



Office of the Public Advocate

Submission to the Parliament of Victoria Social and Legal Issues Committee Inquiry into Youth Justice Centres

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1. Summary of Recommendations

Promoting Independent Third Persons (ITPs) in Indigenous communities

Recommendation 1

The Victorian Government should provide funding to OPA to employ a Koori Liaison Officer, who should be incorporated within the ITP Program. Their role would include promoting the program in Indigenous communities and recruiting Indigenous ITPs.

Recommendation 2

The ITP Program should be funded to conduct training and information sharing with key stakeholders such as the Victorian Aboriginal Legal Service and the Regional Aboriginal Justice Advisory Committee.

Independent Third Person Program - Enshrinement in legislation

Recommendation 3

The Victorian Government should seek to amend relevant legislation to require Victoria Police to have an ITP present when interviewing all people with a cognitive impairment or mental illness.

Independent Third Person Program – Information and referral service

Recommendation 4

The Victorian Government should provide additional funding for the ITP Program to enhance its capacity to provide an information and referral service for people with a cognitive impairment or mental illness who are in contact with the criminal justice system.

Training to de-escalate minor incidents

Recommendation 5

The Department of Health and Human Services should review its procedures for dealing with issues of minor property damage and train its staff in de-escalation techniques to avoid the need to call Victoria Police.

Regular review of Incidents to address behaviours of concern

Recommendation 6

The Department of Health and Human Services should record and regularly review incidents to assess what additional support needs must be addressed to ensure that vulnerable clients do not develop a criminal history due to poor impulse control or challenging behaviours.

Individualised disability accommodation and support

Recommendation 7

The Australian and Victorian Governments should provide personalised, planned and flexible accommodation options to meet the needs of people with cognitive impairments who commit, or who are at risk of committing, violent offences and who need to live on their own with appropriate security and high ratios (2:1) of staff support early in the person's offending cycle to reduce the risk of their continuing to re-offend.



2. Introduction

The Public Advocate welcomes the opportunity to make a submission to the Victorian Parliamentary Inquiry into Youth Justice Centres.

2.1. About the Office of the Public Advocate

The Governor in Council appoints the Public Advocate in Victoria pursuant to the *Guardianship and Administration Act 1986* (Vic) (the Act). The Public Advocate delegates her power to act as guardian of last resort under the Act to her staff. The Office of the Public Advocate (OPA) is an independent statutory office empowered with a broad range of functions under the Act.¹ OPA safeguards the rights, interests and dignity of people with disability in Victoria.

OPA provides a number of services to work towards these goals, including advocacy, investigation and guardianship services for people with cognitive impairments or mental illness over 18 years of age.

OPA coordinates four volunteer programs. Volunteers visit and support people with cognitive impairments and mental illness. The volunteer programs are: the Community Guardianship Program, Community Visitors Program, ITP Program, and the Corrections Independent Support Officers Program.

OPA provides support to over 900 volunteers. The Community Visitors Program volunteers receive training to visit, report and monitor the adequacy of disability residential services, supported residential services, and mental health facilities. In 2015-16, Community Visitors conducted 5268 site visits to 1356 facilities across the state.² ITP Program volunteers attend police interviews where the alleged offender, victim or witness has a cognitive impairment or mental illness. The ITP's role is to ensure that the person being interviewed understands their rights and can communicate sufficiently to be interviewed. ITPs can be trained as Corrections Independent Support Officers (CISOs), who support prisoners with a diagnosed intellectual disability at Governors' Disciplinary Hearings in all adult prisons. In 2015-16, ITPs attended 2831 interviews and 179 prison disciplinary hearings as CISOs.³

2.2. Terms of Reference

This submission will address relevant aspects of terms of reference 4 and 5 based on OPA's expertise.

Term of Reference 4

Implications of incarcerating young people who have issues associated with mental health or intellectual functioning, in relation to— the likelihood of re-offending.

Term of Reference 5

Additional options for keeping young people out of youth justice centres.

2.3. The data sources for this submission

The quantitative data for this submission is taken from OPA's ITP Program and the qualitative data is drawn from OPA case studies from the Community Visitors and ITP Programs. All the data has been de-identified to ensure confidentiality.

¹ *Guardianship and Administration Act 1986* (Vic.), part 3.

² Office of the Public Advocate (2016). *Community Visitors Annual Report 2015-2016*. Melbourne: Office of the Public Advocate, p.12.

³ Office of the Public Advocate (2016). *Annual Report 2015-2016*. Melbourne: Office of the Public Advocate, p.16 (ITP), p. 18 (CISO).



3. Issues for discussion

The key issues this submission will discuss are:

1. OPA's involvement with young people with disability
2. ITP data relating to young people with a disability: 2015-2016
3. Repeat presenters

3.1. OPA's involvement with young people with disability

OPA is involved in a variety of ways with young people under 18 years of age, with cognitive impairments as their advocates and through its Community Visitors and ITP functions. The ITP Program, established in 1988, probably has the most frequent contact with people with cognitive impairment under 18 years of age. OPA has been concerned for a long time about the involvement of people with cognitive impairments or mental illness in the criminal justice system, many of whom are young people.⁴ It has undertaken previous research on this topic.⁵ The most recent report on people with cognitive impairments or mental illness and the criminal justice system is *Breaking the Cycle*. This report found that people with cognitive impairments were particularly at risk of maintaining a cycle of 'poverty, isolation and contact with crime, becoming "repeat presenters" with the ITP program'.⁶

3.2. ITP data relating to young people with disability: 2015-2016

In the last financial year, the ITP Program dealt with 342 people under 18 years of age accounting for 445 interviews. The number of interviews exceeded the number of individuals because a young person can be interviewed by police either as an alleged offender, victim or as a witness multiple times in one or more categories in the same financial year. Young people made up 15.6 per cent of all people of all ages with cognitive impairments supported by the ITP Program. Interviews with young people made up 16.3 per cent of all ITP interviews.

3.2.1. The ITP Program: A statistical overview

Table 1, below, shows, by interview type, the number of young people supported by the ITP Program in 2015-2016: nearly three-quarters of interviewees were alleged offenders. Slightly more than one in five were victims and less than one in ten were witnesses.

Table 1: ITP Interview types

	Alleged Offender	Victim	Witness
Number of interviews	321	99	25
%	72%	22%	6%

Overall, when the data for young people is compared with data for the ITP Program, as a whole, young people are **under-represented** as alleged offenders (72 per cent compared to 84 per cent) and **over-represented** as victims (12 per cent to 22 per cent) and witnesses (six per cent to three per cent).

⁴ Previous reports are referred to in Office of the Public Advocate (2012). *Breaking the Cycle of Crime for Young People with Disabilities: Submission to the Victorian Government Consultation: Practical Lessons, Fair Consequences – Improving Diversion for Young People in Victoria*. Melbourne: Office of the Public Advocate, p. 3.

⁵ McGuire, Magdalena (2012). *Breaking the Cycle: Using Advocacy-Based Referrals to Assist People with Disabilities in the Criminal Justice System*. Melbourne: Office of the Public Advocate.

⁶ McGuire, *Breaking the Cycle*, p.6.

**Table 2: Disability Type**

	No. of clients
Acquired Brain Injury (ABI)	13
Intellectual Disability	191
Intellectual Disability and ABI	3
Intellectual disability and Mental Illness	7
Mental Illness	42
Mental Illness - Bipolar	1
Mental Illness - Depression	1
Not Available	14
Other	35
Unknown	42
Unknown and Drug/alcohol affected	1

Table 2, above, shows the disability type of young people needing an ITP in 2015-2016.⁷ The largest group is people with intellectual disability, followed by people with mental illness, those with an unknown disability and those people with an ABI. Intellectual disability includes people with Autism Spectrum Disorder. OPA has noted that, in the first six months of the financial year, ITPs were involved with 84 people with autism. The youngest person was eight years old and had been a human trafficking victim. The largest group were between 14 and 26 years of age. While the majority of people interviewed were alleged offenders, a number had earlier received support from ITPs as victims of crime.⁸

3.2.2. Gender of young people

As Table 3 shows, ITP data for 2015-2016 indicates that when analysed by gender status, men are more likely to be alleged offenders (83 per cent), with women significantly more likely to be victims than alleged offenders (43 per cent compared to 51 per cent).

Table 3: Gender

	Alleged Offender	Victim	Witness
Female	43%	51%	6%
Male	83%	11%	6%

3.2.3. Koori young people⁹

Young people of Koori background make up about 0.7 per cent of the Victorian population and the population is generally younger than the non-Koori population.¹⁰ ITP data for 2015-2016 indicates that 42 young people of Koori background accounted for 66 interviews. This figure accounts for 12 per cent of the interviews. Furthermore, young people of Koori background appear to be **over-**

⁷ The categorisation of disability is based on the observation of individuals rather than any clinical diagnosis.

⁸ OPA, *Annual Report 2015-2016*, p.16.

⁹ Throughout this document the term "Koori" is used to refer to both Aboriginal and Torres Strait Islander people.

¹⁰ Victorian Aboriginal Legal Service (2015). 'Data of the Victorian Aboriginal Population' [Powerpoint presentation].

<https://vals.org.au/assets/2015/05/Data-of-the-Victorian-Aboriginal-Community.pptx> accessed 8 February 2017.



represented in the ITP Program compared to people of Koori background over 18 years of age (12 per cent compared to nine per cent).

Table 4: Koori young people by client type and gender status

	Alleged Offender	Victim	Witness	Total
Female	10	3	1	14
Male	51	0	1	52
Total	61	3	2	66

The data in Table 4 indicates that the overwhelming majority of ITP interviews attended in support of Koori young men relate to their committing alleged offences. The number of young women involved is too small to draw any firm conclusions.

Table 5: Disability breakdown of Koori interviews

Disability Type	No. of clients
Acquired Brain Injury (ABI)	1
Intellectual Disability	49
Intellectual Disability and ABI	2
Mental Illness	4
N/A	3
Other	5
Unknown	2

The majority of Koori young people interviewed had an intellectual disability, a similar amount to non-Koori interviewees.

This over-representation of Koori young people with the ITP Program is not surprising given the multiple disadvantages that young people of Koori background experience, including their over-representation, compared to non-Koori children, as clients of both the child protection and the youth justice systems.¹¹

OPA has recognised the increased vulnerability of Koories with cognitive impairments and mental illness to involvement with the ITP program. The ITP Program has a strategy specifically targeting Koories.¹²

As part of that strategy, OPA recommends:

¹¹ For Koori over-representation in child protection data, see Australian Institute of Health and Welfare (2015a). *Child Protection Australia 2014-15*, Canberra; Australian Institute of Health and Welfare. <http://www.aihw.gov.au/publication-detail/?id=60129554728&tab=2> Accessed 16 February 2017.

For Koori over-representation in youth justice, see Australian Institute of Health and Welfare (2015b). *Youth Justice in Australia 2014-15*. Canberra; Australian Institute of Health and Welfare. <http://www.aihw.gov.au/publication-detail/?id=60129554714&tab=2> Accessed 8 February 2017.

¹² McGuire 2012. *Breaking the Cycle*.



Promoting ITPs in Indigenous communities

Recommendation 1

The Victorian Government should provide funding to OPA to employ a Koori Liaison Officer, who should be incorporated within the ITP Program. Their role would include promoting the program in Indigenous communities and recruiting Indigenous ITPs.

Recommendation 2

The ITP Program should be funded to conduct training and information sharing with key stakeholders such as the Victorian Aboriginal Legal Service and the Regional Aboriginal Justice Advisory Committee.

Source: McGuire 2012, *Breaking the Cycle*, p.8.

3.3. Repeat presenters

Overall, these findings from the ITP program quantitative data tally with OPA's experience that people who are supported by ITPs can be repeat presenters. As indicated in Section 3.1. above, OPA's ITP Program data in *Breaking the Cycle* indicated that many of the people using the program over the years were repeat presenters, with about one-third of people using the program more than once.¹³

The Victoria Police manual recommends that an ITP be present during Victoria Police interviews where the alleged offender, victim or witness is suspected of having a cognitive impairment and/or mental illness. However, there is no current legislative requirement for the attendance of an OPA-trained ITP at all police interviews for people with a cognitive impairment or mental illness.¹⁴

OPA's experience is that the repeat presentations of this group of alleged offenders, victims or witnesses, requires an early intervention approach to eliminate or at least reduce contact with the criminal justice system. OPA's experience is that an ITP needs to attend all Victoria Police interviews involving all people with a cognitive impairment and/or mental illness. The ITP Program should also have sufficient funding to follow up repeat presenters in an effort to break the cycle of crime.

One ITP, interviewed for *Breaking the Cycle*, stated that: "I think it would be fairly accurate to say that almost all of them have had some previous involvement with the criminal justice system – and that's not just alleged offenders, but often also the victims and witnesses."¹⁵

Therefore, early intervention to support victims and alleged offenders to address key issues when under 18 years of age, before the cycle of offending becomes entrenched in adulthood, is a vital mechanism for reducing re-offending rates.

OPA is aware that Victoria Police has an internal electronic referral system to refer appropriate vulnerable clients to external services. OPA, however, believes that more intensive support is required than this service can provide to reduce the number of repeat presenters with cognitive impairments or mental illness. The OPA experience and access to these young people at their first point of contact with the criminal justice system means it is best placed to be funded for a specific information and referral service. This service would provide referrals and advocacy support to reduce the risk of the person with cognitive impairment or mental illness becoming a 'repeat presenter' in the criminal justice system. As part of the *Breaking the Cycle* project, participants

¹³ McGuire 2012, *Breaking the Cycle*, p. 6.

¹⁴ McGuire 2012, *Breaking the Cycle*, p.18, citing Victoria Police, Victoria Police Manual – Procedures and Guidelines, Independent third persons, p.4 [para 3.2].

¹⁵ McGuire, *Breaking the Cycle*, p.67.



could access some additional support. The benefits of this additional support are demonstrated in Rick's story.

Case Study 1

Rick's story: Getting linked in with help

Rick is a young man with a mental illness. Rick's mother has taken out an intervention order against him. Rick was interviewed by the police in relation to an alleged breach of this intervention order. An ITP volunteer supported Rick in his police interview. The ITP told Rick about the *Breaking the Cycle* project and said that, as part of this project, the program could try to link Rick in with help. Rick confirmed that he would like this. He told his ITP that he was homeless and wanted assistance finding accommodation. Rick's ITP took his contact details and passed them on to the ITP Program.

Rick met with the coordinator of the ITP Program to discuss his situation. Rick said that he had tried to get help on his own, but he was "just being shoved from one person to the next". Rick said that he had tried to find his own accommodation but, in fact, what he really wanted to do was to go home. Rick maintained that he had never been violent towards his mother. He believed that his sister had instigated the intervention order in an attempt to gain greater control over their mother's life and the substantial family inheritance.

The ITP Program linked Rick in with legal assistance. A lawyer was assisting Rick to go to court to try to get the intervention order lifted. The ITP Program also assisted Rick with getting in touch with an alternative dispute resolution centre. The centre was working with Rick to try and arrange family mediation. Rick recognised that repairing these family relationships would be hard work. However, he was committed to improving these relationships. Rick said that, without the assistance of the ITP Program, he would not have been linked in with this help.

Source: Based on an interview from Office of Public Advocate 2012, p. 13.

Luke, an ITP repeat presenter over 20 years had begun offending at 13 years of age and his story demonstrates the benefits of an ITP for the interviewee and the need to provide additional support after the interview with Victoria Police to prevent repeat presentations.

**Case Study 2****Luke's story - Repeat presenter since 13 years of age**

'I reckon I've had more than 40 police interviews. It started when I was 13. I was mainly driving cars without a license. I went to jail over driving charges. As soon as I turned 18, they locked me up. I was in prison for six months.

When you've got the Third Person in there, it does make it a lot better. It's a different situation. When I got that person in the room, the interview just goes so smooth ... It's just one interview, straight up.

If a Third Person offered me help I'd take it for sure. 'Cos you don't really come across help like that. You've got to go looking for it, and I'm not a person to go looking for help. I reckon that most of the people who get targeted by the police probably do need help. They're probably just like me and don't want to go out looking for help.'

Source: M. Maguire 2012. *Breaking the Cycle*, p.46 (abridged).

In an update to Luke's story, OPA has argued that:

'Luke has been unable to break the cycle of contact with police and ... this will probably continue and may result in Luke spending more time in prison. Yet, a timely intervention may have broken this cycle...'¹⁶

Independent Third Person Program - Enshrinement in Legislation**Recommendation 3**

The Victorian Government should seek to amend relevant legislation to require Victoria Police to have an Independent Third Person present when interviewing all people with a cognitive impairment or mental illness.

Independent Third Person Program – Information and referral service**Recommendation 4**

The Victorian Government should provide additional funding for the ITP Program to enhance its capacity to provide an information and referral service for people with a cognitive impairment or mental illness who are in contact with the criminal justice system.

OPA's experience indicates that repeat presenters often commit offences, involving minor criminal damage, which is part of an ongoing cycle of crime, which is more often a combination of the effects of their cognitive impairment and an indication of their frustration with the situation in which they find themselves rather than a desire to engage in criminal behaviour.¹⁷

An example of this situation is Ned's story.

¹⁶ Office of the Public Advocate (2013). *Annual Report 2012-2013*. Melbourne: Office of the Public Advocate, p.40.

¹⁷ Office of the Public Advocate (2012) *Practical Lessons, Fair Consequences*, p.7.

**Case Study 3****Ned's Story: Ensuring fair consequences**

Ned is 22 years of age. He has a moderate intellectual disability and autism. He has lived in Department of Health and Human Services (DHHS) group home accommodation since he was 16 years of age.

The DHHS service phoned Victoria Police to attend one evening following a critical incident in the house. Following the incident, Ned was arrested. He had made a hole in the wall of the group home. He was placed under arrest for criminal damage and interviewed two days later when an ITP was available.

During the interview, the police officer put to Ned that he caused around \$250 damage to the wall of his home that was owned by DHHS. Ned explained that he understands that he damaged the wall and that he would be prepared to pay for the damage. This was Ned's second charge of criminal damage in his home and, as a result, he understands he may need to go to court like the last time.

When asked why he caused the damage, Ned explained that he became upset that evening as he wanted more dinner. When staff would not provide more dinner, he got upset, took a knife from the dining room table and attempted to enter the locked kitchen by cutting the sensor lock out of the wall.

Ned agreed that he was very upset, shouting and using a knife to damage the wall. He agreed this would have been very scary for the support staff and other people who live in the house. He stated that he stopped after staff gave him PRN (as needed) medication that calmed him down. Ned was charged and his fingerprints were taken.

Following the interview the police officer spoke with Ned and attempted to explain that he "doesn't want to see him arrested again". When the police officer asked Ned what he would do next time he got angry, Ned stated he would try not to "blow up and scare people". Ned re-stated that he understood it was wrong but he had "trouble controlling his temper".

ITP Observations

- The charges appear to have resulted from an interaction of the person's cognitive impairment, the available support and responses. The support service was not present to explain why more dinner was not available to Ned, why the knife was left within his reach and what future support may be put in place to minimise Ned causing further damage. However, Ned has further charges on his criminal record.
- There is significant time required by Victoria Police, Victoria Legal Aid and the courts to process the charges, compared to an estimated cost of \$250 for the property damage.

Source: ITP Program case study

The negative consequences Ned experienced appear out of proportion to the minor offence committed. It is unclear why Ned was denied more dinner, and it is unclear why DHHS staff did not employ alternative strategies to de-escalate the situation, including implementing strategies included in any behaviour support plan to control his anger, removing weapons from Ned's reach and making him pay for the damage rather than calling Victoria Police.



OPA would like to see the policy of calling the police for minor damage reviewed and that staff receive training on how better to respond to such incidents in the future thereby reducing the need to call Victoria Police.¹⁸

Training to de-escalate minor incidents
Recommendation 5

The Department of Health and Human Services should review its procedures for dealing with issues of minor property damage and train its staff in de-escalation techniques to avoid the need to call the Victoria Police.

Regular review of incidents to address behaviours of concern
Recommendation 6

The Department of Health and Human Services should record and regularly review incidents to assess what additional support needs must be addressed to ensure that clients with disability, like Ned, do not develop a criminal history due to poor impulse control or challenging behaviours.

OPA's experience is that a small group of young people, who are involved with the criminal justice system are repeat presenters who are bounced around the disability system because of repeated, violent behaviours of concern.

These young people need individually tailored accommodation and support to prevent a re-occurrence of their behaviours of concern. When this offending is not addressed at an early stage, the cycle of offending continues.

Stella's story indicates the additional disadvantages experienced by young people with disability who move, or attempt to move, from out-of-home care to the disability services system and sometimes back again.

¹⁸ <http://www.dhs.vic.gov.au/about-the-department/documents-and-resources/reports-publications/residential-services-practice-manual-section-3.4>. 'Occupational Violence', includes advice about when the Victoria Police should be called. Victoria Legal Aid has raised the issue of children in out-of-home care being charged for minor criminal damage caused in their residential home. In family homes, the police would not normally be called out for such minor incidents. Victoria Legal Aid (2017). 'Care not Custody – a new approach to keep kids in residential care out of the criminal justice system'. '<http://www.legalaid.vic.gov.au/about-us/research-and-analysis/care-not-custody-new-approach-to-keep-kids-in-residential-care-out-of-criminal-justice-system>' Accessed 19 February 2017.

**Case Study 4****Stella's story- Bounced around the system - 1**

Stella, 17, was interviewed by police in 2015 for an alleged offence of threats to cause harm.

She moved to a Community Residential Unit (CRU), later that year. In early 2016, police followed up with the ITP Program to get a statement from the ITP as they were likely to proceed with a case against this young woman.

The ITP database shows volunteers have attended 14 interviews with Stella since August 2011 mainly as an alleged offender for a range of offences like assault, threats to kill, assault with a weapon and property damage. However, in 2013, an ITP attended for a victim interview as she alleged that she had been raped.

At about that time, Stella moved to another DHHS CRU, where she only lasted five days, previously she had lived in an out-of-home care facility run by a Community Support Organisation (CSO). She has a mild intellectual disability, is from a culturally diverse background and her family live overseas.

Stella was inhaling deodorants and, with some friends, broke into the house where they were inhaling together on Christmas day. They caused some property damage including damage to a car.

Stella apparently threw a picture at another male resident, R, and he and another resident, G, were scared of her. The operations manager spent several hours at the house on Christmas day and consulted with the DHHS area manager by phone. The three other house residents were male, in their 40s and were deemed by the area manager to be at risk. They were offered counselling after Stella left the house.

Unfortunately, the timing of Stella's move coincided with the long-term carers she was close to being on leave and she was already on a year's suspension from her day program. She had two case managers: one for disability and the other for child protection who had been seeking accommodation for her. The carers were also seeking a mentor for Stella through EMERGE, an innovative mentor, youth and regional outreach community cultural development program for emerging culturally and linguistically diverse refugee communities in Victoria.

Consequently, Stella moved back to the out-of-home care facility run by the CSO. Now that she has turned 18 years of age and aged-out of the child protection system, what will happen to her is an open question.

Source: ITP Program case study

This situation illustrates the need for more accommodation and support options for young people with disability and complex needs. It also highlights the need for additional staff in the ITP Program to work with young people like Stella to ensure that there is not a continuing and increasing number of offences committed, which will likely see her end up in jail.

A second example of what happens when young people with cognitive impairments who are at risk of committing violent offences are bounced around the system is illustrated in Mick's story, which is taken from the 2014-2015 Community Visitors' annual report. An update on Mick's current situation is provided.

**Case Study 5****Mick's story: Bounced around the system – 2**

Mick, a young man with autism, originally shared a house with several young men with intellectual disability.

After assaulting one of his co-residents, alarms were put on doors and instructions were issued to staff that the alleged offender was to be kept in sight at all times. The police, DHHS, and the parents of the victim were contacted by the service.

The distressed parents of the victim sought help from the Minister and numerous agencies, including OPA. The alleged offender was moved to hotel accommodation, and then a 'contingency house'.

The matter was subject to police investigation.¹⁹

Update: After several other moves, Mick continued to bounce around the system between DHHS and various CSO-managed houses. He is currently being supported in a house on his own by a CSO with 2:1 staff at all times. This is good as it enables him to maintain contact with his family. Unfortunately, Mick has recently been charged with assault.

Source of update: Community Visitors Program, February 2017

Individualised disability accommodation and support**Recommendation 7**

The Australian and Victorian Governments should provide personalised, planned and flexible accommodation options to meet the needs of people with cognitive impairments, who commit or at risk of committing violent offences and who need to live on their own with appropriate security and high ratios (2:1) of staff-support early in the person's offending cycle to reduce the risk of their continuing to re-offend.

¹⁹ Office of the Public Advocate (2015). *Community Visitors Annual Report 2014-2015*. Melbourne: Office of the Public Advocate, p. 84.



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