. WELF. & INST. CODE § 1769 (West Supp. 1977).

the juvenile court need not apply the more favorable treatment afforded the adult offender.

In its initial opinion, the court of appeal found no merit in the contention that the classification itself was unreasonable and cited *Cunningham v. United States*[43] to support that position. In justification for the classification, the court cited the purpose of the California Youth Authority as a correctional and rehabilitative program rather than as a tool for retribution or punishment. Under this traditional view, the operation of a rehabilitative program promised greater protection for the community than did the program of simple punishment; thus, disparity in the treatment was justified to accomplish this goal which was unique to a juvenile offender.[44]

In resolving the equal protection claim, the court of appeal pointed out the California Supreme Court had specifically left the issue of the applicability of *Olivas*[45] to juvenile court commitments undecided and concluded that it was not compelled to apply the philosophy represented in *Olivas* to the juvenile court process.

Almost as an afterthought, the court noted that the extensive prior criminal history of the youth would have itself justified the commitment. The court assumed that Aaron had been committed upon the entirety of his criminal record and not just upon the last two criminal acts which were then before the court. It was this comment which would later provide the springboard for the second opinion, six months later.

The due process claim made by Aaron to the court of appeal had a dual attack. First, the denial of substantive due process was argued because the commitment period for juveniles exceeded that of similarly situated adults. The second substantive due process claim challenged the statutory basis[46] by which the California Youth Authority effectively made the term of confinement indeterminate in nature.

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43. 256 F.2d 467, 473 (5th Cir. 1958).

44. People v. Mack, 2 Cal. App. 3d 724, 729, 82 Cal. Rptr. 771, 774 (1969); In re J.L.P., 25 Cal. App. 3d 86, 89, 100 Cal. Rptr. 601, 603 (1972).

45. We are not confronted by a situation in which a juvenile adjudged under the Juvenile Court Law as a juvenile contends that his term of involuntary confinement may exceed that which might have been imposed on an adult or juvenile who committed the identical unlawful act and was thereafter convicted in the criminal courts. Since that situation is not before us, we reserve consideration of the issue should it arise in some future case and we express no opinion on the merits of such a contention. 17 Cal. 3d 236, 243 n.11, 551 P.2d 375, 379 n.11, 131 Cal. Rptr. 55, 59 n.11 (1976).

46. CAL. WELF. & INST. CODE § 1769 (West Supp. 1977); CAL. WELF. & INST. CODE § 1802 (West 1972).

In addressing the two due process claims, the court first distinguished procedural due process rights from substantive due process rights. It noted the former required notice and the opportunity to be heard before there was a deprivation of life, liberty, or property, while the latter was a protection from such a deprivation by arbitrary legislative action. The test applied by the court was a rational basis test, requiring the legislative scheme be clearly defined and reasonably applied. The court found the relationship between substantive due process and equal protection was so interrelated that when a classification met the equal protection requirements, it also met the concurrent, but less onerous, substantive due process requirements. The court also added that the rehabilitative purpose of the California Youth Authority justified the legislation and allowed the difference in duration of sentence to be lawfully applied.

Aaron's final claims were disposed of in summary manner. First, it was suggested that commitment constituted cruel and unusual punishment. This was rejected. The purpose of the California Youth Authority, as evidenced by its statutory authority and the findings of other courts, was rehabilitative rather than punitive.[47] Finally, facts to support the minor's claim of double jeopardy were not found in the record and the court of appeal found this claim totally without merit.

B. Aaron II

Despite the traditional view taken by the court of appeal in its January opinion, it responded to the statutory modification of the juvenile court sentencing authority in its June 22 opinion. This second opinion found that statutory modification of the juvenile court commitment authority[48] served as an equalizing provision between the adult and juvenile courts and applied it retroactively. Retroactive application was based on the fact the statute was amended after the criminal act was committed but prior to the finality of the judgment of the sentencing court due to an appeal.[49] On rehearing, the court dismissed the equal pro-

47. People v. Olivas, 17 Cal. 3d at 255, 551 P.2d at 387, 131 Cal. Rptr. at 67; In re Gary W., 5 Cal. 3d 296, 301, 486 P.2d 1201, 1205, 96 Cal. Rptr. 1, 5 (1971); People v. Barstow, 42 Cal. App. 3d 90, 95, 116 Cal. Rptr. 524, 527 (1974).

48. CAL. WELF. & INST. CODE § 731 (West Supp. 1977).

49. In re Estrada, 63 Cal. 2d 740, 744, 408 P.2d 948, 951, 48 Cal. Rptr.

tection and due process arguments by stating that Assembly Bill 3121 had provided a cure to the complaint by prohibiting disparity in sentencing.

After an examination of the extensive legal history of the juvenile, the court stated:

> The proposition that in measuring the maximum extent of physical confinement the entire record of the juvenile may be regarded and that as a yardstick the most serious offense committed by a delinquent youth may be taken into account, is supported rather than contradicted by the language of sections 726 and 731.[50]

The court continued its analysis, stating that, "each and every criminal violation may constitute the offense which brings him under the jurisdiction of the juvenile court and may serve as a measurement for his physical confinement."[51] Next, the court dismissed Aaron's claim that the constitutional prohibition against double jeopardy applied by saying that use of a prior conviction for the purpose of computing the maximum period of physical confinement was not a second prosecution and therefore not prohibited. The trial court had inferred the youth's entire history of convictions constituted the basis for imposition of sentence, but did not state it clearly. For this reason, the court on rehearing held there was inadequate notice and directed the release of the minor from the California Youth Authority. It concluded by establishing a procedural due process requirement for the future juvenile court sentencing practices, stating:

> In short (and for the guidance of juvenile courts hereafter), we hold that before a minor may be committed to the Youth Authority based on his entire record and/or that the maximum term should be governed by some prior criminal act through which a petition has been sustained, the court must advise the minor of its intention to do so and afford the minor an opportunity to be heard prior to commitment.[52]

The opinion, on rehearing, of *In re Aaron N.* was filed for publication on June 22, 1977. On July 1, 1977, the Juvenile Court Rules became effective. Obviously, the logic of the case was not included in the Rules. The Rules merely re-state the statute and do not define "the offense which brought the minor under the jurisdiction. . .". The second appellate opinion provides an excellent guide on this point as it is not in conflict with a rule or statute. In setting the yardstick offense, the trial court must give the above mentioned procedural admonition to the youth prior to sentencing.

172, 175 (1965); People v. Francis, 71 Cal. 2d 66, 75, 450 P.2d 591, 596-97, 75 Cal. Rptr. 199, 204-5 (1969); In re Moreno, 58 Cal. App. 3d 740, 742, 130 Cal. Rptr. 78, 80 (1976).

50. 70 Cal. App. 3d 931, 939, 139 Cal. Rptr. 258, 262 (1977).
51. *Id.*
52. *Id.*

IV. ASSEMBLY BILL 1756 AND SENTENCE COMPUTATIONS[53]

The Juvenile Court Rules[54] indicate that "in the case of a felony offense, the maximum term of physical confinement shall be determined by procedures applicable to the sentencing of an adult to imprisonment." The same day that the Juvenile Court Rules became effective, Senate Bill 42, the Determinant Sentencing Act, also became effective and established a new and complex set of procedures for sentencing an adult.

At its most elementary level, the determinant sentencing process[55] for a felony commitment to state prison requires a calculation not unlike a "new math" quiz. There is a "base term" consisting of three alternate sentences of fixed duration.[56] The middle of the three base terms must be selected unless "aggravation" is proven, in which case the upper term is selected, or unless "mitigation" is proven, in which case the lower term is selected. To vary from the middle term, a specific showing is required and procedural formalities must be met. Once the base term is selected, a total period of physical confinement may grow by the addition of "enhancement." An enhancement is a fixed additional time increment which may be added for specific behavior such as the use of a weapon in the commission of a crime which does not require a weapon as an element of that crime, or the infliction of great bodily injury in the commission of the crime. This adult court practice seems to be the procedure which Juvenile Court Rule 1373(b) followed, and which was applied in juvenile court from July 1 to October 1, 1977, when Assembly Bill 1756 became operative as an urgency statute.[57]

Assembly Bill 1756 established, with dubious constitutionality, the manner in which a "maximum" sentence may be set. By amendment to Sections 726 and 731 of the California Welfare and Institutions Code, the legislation put juvenile court in the

53. Note that the office of the Assemblyman who authored Assembly Bill 1756 was twice contacted and asked for comment on the apparent due process problem in attaching the highest of the three terms of imprisonment to a juvenile without the hearing this would require in adult court. No comment has been received as of this writing.
54. CAL. JUV. CT. R. 1373(b) (1977).
55. CAL. PENAL CODE §§ 1170, 1170.6 (West Supp. 1977).
56. *Id.* at § 1170(2).
57. 1977 Cal. Stats. ch. 1238.

unique position in which the upper of the three base terms for an adult will always be the selected sentence for a juvenile.[58] This is done without the necessity of the prosecuting attorney proving the aggravation, and without giving the defense counsel the opportunity to prove mitigation. The opportunity still exists however, for the prosecuting attorney to add enhancements to the upper base term, if both plead and proved in court, thereby expanding the juvenile's sentence to an even greater period of incarceration.

The conflict between the procedure required by the Juvenile Court Rules and those of Assembly Bill 1756 are obvious. Facing a process similar to that suggested by Assembly Bill 1756,

58. 1977 Cal. Stats. ch. 1238 reads as follows regarding Sections 726 and 731 of the California Welfare and Institutions Code:

726. In all cases wherein a minor is adjudged a ward or dependent child of the court, the court may limit the control to be exercised over such ward or dependent child by any parent or guardian and shall by its order clearly and specifically set forth all such limitations, but no ward or dependent child shall be taken from the physical custody of a parent or guardian unless upon the hearing the court finds one of the following facts.

(a) That the parent or guardian is incapable of providing or has failed or neglected to provide proper maintenance, training, and education for the minor.

(b) That the minor has been tried on probation in such custody and failed to reform.

(c) That the welfare of the minor requires that his custody be taken from his parent or guardian.

In any case in which the minor is removed from the physical custody of his parent or guardian as the result of an order of wardship made pursuant to Section 602, the order shall specify that the minor may not be held in physical confinement for a period in excess of the maximum term of imprisonment which could be imposed upon an adult convicted of the offense or offenses which brought or continued the minor under the jurisdiction of the juvenile court.

As used in this section and in Section 731, "maximum term of imprisonment" means the longest of the three time periods set forth in paragraph (2) of subdivision (a) of Section 1170 of the Penal Code, but without the need to follow the provisions of subdivision (b) of Section 1170 of the Penal Code or to consider time for good behavior or participation pursuant to Sections 2930, 2931, and 2932 of the Penal Code, plus enhancements which must be proven if pled.

If the court elects to aggregate the period of physical confinement on multiple counts, or multiple petitions, including previously sustained petitions adjudging the minor a ward within Section 602, the "maximum term of imprisonment" shall be specified in accordance with subdivision (a) of Section 1170.1 of the Penal Code.

If the charged offense is a misdemeanor or a felony not included within the scope of Section 1170 of the Penal Code, the "maximum term of imprisonment" is the longest term of imprisonment prescribed by law.

"Physical confinement" means placement in a juvenile hall, ranch, camp, forestry camp or secure juvenile home pursuant to Section 730, or in any institution operated by the Youth Authority.

Nothing in this section shall be construed to limit the power of the court to retain jurisdiction over a minor and to make appropriate orders pursuant to Section 727 for the period permitted by Section 607.

731. When a minor is adjudged a ward of the court on the ground that he is a person described by Section 602, the court may order any of the types of treatment referred to in Sections 727 and 730, and, in addition

the United States Supreme Court in *Williams v. United States*[59] found that an inflexible sentencing practice was inappropriate because the trial court had failed to consider circumstances which served to mitigate the gravity of the offense. The rationale of the Court was "the exercise of sound discretion in such a case required consideration of all the circumstances of the crime."[60] A similar problem was encountered in *United States v. Daniels*[61] in which failure of the trial court to consider evidence of mitigation was held to be an abuse of the court's discretion.

The court in *United States v. Wiley*[62] held the imposition of an arbitrarily severe sentence simply because the accused had requested the exercise of the right to trial was improper. This decision was founded on the supervisorial power of the appellate court. Under the procedures suggested by Assembly Bill 1756, no particular showing is required to impose the juvenile court's most severe sentence, in contrast to adult court which can not impose maximum sentences without complying with a hearing requirement. The fact of minority cannot appear to carry with it the justification for the imposition of the maximum sentence any more than the request for trial did in *Wiley*.

The United States Supreme Court, in *Williams v. Illinois*,[63] said: "the Equal Protection Clause of the Fourteenth Amendment requires that the statutory ceiling placed on imprisonment for any substantive offense be the same for all defendants irrespective of their economic status." In *Robinson v. York*,[64] the

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may order the ward to make restitution or to participate in uncompensated work programs or may commit the ward to a shelter-care facility or may order that the ward and his family or guardian participate in a program of professional counseling as arranged and directed by the probation officer as a condition of continued custody of such minor or may commit the minor to the Youth Authority.
A minor committed to the Youth Authority may not be held in physical confinement for a period of time in excess of the maximum period of imprisonment which could be imposed upon an adult convicted of the offense or offenses which brought or continued the minor under the jurisdiction of the juvenile court. Nothing in this section limits the power of the Youth Authority to retain the minor on parole status for the period permitted by Section 1769.

59. 358 U.S. 576 (1959).
60. *Id.* at 585.
61. 446 F.2d 967 (6th Cir. 1971).
62. 278 F.2d 500 (7th Cir. 1960).
63. 399 U.S. 235, 244 (1970).
64. 281 F. Supp. 8 (D. Conn. 1968).

court sustained the equal protection challenge when a woman served a longer sentence than did a man convicted of the same offense. The court used a suspect classification approach to find the sentencing scheme unconstitutional. Under the provisions of the equal protection clause, it is difficult to see how age alone can justify the variation in the statutory ceiling placed on the term of physical confinement when gender or economic status have not been given this accord. The philosophical thrust to treat juveniles more like adults found in Assembly Bill 3121 has removed much of the former rationale for dividing the juvenile and adult court systems. Also, the administrative policies, present programs, and the population now served by the California Youth Authority, may reflect an alteration from the benign rehabilitative program envisioned in the enabling statute to a correctional system not unlike that found in the state prison system.

V. USE OF THE SOCIAL STUDY REPORT IN SENTENCING

As previously noted, the Juvenile Court Rules have introduced some statewide uniformity and certainty to the sentencing process. The Rules appear to assume that sentence is pronounced at a formal dispositional hearing. This is not always the case. The frequency of continuation of matters for a formal dispositional hearing varies substantially from county to county within California.

The dispositional hearing in the California juvenile court now has assumed a theoretical formality and a measure of statewide uniformity which was unknown in prior years. In practice, there still remains some confusion as to whether sentence must be imposed only after a formal dispositional hearing or may be pronounced at an earlier hearing. Functionally, the juvenile court is as involved with the negotiated plea and disposition as the adult court, despite protestations to the contrary. Rule 1371 of the Juvenile Court Rules requires the juvenile court conduct a dispositional hearing if the juvenile is found to be a person described in Section 601 or 602 of the California Welfare and Institutions Code.[65] It further mandates that a social study report be prepared by the probation officer and considered by the court before making a dispositional order. Input from the juvenile's parole agent is a necessary component of that report where the juvenile is a parolee.[66] Despite use of the word "shall"

65. CAL. JUV. CT. R. 1371(a)-(d) (1977).
66. *Id.*

in the rule, the juvenile courts throughout the state have continued to allow a waiver of this provision of the law and permitted a negotiated dispositional agreement by prosecution and defense counsel to be entered when a plea is determined and presented to the court. This mechanism evades the probation investigation and the receipt of social data to assist the court in formulating a disposition which meets community protection as well as the needs or desires of the juvenile.

If a dispositional hearing is conducted, the juvenile court is required to explain the nature of the dispositional hearing to all parties, to advise the juvenile of the right to have counsel appointed, and the right to have counsel present whether appointed or retained.[67] The court must also receive into evidence the social study prepared by the probation officer, material offered by the petitioner,[68] by the juvenile, and by the parent(s) or guardian. The court may also receive evidence on its own motion.[69] This serves to bring the rule of *In re Mikkelsen*[70] into the juvenile court process. In *Mikkelsen* the California District Court of Appeal held that refusal of the trial court to allow a juvenile to present evidence regarding the proper disposition of his case was a denial of due process. In addition to the opportunity to present evidence in the juvenile court relating to the matter of disposition, the Juvenile Court Rules require a disclosure of the social study report to all parties. This is accomplished by filing the social study with the clerk of the juvenile court under terms of the Juvenile Court Rules.[71] In practice, the report may be released directly by the probation department or by the court. Despite the clarity of the rule, this is a matter which appears to vary operationally throughout the state. The functional impact of this rule is to allow the juvenile, and other parties, an opportunity to review the contents of the social study

67. *Id.*

68. *Id.* Note also that the petitioner in juvenile court matters under Section 602 of the Welfare and Institutions Code (Delinquency) is the prosecuting attorney; it is the probation officer in matters under Section 601 of the Welfare and Institutions Code (Status offenders); it is the probation officer or social worker in matters under Section 300 of the Welfare and Institutions Code (dependent child), depending on a county by county determination.

69. CAL. WELF. & INST. CODE §§ 280, 702, 706 (West Supp. 1977).

70. In re Mikkelsen, 226 Cal. App. 2d 467, 471, 38 Cal. Rptr. 106, 108 (1964).

71. CAL. JUV. CT. R. 1371(b) (1977).

and to prepare for the dispositional hearing without the surprise of having evidence introduced at the hearing which is incorrect in fact or inference, but difficult to refute on short notice. It also eliminates a situation, often found in other courts, where an individual before court has no opportunity to learn the factors on which the court will rely in formulating a sentence. Rule 1371(b) mandates a continuance of forty-eight hours upon the request of any party who has not received the social study.

The requirement of disclosure adopted by the Judicial Council has been followed by only ten percent of the states. Krantz, in his work on corrections, wrote that disclosure of the report, "is generally a matter of judicial discretion, although in five States disclosure is required by statute."[72] This disclosure tends to serve the defense at the dispositional stage, to encourage openness and rationality on the part of the court, and to assist in appellate review of the matter, should that become necessary. The social study report also serves as a point of reference for the court, enabling it to frame or modify the correctional plan suggested in the report. The report puts correctional authorities, whether in a custodial or community setting, on notice of the expectations held by the court in making its dispositional order. The juvenile will also have a clear understanding of the court's expectations regarding his or her behavior.

The logic and equity behind the disclosure rule was well stated by Federal District Court Judge Wyzanski when he commented:

> [d]espite the latitude permitted by the Due Process Clause, it seems to me that a judge considering his sentence, just as in trying the defendant, should never take into account any evidence, report or other fact which was not brought to the attention of the defendant's counsel with opportunity to rebut it. *Audi alteram partem*,[73] if it is not a universal principle of democratic justice, is at any rate sufficiently well founded not to be departed from by a trial judge when he is performing his most important function.[74]

In *Townsend v. Burke*,[75] the sentencing court noted, as a part of the defendant's prior criminal history, two crimes for which the defendant had not been convicted. Justice Jackson, speaking for the majority of the United States Supreme Court, stated:

> It is not the duration or severity of the sentence that renders it constitutionally invalid; it is the careless or designed pronouncement

72. S. KRANTZ, THE LAW OF CORRECTIONS AND PRISONER'S RIGHTS 27 (1973).

73. Roughly, "hear the other side."

74. Wyzanski, *A Trial Judge's Freedom and Responsibility* 65 HARV. L. REV. 1281, 1291 (1952).

75. 334 U.S. 736 (1948).

> of sentence on a foundation so extensively and materially false, which the prisoner has no opportunity to correct by the services which counsel would provide, that renders the proceeding lacking due process.[76]

While *Townsend* held that a sentence predicated on false information about the criminal history of the offender is a denial of due process, there exists concern that cases continue through the courts on a negotiated basis in which there is no legal or factual reason for entering a plea of guilty. The negotiated disposition that follows is thereby based upon inaccurate or incorrect facts.[77]

VI. Recommendations for Change

There are two areas of sentencing in which the trial court could improve its functioning. First, it could maintain a scrupulously detailed record for appellate review. Second, it could carefully evaluate the impact of dispositional negotiation upon its role and responsibilities. *Townsend* was decided because the trial court acted on the basis of inaccurate information. On appeal, these inaccuracies were discovered and the matter remedied. The Juvenile Rules require imposition of the maximum sentence but do not require the court to state its mathematical methodology or the factual support for imposition of that sentence. Both would aid appellate courts in the review of sentencing practices by the California juvenile courts. This record is vital for informed growth of our law, first for use by the appellate courts in reviewing sentencing procedures, and later for use by the legislature as patterns for correction emerge. Negotiation of disposition between prosecution and defense tends to remove the court from one of its most crucial responsibilities. While many cases are highly appropriate for negotiation, many are not. The establishment of the dividing line should be a matter for the court rather than a matter left exclusively within the hands of prosecution and defense.

The role assumed in some counties by the prosecutor is in-

76. *Id.* at 741.

77. It has been the author's experience on several occasions, as an investigating probation officer attached to the juvenile court, to discover information which contradicted the court's acceptance of a guilty plea, such as lack of an element of the prima facia case or that an obvious defense existed. To its credit, the court reexamined each case immediately and took corrective action.

compatible with the sentencing function. Rarely has the prosecutor had training in the social sciences which would temper a purely legalistic approach to sentencing recommendations. Many prosecutors who have received training find it incompatible with the role properly assumed by the prosecutor. Generally a prosecutor does not have a sufficient familiarity with local and state correctional resources to make meaningful sentencing recommendations which bear practical relevance to the needs of the juvenile sentenced, restitution to a victim, or protection of the community. Few prosecutors are aware of the full context of the offender's social, economic, psychiatric, psychological, educational, and employment history so that an informed judgment can be made and a responsible recommendation presented to the court for its review and action. Practically, the prosecuting attorneys are advocates for the state, serving in a specialized role, and generally operating in an understaffed office. They are not allowed the time to adequately investigate the full dimensions of the case beyond the elements needed to establish the basis for criminal adjudication. Prosecutorial discretion in charging the crime, filing the petition, and in plea bargaining should not be extended to unbridled bargaining of the sentence. The court will be limited in its sentencing alternatives by the charge and plea but it should not delegate its sentencing responsibilities to the prosecutor so soon after regaining them from the administrative arena of the prison and parole system.[78]

Assembly Bill 1756 strips juveniles of the procedural rights guaranteed to similarly situated adult offenders. Juveniles are sentenced for the maximum term allowed by law while adults are sentenced for the middle of the three statutory terms unless

78. The author recommends the following as thought provoking, well reasoned examinations of this area:

1) ABA PROJECT ON MINIMUM STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO PLEAS OF GUILTY (Approved Draft, 1968).
2) PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: THE COURTS (1967).
3) Comment, *Reconstructing the Plea Bargain*, 82 YALE L.J. 286, 291 (1972).
4) AMERICAN BAR ASSOCIATION, STANDARDS RELATING TO SENTENCING ALTERNATIVES (1968).
5) AMERICAN LAW INSTITUTE, MODEL PENAL CODE—SENTENCING PROVISIONS (1963).
6) NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS AND GOALS, CORRECTIONS (1973).
7) NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS AND GOALS, COURTS (1973).
8) NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS AND GOALS, A NATIONAL STRATEGY TO REDUCE CRIME (1973).
9) NATIONAL COUNCIL ON CRIME AND DELINQUENCY, MODEL SENTENCING ACT (1972).

a hearing is conducted and matters are both heard and proved to justify imposition of a greater term. The procedural protection conferred upon adults is withheld from the similarly situated juveniles. It is suggested that although the courts may invalidate Assembly Bill 1756 this is more properly a matter for legislative remedy. The better course would be to adopt the methodology used from July 1 to October 1, 1977, under the joint operation of Sections 726 and 731 of the Welfare and Institutions Code and the Juvenile Court Rules. Unless otherwise established, juveniles, like adults, should be sentenced to the middle term of detention. Should the prosecutor plead and prove the facts in aggravation to require the maximum sentence, it should be imposed in juvenile court as it would be in adult court. Should defense counsel plead and prove facts in mitigation of the sentence, the minimum sentence should be imposed in juvenile court as it would be in adult court. Finally, it is suggested that the procedural aspects dealing with the enhancement of the base sentence in juvenile court parallel that function presently found in adult court.

The legislature should fully examine requiring annual reporting to the committing or placing court on the progress of the juveniles who are continued in a program outside of their natural home. This could well be an abbreviated report on a nonappearance calendar basis. Presently, the juvenile court has no method of monitoring the progress of those it sentences. When the court removes a juvenile from his or her natural home, it is recommended that there should be at least an annual check-up by the court on the progress the juvenile is making. The responsibility of the court should be ongoing as is its jurisdiction. Presently, the court is aware of failure only where a juvenile is returned to court. In such case, no added report is or would be necessary. In the event of an end to the commitment or placement within a year of its commitment date or the date of the last annual review, no report would need be made to the court.

Juveniles continued in a program should also be affirmatively and conscientiously reviewed by the court on at least an annual basis. The methodology by which this may be accomplished certainly is open to discussion between the legislature and the courts. However, it appears only reasonable to afford the

juvenile, who may be committed to a period of physical confinement, the same protection which the fifteen day review provides to the juvenile detained in a custodial setting pending the implementation of the court's dispositional order.

VII. CONCLUSION

Dean Pound captured the thought well in his observation that "the law must be stable, but it cannot stand still."[79] As historians, we have seen how other societies have addressed criminal behavior and applied their sanctions and we have judged them by their policies and practices. Those who come after will judge this society, not exclusively by its physical or economic goals, but also by how it treated fundamental social concerns and applied its sanctions. This balance is neither simply drawn nor unchanging. It poses an ongoing challenge as:

> There is inherent in all law a polarity which arises out of the unending struggle for supremacy between the need for stability of rights and institutions, and the need for humane solutions to controversies in accordance with considerations of individual justice.[80]

If criminal sanctions are effective, they improve the quality of life for the individual offender and the fabric of society in general. The community is both protected from future deviant acts and enriched by the presence of a responsible citizen. If criminal sanctions and efforts at rehabilitation and deterrents are not effective, society as a whole and the individual offender have lost something of exceptional value. The bargained sentence is as common as the bargained plea and reduced charge. These are practical, expedient, and pragmatic elements of the judicial system today yet they rob the offender and society of trial before an informed and impartial magistrate of the opportunity for the court's reasoned pronouncement of a productive and individualized sentence, and of the full protection that the criminal justice system, at its best, offers both the accused and the victim.

Another concern is the disparity in sentencing when the offender is one of high station or of exceptional familiarity with the court process. Mr. Durant notes that historically the "magnitude of the crime has been lessened by the magnitude of the criminal."[81] Murder by a chief in Fiji was considered a less heinous crime than theft by a commoner.[82] Perhaps a higher

79. MENNINGER, THE CRIME OF PUNISHMENT 95 (1971).
80. R.A. Newman, *The Place and Function of Pure Equity in the Structure of Law*, 16 HAST. L. REV. 401, 419 (1965).
81. W. DURANT, I THE STORY OF CIVILIZATION 27-29 (1935).
82. SIR JOHN LUBBOCK, THE ORIGIN OF CIVILIZATION 330 (1912).

standard of morality was suggested in the Sumerian law of the Third Millenium in that a higher penalty was extracted from the Patrician class because violation of a public trust was inherent in the basic criminal act.[83] Until society demands the quality of justice it says that it wishes and is willing to support, these and other disparities appear bound to reduce the effectiveness of rehabilitative or deterrent sentencing.

The expanded use of presentence or dispositional reports, even when the plea and charge are negotiated, would allow the court to make a more informed judgment as to the social need to be met in sentencing and the danger posed to the community by the offender. Disclosure of the report to the individual to be sentenced and to his or her counsel should be mandatory. California requires this in juvenile court matters and a uniform national adoption of this standard is suggested. It would seem necessary for responsible sentencing that the judge be familiar with the program, facilities, and resources invoked by a particular sentence. Yet many judges never see the institution or become familiar with the details of the program of rehabilitation which they order. On site inspection tours, instructional meetings with those operating the program, and an ongoing exchange of ideas with the resources brought into play by the court appear to be an obvious necessity; yet, this is rarely done.

Concurrent with the knowledge of the offender and the dispositional resource, the court should make a clear statement on the record as to why the sentence is being pronounced and the methodology by which it was reached. This allows both the individual offender and society in general to understand and monitor the process. It also allows the appellate court review to be specific in addressing sentencing process, should that become necessary. The court can also work to achieve greater uniformity between judges and jurisdictions through sentencing workshops and an improved statutory structure reducing the discretion of the judge. In California, Senate Bill 42 has accomplished a great deal of this not by removing the discretion of the judge but by tempering it so the court is directly account-

83. E.M. BURNS & P.L. RALPH, WORLD CIVILIZATION FROM ANCIENT TO CONTEMPORARY 124 (1964).

able for its orders. Sentencing is thereby appropriately made a public matter, not a subjective and secret balance performed only in the mind of the sentencing judge or in the hallway of the court.