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CRIME RESEARCH CENTRE

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Research Report No. 1
October 1989

ISBN 0 86422 087 1

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The Report
This research was funded by a grant of $26,988 made available by the Criminology Research Council (No. 5 of 1988). Additional computing funds were made available by the Crime Research Centre of the University of Western Australia. The final version of this report was written whilst Professor Harding was working as Director of the Crime Research Centre and Ms Blake as Research Officer at the Western Australia Law Reform Commission. The authors wish to record their appreciation to each of the above institutions.

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1. Introduction

This report sets out the results of a pilot research project designed to identify factors relevant to weapon choice by violent offenders in Western Australia.

The selection of such a project arose out of several matters of current criminological concern. First, there is the well-documented fact that public fear of violent crime runs at consistently high levels.[1] Second, that fear is even more intense in relation to violent crime involving the use of firearms, a crime category which is measurably growing.[2] Fear is engendered whether the firearm is *actually used* or not; it is enough that the random infliction of major injury or death *can* occur in such situations. From these points is derived the third matter, that public fear of violent crime is as potent a force in the development of crime and justice policies as is the actual frequency of such crime. The fact that these fears may, from an abstract statistical point of view, be exaggerated does not alter the social and political reality that they exist.[3]

The fourth current concern relates to broad principles of crime prevention. It has been argued that there has not been enough research into the decision-making processes of offenders, so as to identify possible modes of reducing their violence.[4] The firearm is more dangerous than the knife, and the knife than the broken fence-picket.[5] If violence itself

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1 See the public opinion surveys cited by Harding, *Gun Law Reform in New South Wales: Better Late than Never*, Proceedings of the Sydney University Institute of Criminology, No. 64, pp. 32–60, at p. 34 (1985). Note also material referred to in *Violence, Crime and Australian Society*, Report No. 1 in the series *Violence Today*, Australian Institute of Criminology (February 1989). In the particular context of fear of crime in Western Australia, see Indermauer, "Public Perception of Sentencing in Perth, Western Australia" (1987) 20, *Australian and New Zealand Journal of Criminology*, pp. 163–182.

2 As to fear levels, see "How the Public sees Crime: An Australian Survey", *Trends and Issues in Crime and Criminal Justice*, No.2, Australian Institute of Criminology (1986). As to increasing levels of firearms use, there is no single Australian publication which draws together crime patterns by weapon use. However, see "Firearms and Violence in Australia", *Trends and Issues in Crime and Criminal Justice*, No. 10, Australian Institute of Criminology (1988). In Western Australia itself, police statistics show an increase in gun-robberies from 48 in 1984/5 to 103 in 1986/7, and this pattern of increasing use of firearms has been maintained.

3 See Indermauer (1987), cited in footnote 1 above, particularly pp. 175–178 and the citations contained therein. Note also the oft-made point that the apparent disparity between potential victimisation rates and fear of crime rates, identified by numerous studies, does not necessarily mean that the fear level in question is irrational. Groups such as the elderly well understand that, if they are victimised, their vulnerability in that incident is greater than that of younger people. Their fear is akin to that of plane travellers who may well understand that the likelihood of a crash is far less than that of a car crash but who also understand that, if a crash does occur, their likelihood of survival is far less than in a car crash.

4 Harding, *Firearms and Violence in Australian Life*, University of Western Australia Press (1981).

5 This raises the "substitute weapon" debate. The seminal article by Zimring, "Is Gun Control Likely to Reduce Violent Killing?", (1967–8) 35, *University of Chicago Law Review*, p. 721, has never been refuted. The main aspects of the subsequent debate are summarised in Harding, "An Ounce of Prevention...: Gun Control and Public Health in Australia", (1983) 16, *Australian and New Zealand Journal of Criminology*, pp. 3–19. It is undoubtedly true that less lethal weapons tend to be used more often in robbery situations and thus, quantitatively, cause more injury. But where firearms are actually used to inflict injury, qualitatively they are far more dangerous: see Zimring and Zuehl, "Victim Injury and Death in Urban Robbery: A Chicago Study", (1986) 15, *Journal of Legal Studies*, pp. 1–40.

cannot be prevented, might there nevertheless be available strategies to bring about displacement from a more dangerous to a less dangerous form? One can anticipate that one such strategy would be related to the operation of the principles of deterrence.

The fifth concern relates specifically to firearms use. Hard upon some horrifying incidents of mass random shootings, the perception has grown in Australia that young persons may become socialised to gun use, in the sense that if they later become involved in a violent crime event or embark upon a criminal career they may be more likely to use firearms than offenders who have not been thus socialised.[6] The argument is *not*, it should be stressed, that early familiarity with firearms may in itself be a criminogenic factor, pushing into crime people who would otherwise not become offenders at all; rather it relates to the chosen modus operandi of those who do become criminal.

6 Three mass random-killings committed by "gun-nuts" during 1987 were presented by the media in this way.

2. Previous Research

Lettkemann in his 1973 book, *Crime as Work*, had approached crime patterns from the novel perspective of efficient work practices.[7] He observed that displacement from surreptitious to overt crime, more specifically burglary to robbery, could occur as targets hardened or rewards dim-inished. Overt crime necessarily involved victim confrontation, and thus depended for its success on the worker-criminal's capacity for victim-management as well as his choice of tools and his talents as a planner and organiser. As with all work situations, some workers adapted better than others.

This simple insight deserved to be built on by further research. However, United States work concentrated much more on the "technology of violence";[8] moreover, an enormous amount of time and intellectual effort was put into the increasingly arid debate about the "substitute weapon" theory.[9] As so often with criminological research, American scholars seemed almost totally unaware of pioneering projects being carried out north of the border.

In the Australian context, Harding was able to state as late as 1981 that the category of research waiting to be done included "the decision-making processes of robbers. What governs their choice of weapon, if a firearm was chosen did this affect the composition of the team, would fears as to greater penalties for firearms robbery operate as a marginal deterrent?"[10] There was a comparable hiatus in relation to decision-making processes of violent criminals generally, though much more was beginning to be known about the typology of such crimes.[11]

The first major attempt to carry out primary research in this field was made in 198–84 by Wright and Rossi. Their results were published in 1986 in the book, *Armed and Considered Dangerous: A Survey of Felons and their Firearms*.[12] This was a slightly misleading title inasmuch as the work

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7 Lettkemann, *Crime as Work*, Spectrum Books, Prentice-Hall. New Jersey (1973).

8 A phrase coined by Philip Cook to encompass the notion that the means of perpetrating violence is a more important determinant of its effect than the motive with which it is inflicted. Thus, research should be carried out into comparative efficacy of various means, the impact of limiting the availability of those means, and so on.

9 See footnote 5, above.

10 See footnote 4, above.

11 See, for example, the following Australian publications: Bartholomew, Milte and Galbally, "Sexual Murder: Psychopathological and Psychiatric Jurisprudential Considerations" (1975) 8, *Australian and New Zealand Journal of Criminology*, p. 143; Francis, "Migrants and Violent Crime" (1976) 8, *Journal of Forensic Sciences*, pp. 14–23; South Australian Office of Crime Statistics, *Homicide in South Australia - Rates and Trends in Comparative Perspective* (1979), Series II(1); Najman, "Victims of Homicide: An Epidemiological Approach to Social Policy" (1980) 13, *Australian and New Zealand Journal of Criminology*, p. 272; Bacon and Lansdowne, *Women Homicide Offenders in New South Wales*, Feminist Legal Action Group (1982). The culmination of this trend was the excellent study by Wallace, *Homicide: The Social Reality* (1986) New South Wales Bureau of Crime Statistics and Research.

also covered the behaviours of offenders armed with weapons other than firearms and those who were not armed at all. The title was, perhaps, symptomatic of their concern to fit their work into the general debate about gun control. As they pointed out, "the design and contents of this survey evolved out of a comprehensive review of the extant literature on weapons, crime and violence in America."[13] Yet, even though the survey related not only to the offence for which respondents were serving their current prison sentence but also to the remainder of their criminal careers, no more than 50% of the final sample had committed one or more gun crimes.

The methodology followed by Wright and Rossi was to survey by way of self-administered questionnaires a sample of almost 2000 convicted felons who were serving time in State prisons and who had begun their current prison term on or after 1 January 1979. The survey took place during the period August 1982 – January 1983. The sample was drawn from 10 State prison systems, thus permitting a spread across the main regions of the United States. In all States except one, only one prison facility was surveyed; they were mostly maximum security, but also took in one "country club" and several medium security institutions.

Where the prison authorities allowed, Wright and Rossi offered a small inducement – a carton of cigarettes – to potential respondents. This had an apparent bearing upon the participation rate. Where prison authorities would not permit this inducement, participation was as low as 24%; but where inducements were offered the normal rate was upwards of 70%.

Wright and Rossi recognised the inherent and inevitable limitations of their methodology. They stressed that their purpose was primarily descriptive. "We plead guilty in advance to the (inevitable) charge that this work is largely atheoretical. But, on the other hand, where is the criminological theory that says *anything at all* about the role of firearms in the lives and activities of the criminal population?"[14] With this comment we see, once more, the centrality of firearms policy to their research.

In the report of our own research, frequent reference will be made to the findings of Wright and Rossi. At this point, however, only two comments require to be made. The first relates to their propensity to allow data to cloud, rather than to enlighten, their criminological common sense; the second, to their failure to pull current deterrence research into their argument.

As to the first, then, they are sometimes too subservient to their data because of the mode of statistical analysis which they adopt. Their sample was made up of non-random cross-sections of non-random prison populations within States selected on a non-random basis. Their data are categorical or discrete. There is nothing in itself wrong with conducting this kind of research in this way; indeed, it is probably the only feasible way in which it can be done at all.

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12 Wright and Rossi, *Armed and Considered Dangerous: A Survey of Felons and Their Firearms*, Aldine de Gruyter, New York (1986).

13 Ibid, p. ix.

14 Ibid., p. x.

However, where Wright and Rossi create a problem for themselves is by *treating their data as if they were randomly derived and, more importantly, non-categorical or continuous.* In particular, at numerous points in their analysis they apply regression analysis techniques to these bundled -up sets of data relating to attitudes and likely behavioural patterns – data derived from what are essentially discrete non-random samples. As Zeisel has commented: "Applied to non-experimental data, regression analysis is not naturally a robust instrument."[15]

An example of where this approach leads Wright and Rossi by the nose into unsustainable propositions – or at least propositions which part company with criminological common sense – concerns encounters between offenders and victims armed with firearms. Their Table 7.5. sets out "Experiential Results" with regard to confronting the armed victim. The first two items in the table are relatively "hard" – "Did you ever personally run into a victim who was armed with a gun?" and "Have you ever been scared off, shot at, wounded or captured by an armed victim?" The second two items are "soft", being either attitudinal or vicarious – "Was there ever a time... when you decided not to do a crime because you knew or believed that the victim was carrying a gun?" and "Have any of the criminals you have known personally ever been scared off, shot at, wounded, captured or killed by an armed victim?"[16]

So far, so good. But now the authors roll all the results together into an "Encounter Index" on the basis that the correlation coefficients between these items are strong enough to justify this course. Then by means of regression analysis they seek to establish (their Table 7.7) that the most frequent gun-users in the sample ("predators") most frequently encountered armed victims and, presumably, were most frequently scared off.[17]

What all this is leading to is a justification of the ownership of "defence-guns" in American social life.[18] What it fails to do is to analyse what sorts of crime (assault v. burglary v. robbery v. rape) led to encounters with *armed* victims and – the other side of the coin – who the armed victims were.[19] Even more important, the statistically-dictated conclusion fails to take account of far more cogent analyses of the use of the defence-gun, analyses which look at such incidents in the criminological round. Most notably, it ignores the epidemiological approach of Kellermann and Reay,[20] whose 1978–83 study found in conformity with earlier studies[21] that for every case of self-protection homicide involving a home defence-

15 Zeisel, "The Deterrent Effect of the Death Penalty: Facts versus Faith" (1976), *Supreme Court Review*, p. 333.

16 Wright and Rossi, pp. 154–155.

17 Ibid., pp. 156–158.

18 Ibid., pp. 158–159; see also pp. 3–4, 10–11, 15, 237–238.

19 See Zimring's review of Wright and Rossi (1988) *American Journal of Sociology*, pp. 224–226.

20 Kellermann and Reay, "Protection or Peril? – An Analysis of Firearm-Related Deaths in the Home" (1986) 314, *The New England Journal of Medicine*, pp. 1557–1560.

21 See, for example, Rushforth et al., "Accidental Firearms Fatalities in a Metropolitan Count, 1958–73"(1975) 100, *American Journal of Epidemiology*, p. 499; Yeager et al., *Does the Handgun Protect You and Your Family?*, (1976) Publication of the US Conference of Mayors; Harding, "Firearms Ownership and Accidental Misuse in Western Australia" (1976) 12, *University of Western Australia Law Review*, p. 122; Harding, "Firearms Ownership and Accidental Misuse in South Australia" (1978) 6, *Adelaide Law Review*, p. 271.

gun there were 1.3 accidental deaths, 4.6 criminal homicides and 37 suicides involving such guns.

What this tends to show is that a study such as that carried out by Wright and Rossi should not look for revelation via regression – or any other statistical technique. In behavioural matters, statistical tests are best utilised to help one see red lights, not green ones.

As for the second point of criticism – failure to pull current deterrence research into the argument – this is simply another illustration of that peculiar American intellectual parochialism which so often fails to look north. Wright and Rossi do produce fascinating material on why non-gun users do not carry guns, as well as on why gun-users carry them.[22] However, Canadian work, to be referred to in detail later, was already in existence suggesting that mandatory additional penalties for the use of firearms in crime might well bring about a displacement effect, or some degree of marginal deterrence, with regard to gun-users.[23] Their work may only have purported to have been descriptive – and we do not criticise it merely for that. But an important perspective nevertheless appears to be missing.

To turn now to other relevant research, in Canada Gabor et al.[24] have recently carried out an important project relating to armed robbery in the province of Quebec. The research drew mainly upon information contained in police files relating to 1266 robberies in Montreal and Quebec City. Important information was also obtained by way of interviews with 39 convicted robbers who were serving terms of imprisonment. This will be referred to in more detail later, particularly in the context of discussion of individual motivation and how the criminal justice system as a whole may be tuned in to the possible modes of discouraging people from continuing their criminal careers.

A team in the Federal Republic of Germany has likewise analysed the typology and behavioural aspects of armed robbery.[25] In this case, the self-administered questionnaire technique was used. As in the case of the Canadian research, the project was confined to robbers rather than extended to violent offenders generally. Full results are not yet available in English.

In Australia, Kapardis[26] has conducted structured interviews with 100 convicted armed robbers serving sentences in Victorian prisons during 1981. As with the later studies of the New South Wales Bureau of Crime Statistics and Research,[27] the study yielded higher grade data about the

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22 Wright and Rossi, Chapter 6, passim, and in particular pp. 131–133.

23 Scarff et al., *Evaluation of the Canadian Gun Control Legislation: First Progress Report*, Solicitor-General Canada (1981); Scarff, *Evaluation of the Canadian Gun Control Legislation: Second Progress Report*, Firearms Policy Centre of the Solicitor-General Canada (1983); Scarff, *Evaluation of the Canadian Gun Control Legislation: Final Report*, Solicitor-General Canada (1983); *Firearms Control in Canada: An Evaluation*, Solicitor-General Canada (1983).

24 Gabor et al., *Armed Robbery: Cops, Robbers and Victims*, Charles C. Thomas, Springfield, Illinois (1987). See also Gabor, *Armed Robbery Overseas: Highlights of a Canadian Study*, in Challinger (ed.) *Armed Robbery*, Australian Institute of Criminology (1989), pp. 13–23.

25 Irle, *Guiding Patterns of Bank Robberies*, Intermediate Report, Federal Police Authority (1988).

26 Kapardis, *One Hundred Convicted Armed Robbers in Melbourne: Myths and Reality*, in Challinger (ed.) *Armed Robbery*, Australian Institute of Criminology (1989), pp.37–47.

typology of armed robbery than about the decision-making processes of the robbers themselves. However, there were some interesting results to which reference will be made later in this report. As with the Canadian and West German work, these two Australian studies focussed on armed robbery specifically, rather than violent crime more generally.

Subsequently, the Australian Institute of Criminology has embarked upon a study of armed robbers who committed their offences in New South Wales and Victoria. Once more, the methodology is primarily that of the self-administered questionnaire answered by a sample of the convicted population. Results of this externally-funded research are expected to be available some time in 1990.

The Western Australian research will thus be able to be fitted into a growing patchwork of research into the decision-making processes of violent offenders generally and armed robbers in particular, both within Australia and throughout the western world.

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27 *Robbery Study: First Interim Report – Police Reports of Robberies in New South Wales*, N.S.W. Bureau of Crime Statistics and Research (1986); *Robbery: Final Report*, N.S.W. Bureau of Crime Statistics and Research (1987).

3. Methodology of the Western Australian Research Project

The relevant offender population was first identified. This consisted of all prisoners, male or female, serving a custodial sentence for a violent offence at the time of the survey (October/December 1988) and who had been convicted after March 1985. For logistical reasons, two prisons – the Eastern Goldfields and the Wyndham regional prisons – had to be left out; however, contact was made with the remaining 14 prisons in the State system.

For the purposes of the study an offence was defined as "violent" if its commission involved either actual or potential physical harm to somebody else. Offences falling within this category were: wilful murder and murder; other unlawful killings; assault; sexual assault of various degrees; robbery; and related offences, notably attempts.

There were 469 relevant offenders in the 14 prisons at the applicable time. Each of these was informed, through the prison management, of the fact that this research project was to be carried out and that participation would be entirely voluntary.

We had at first considered offering an inducement – $50 to be paid into the respondent's release fund. However, after discussion with the prison authorities, who were uneasy about this approach without wanting to prohibit it, we decided to offer no such incentive. This not only brought the West Australian study into line with that about to be carried out by the Australian Institute of Criminology but also allayed our slight fear that we might attract any "jokers" within the prison population, who tend to regard all attempts at eliciting behavioural information as "academic" bulldust – something to be undermined or parodied.

In the event, 123 usable responses were obtained.[28] The response rate was thus 26.2%. Interestingly, though perhaps coincidentally, that was about the same as the response rate obtained by Wright and Rossi in relation to the one State prison where they were not permitted to offer an inducement. Naturally the response rate varied from institution to institution, with a male prison high of 57% and low of a mere 6%. The response rate in the State's only female prison was 89% – though in reality this simply meant that 8 out of 9 eligible prisoners participated.

It is considered that, in the circumstances, the overall response rate was satisfactory. The fact that voluntariness was absolutely authentic obviously tended to reduce participation. So, too, did factors beyond the control of the researchers – notably, the fact that the effects of the Fremantle Prison riot trials[29] and of the ongoing Royal Commission into

28 Six responses were removed from the sample because, in our judgment, they were too risky or otherwise invalid. The reasons were: incompleteness, unreliability emerging from the evident lack of comprehension of the questions, and unqualified (i.e. focal offence not "violent") offenders.

Aboriginal Deaths in Custody were still being felt throughout the prison system, by prisoners and prison officers alike. The attitude of prison officers, as Wright and Rossi had also found,[30] can have a crucial influence on the readiness and ability of prisoners to participate in such studies.

However, the most daunting aspect – the one most calculated to reduce the participation rate – was probably the information collection method itself. The method adopted was that of a self-administered questionnaire. Although it was colour-coded so as to fast-track respondents to the sections relevant to their own category – Armed with gun, Armed with knife, Armed with other weapon, Unarmed – nevertheless even the shortest variant involved coping with a document of 96 questions, of which an absolute minimum of 46 would require written answers to be filled in. In this context, eligible offenders with writing and reading problems may have been deterred from participating. Obviously, this risk could be exacerbated in relation to Aboriginal offenders; though as it turned out Aboriginal participation was only slightly lower pro rata than eligibility.

This foreseen difficulty was coped with to some extent by the availability of one of the researchers in the activity room where the respondents were answering their questionnaires. In actual fact, quite substantial assistance was given to some respondents. However, the fact that help was able to be offered was clearly not a means of overcoming threshold reluctance; if they were not in the room in the first place, our palliative would be futile. Thus, it must be conceded that almost inevitably our sample would have contained a "selection bias", to adopt Glaser's terminology.[31] However, as will be explained later, we believe – for reasons which once more emulate Glaser[32] – that the possible "application bias" would have been less significant.

What about data quality? Wright and Rossi discuss this at length, drawing particularly upon the definitive study of prisoner self-report data carried out by Marquis.[33] They endorse his general conclusions:

> (a) there is no evidence that prisoners attempt to deny salient aspects of their criminal past;
> (b) comparisons of self-reported conviction-offence data showed that generally the data are close to unbiased; and
> (c) discrepancy between survey and official data were not well predicted by verbal ab-

29 Sections of Fremantle Prison had been occupied, some prison officers taken hostage, and a wing set on fire in January 1988. Criminal trials arising out of that incident were taking place throughout the period during which we were conducting our survey. Because of the number and status of the prisoners involved and the concern within the Prison Officers' Union, the atmosphere in Fremantle was tense; to some extent that feeling had spread through some other near-Metropolitan prisons.

30 Wright and Rossi, pages 24–32.

31 Glaser, *The Interplay of Theory, Issues, Policy and Data*, in Klein and Teilman (eds.), *Handbook of Criminal Justice Evaluation*, Sage Publications (1980), pp. 123–142.

32 Ibid., at p. 124.

33 Wright and Rossi review Marquis's 1981 Rand Corporation study at pages 32–33.

> ility, memory or demographic characteristics, which is to say that reporting errors were, in essence, randomly distributed over the survey population.

Wright and Rossi cross-checked their findings by comparing criminal-record responses with official records. Marquis's findings were vindicated. We made no attempt to do this formally in relation to our own survey population, though the informal feedback from prison officers organising or supervising the survey sessions at the various institutions tended to confirm that the basic information reported to us was correct.

In reality, our concern was not so much with lies as to the nature of the crime for which there had been a conviction; rather we were concerned about exaggerations, braggadocio or frivolity with regard to personal attitudes and motivations – matters to which Marquis's study is not addressed. Wright and Rossi certainly encountered this in relation to that part of their sample which had been offered inducements;[34] we hoped to avoid this by our late decision to make participation entirely voluntary. From the internal evidence of the tone of the answers, and the absence of obscenities or sarcastic comments scrawled across the quest-ionnaires, as well as from the personal impressions of the researcher who was in direct contact with the respondents, we believe that we were reasonably successful.

A mass of information, then, was obtained about the *focal offence* committed by each of the 123 respondents. The "focal offence" is the phrase we use to describe the particular violent crime which had landed the offender in prison on the relevant occasion. In the case of those who were serving cumulative or concurrent sentences for more than one offence, the one for which the greatest sentence had been imposed was treated as the focal offence. This approach seemed to cause no difficulty to respondents.

The responses were coded, and the information sifted by computer. Several tables will thus be found set out in this report. However, it is essential to emphasise at this early stage that the study does not depend for its validity or strength upon tests of statistical significance. The use of survey material is principally qualitative. The data are indicative of criminological insights, not statistical proof of their correctness.

Subservience to data can obfuscate criminological common sense; in the case of Wright and Rossi, an example of this tendency has already been given.[35] What will follow, then, is a criminological study, seasoned here and there with data; not a statistical study larded here and there with lumps of dubious criminology. It is a pilot study aimed at generating hypotheses, rather than proving them.

Two final points should be made before coming to the results themselves. First, a distinct limitation of the Wright and Rossi study – one

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34 Ibid., pages 29–32.

35 See above, pages 4–6.

which they themselves acknowledge[36] – was that juveniles were not interviewed. The participation rate of juveniles in violent crime is increasing and is a matter of widespread political and social concern. Clearly, it would be advantageous to conduct research into their decision-making processes, as well as those of adult offenders.

Our intention was to do this; indeed, permission to do so was obtained from the relevant State authorities. The research grant application referred to this aspect of the proposed research. In the event, this part of the project failed. Numerous factors contributed. One was the speed at which offenders moved through the institutional system. Another – less tangible – was the feeling of institutional managers that the time was not quite right; for some structural problems as to the working of juvenile justice policies were occurring at about the time we were carrying out this study. The most important factor, however, was that identified in relation to adults – that the self-administered questionnaire required a degree of literacy which was often lacking, particularly amongst a population which was disproportionately Aboriginal. In the event, only 15 usable questionnaires were returned; after examining them, we did not consider that they offered any reliable criminological signposts.

The second matter related to Aborigines. None of the previous studies mentioned above had succeeded in eliciting anything worthwhile about indigenous or minority groups, at least in contrast to the dominant social group.[37] Our research was reasonably successful in this regard. We managed to pick up 33 Aboriginal respondents, i.e. 27% of our total sample. This compared to a total percentage of 31.4% Aborigines in the prison system at the time, and a total of 33.4% serving sentences for violent offences, as defined.[38] However, to put this in perspective, it should be pointed out that the response rate was very much enhanced by a 100% response rate in one northern regional prison, whereas in the near-metropolitan and southwest prisons there were much lower rates.

Finally, before coming to the data and our analyses, our terminology should be clarified. The "total sample" (n = 123) consisted of all respondents. The Northwest Aboriginal sample (n = 18) is self-explanatory. The "remainder of the sample" or "main sample" (n = 105) consists of the total sample minus the Northwest Aboriginal sample. The "robbers" sample (n = 37) includes the sub-sample of gun-robbers (n = 15).

No separate analysis will be shown of female violent offenders (n = 9) or the non-Northwest Aboriginal violent offenders (n = 15). The numbers were too small and the patterns not sufficiently distinctive. These groups thus appear as components of the relevant residual group, such as the "main sample" or "robbers".

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36 Wright and Rossi, p. 22.

37 Wright and Rossi's sample under-represents black prisoners, over-represents other non-white prisoners (mainly because of the inclusion of a disproportionate number of American Indians from prisons in two of their sample States) and fairly represents white prisoners: see pp. 38–41. Their analysis does not differentiate between these groups, however; they are simply "armed offenders".

38 An offence was defined as "violent" for the purposes of the research if its commission involved either actual or apprehended potential physical harm to another person or persons. The offences mainly falling within this definition were: wilful murder, murder, manslaughter, robbery, assault of various degrees, sexual assault and related offences, including attempts to commit these offences.

As with all surveys, numbers do not invariably tally with the size of the sample. It will be seen that there are missing data and multiple data in some tables.

4. The Main Hypotheses

There were two main issues which the research sought to explore. The first was: *how far did socialisation with regard to firearms affect the use of firearms by persons who subsequently became involved in violent crime?* It should be emphasised again that it was not hypothesised that early socialisation to firearms use and ownership was in itself a factor predisposing or conditioning persons to crime per se or violent crime in particular.

The second issue was *whether the decision-making processes of those offenders who used firearms were, in choosing their weapon, different from those of other armed violent offenders?* From this second question, a further issue arose – namely, whether gun-users were deterrable, at least from the use of firearms in crime. As Andanaes has said: "Generally speaking, the more rational... a specific violation may appear, the greater the importance of criminal sanctions as a means of sustaining lawfulness."[39] The hypothesis was that choice of a firearm was, within the crime context, sufficiently "rational" (i.e. apparently adapted to the achievement of a desired objective) to be within the realm of conduct which can be affected by criminal sanctions.

Any such effect could be called "secondary-level deterrence", i.e. a factor deterring offenders not from criminal activity itself but from a particularly dangerous or fear-inducing modus operandi. Alternative terminology may be that of "marginal deterrence", in the sense that it does not purport to deter conduct absolutely but rather to encourage a displacement effect into the use of less anti-social or dangerous means.[40] Whichever terminology is preferred, its main impact would be upon particular offenders – what Andanaes calls "mere deterrence".

Of course, people are not equally receptive to the deterrent strategies of the penal system. Nor is any particular individual equally deterrable at all times or in relation to all types of proscribed conduct. Accordingly, information about the situations of such offenders at the very time the offence was committed should ideally be obtained. Moreover, in evaluating deterrability, not merely the conduct and decision-making processes of firearms-users but also the contrasting behaviours of other-weapon-users and non-weapon-users should be examined.

A related question which should also be explored is whether "general prevention" (Andanaes's term to describe the moral or socio-pedagogical

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39 Andanaes, "The General Preventive Effects of Punishment" (1966) 144, *University of Pennsylvania Law Review*, pp. 949–983, at p. 958.

40 It has been pointed out that, in a sense, virtually all deterrence theory is concerned with marginal deterrence – the question whether a particular sanction or mode of intervention deters more than another. The question of absolute deterrence – Does a particular sanction, as opposed to no sanction at all, deter? – seldom in practice arises, except as an aspect of the criminalisation/decriminalisation debate: Zimring and Hawkins, *Deterrence: The Legal Threat in Crime Control*, University of Chicago Press (1973), pp. 13–14. In this Research Report, however, the phrase marginal deterrence is being used in a slightly different sense, as indicated.

influence of punishment across the relevant community) might also be achieved in this area. If so, this would once again not be in the sense of absolute crime prevention but by way of displacement into less dangerous modes – secondary-level or marginal deterrence.

As the research progressed, it became apparent that the second set of questions could more profitably be explored in relation to armed robbers rather than violent offenders generally. Members of this group were the predominant users of firearms; their crime-objectives were relatively clear-cut; their motivations not unduly muddied in the pool of human yearnings and frustrations. Broadly speaking, patterns which emerged in broken lines with regard to armed offenders generally stood out in bold for armed robbers.

Paradoxically, then, our study turned itself into one primarily about armed robbery, and its specific contrasts with violent crime generally. Also, like Wright and Rossi, we found ourselves focussing particularly on firearms users, and the specific contrasts with other violent offenders.

Let us return now to Glaser's point about "application bias".[41] He defines this as "any difference between the sample or population in a particular category of subjects ... selected for an evaluation and the other populations in this category to whom the particular evaluation's conclusions will be applied at a later time and possibly at a different location." This bias is potentially far greater than a selection bias and far more potentially destructive of research findings. However, "theory-focussed sampling can diminish handicaps from application bias or selection bias in generalizing from evaluative research, because it fosters comparisons of outcomes for persons in a set of rubrics with theoretically contrasting implications, regardless of the location of these persons in time, place or administrative category."[42]

In our case, the theory with which we approached this project is very much derived from differential association, though takes in also some standard deterrence theory – notions that are by no means irreconcilable with each other.

We do not believe that there are any root causes that lead certain persons to choose one kind of a weapon rather than another for the commission of crime. In spontaneous crime, we would expect availability to be the single most significant variable of weapon choice; though even in this area learned behaviours could be expected to have some impact upon some choices.

With regard to non-spontaneous crime, our expectation was that choice is predominantly influenced by learned behaviours absorbed both at the pre-criminal career stage and during the criminal career itself. Those behaviours may more readily have been learned because they positively assist the successful or convenient realisation of the particular criminal event itself; in other words, such learning may be intelligent and inductive, not merely rote. Because these behaviours have been intelligently learned, they may likewise be intelligently "unlearned" – by an excess of definitions unfavourable to their continuance, to adopt the term-

41 See footnotes 31 and 32, above.

42 Glaser, at pp. 124, 125.

inology of standard differential association theory. Psychologists, doubtless, would prefer one to describe this process as learning new behaviours, rather than "unlearning" established ones.

Finally, it is our belief, as already stated in the context of deterrence, that people learn behaviours at different rates and to differing extents and, indeed, that stronger pre-existing associations may stop them from learning some behaviours at all. Conversely, their "unlearning" rates will differ.

Seen against this theoretical backdrop, our study is best thought of as a pilot project – one which can be replicated in relation to some future group in Western Australia or another Australian group at a different time and place. This is so even if the sample possesses, as did our own, some selection bias.

If our theory is well-grounded, however, the application bias of this research study could turn out to be quite slight. One can anticipate that the greatest source of this kind of bias might arise out of the fact that so many violent offenders, both in our sample and generally, are also current drug-users at the time of the commission of their offences.

5. Socialisation to the Use of Firearms

It is evident that gun use patterns are partly cultural, transcending mere availability. For example, in Switzerland and Israel, where in different ways gun ownership is an expression not of personal desires or whims or recreational needs but of obligation to the political entity of which one is a part, both the instrumental and the expressive use of firearms in crime is very low. In other words, availability per se has only a limited bearing upon gun use, because stronger social influences are at work.[43]

By contrast, in the United States, gun availability *is* crucially related to gun use in crime. In that country, gun ownership is an aspect of self-expression – to enable persons to do things such as hunting which they find personally satisfying – or is an aspect of their perception of their own relationship to the rest of society – to defend themselves against intruders and so on. In most parts of the United States, any countervailing social inhibitions which exist seem to be ineffectual.

Zimring and Hawkins[44] criticise the view that there is a single and prevalent "gun-culture" in the United States. They point out that, at the very least, there are two gun-cultures – one owning firearms for sport and recreation, the other for protection and defence. This is certainly true; and from the point of view of identifying a politically feasible strategy for implementing some form of gun control (the context in which they discuss this matter) it is potentially a crucial observation. Nevertheless, none of the available evidence suggests that these two cultures differ significantly in the extent to which, in the course of committing crime, they are prepared to use firearms. Availability, on whatever basis, seems to be a key matter.

Where does Australia stand in this? Previous survey and crime analysis information[45] has suggested that, in terms of motives for ownership and patterns of crime commission, Australia is certainly more akin to the United States than, say, to Switzerland or Israel. In some ways, to be described below, the survey information tends to confirm this – i.e. it links gun use to availability and individualistic cultural standards. Yet what also emerges from the research is that, from the point of view of firearms use in crime, there is more than one gun-culture in Australia. A striking finding is that *Northwest Aborigines undergo early and sustained exposure to firearms but do not use them in violent crime.* Specifically, only 1/18 of this group was a gun-criminal, in contrast to 17/105 of the remainder of the sample.[46] Something of the Aboriginal ethos was,

43 Harding, "An Ounce of Prevention...: Gun Control and Public Health in Australia" (1983) 16, *Australian and New Zealand Journal of Criminology*, at pp. 5–6.

44 Zimring and Hawkins, *The Citizen's Guide to Gun Control*, Macmillan, New York (1987), pp. 68–73.

45 Harding, *Firearms and Violence in Australian Life*, University of Western Australia Press (1981), chapters 4, 5, 10 and 11.

perhaps, captured by the respondent who said that "guns are for shooting tucker, not people."[47]

The data which follow allow this hypothesis to be explored in a more structured and less impressionistic way. In doing so, it is necessary to emphasise yet again that we are not seeking to assert that the figures themselves almost deterministically compel any particular conclusion by dint of tests of statistical significance.[48] It is simply that they provide a factual backdrop to discussions which, ultimately, will derive their interest from criminological and behavioural common sense, and which subsequently may be able to be explored further by way of additional research.

The data in Table 1 suggest that, in terms of basic familiarity with firearms, there were no marked differences between Northwest Aborigines and the remainder of our sample. For convenience and simplicity, the categories of Armed with Knife, Armed with Other Weapon, and Unarmed have been collapsed into the single category of "No-gun users". This enables hypotheses about factors relevant to gun-choice in violent crime to be more explicitly explored.

Obviously, if a particular segment of the population were culturally insulated from any exposure to firearms – like the Pennsylvania Amish or the U.K. Christadelphians – it would hardly be surprising to discover that their crime patterns reflected this. But in the case of Northwest Aborigines the figures confirm what we know already, that they are exposed to firearms to much the same extent as the rest of the surveyed population.

46 If we were, in this study, looking under stones to see if tests of statistical significance could be satisfied, these differing use patterns would by a chi-squared test be significant at the 0.01 level. There are other tables which would measure up in this way, but in the light of our declared policy in relation to the proper role of data in studies such as this, we will not draw attention to them.

47 In 1988, an incident occurred where an outback or tribal Aborigine shot and killed five family members. This is absolutely atypical of patterns of violence by full-blood Aborigines, though gun use in crime by urban Aborigines is becoming more common.

48 Cf. Wright and Rossi, and note the discussion at pp. 4–6, above.

TABLE 1 : Familiarity with firearms x gun/no-gun use in focal offence Northwest Aborigines and remainder of sample.

Familiarity		Gun Users	No-Gun Users	Total
Yes	NW Aborigines	1	14	15 (83.3%)
	Remainder	17	79	96 (89.7%)
No	NW Aborigines	0	3	3 (16.7%)
	Remainder	0	11	11 (10.3%)
Total	NW Aborigines	1 (5.9%)	17 (94.1%)	18 (100.0%)
	Remainder	17 (15.9%)	0 (84.1%)	107 (100.0%)

What also emerges, as Table 2 indicates, is that the age of first exposure to firearms was much the same for both groups – about half being under 13, and the bulk of the rest under 17. This finding, incidentally, serves to fortify Harding's earlier observation that the laws relating to use and acquisition of firearms are largely irrelevant to people's actual behaviour in introducing youngsters to gun use.[49]

TABLE 2 : Age of first exposure to firearms x gun/no-gun use in focal offence – Northwest Aborigines and remainder of sample.

Age		Gun Users	No-Gun Users	Total
8–12	NW Aborigines	1	6	7 (46.7%)
	Remainder	8	40	48 (53.9%)
13–16	NW Aborigines	0	6	6 (40.0%)
	Remainder	6	19	25 (28.1%)
17–20	NW Aborigines	0	2	2 (13.3%)
	Remainder	1	13	14 (15.7%)
20+	NW Aborigines	0	0	0
	Remainder	0	2	2 (2.3%)
Total	NW Aborigines	1 (6.7%)	14 (93.3%)	15 (100.0%)
	Remainder	15 (16.9%)	74 (83.1%)	89 (100.0%)

Tables 3 and 4 begin to explore qualitative questions as to socialisation. Does the social/relational context of initial exposure to firearms use have any bearing upon the subsequent choice of a firearm as a crime weapon? In particular, if persons are introduced to and trained in the use of firearms by "authority figures", do they show a lesser propensity to choose guns as crime weapons than if peer-group members are their models?

49 Harding, *Firearms and Violence in Australian Life*, University of Western Australia Press (1981), pp. 62–64.

TABLE 3 : Person introducing offender to initial firearm use x gun/no-gun use in focal offence – Northwest Aborigines and remainder of sample.

Person		Gun Users	No-Gun Users	Total
Grandfather	NW Aborigines	0	0	0
	Remainder	0	1	1
Father	NW Aborigines	1	8	9
	Remainder	5	30	35
Uncle	NW Aborigines	0	1	1
	Remainder	0	10	10
Brother	NW Aborigines	0	1	1
	Remainder	3	6	9
Cousin	NW Aborigines	0	0	0
	Remainder	2	5	7
Friend	NW Aborigines	0	4	4
	Ramainder	9	23	32
Criminal	NW Aborigines	0	0	0
	Remainder	3	1	4
No-one	NW Aborigines	0	0	0
	Remainder	1	5	6
Farm/Station	NW Aborigines	0	0	0
Owner	Remainder	0	1	1
Other	NW Aborigines	0	6	6
	Remainder	0	6	6
Total	NW Aborigines	1	20	21
	Remainder	23	88	111

TABLE 4 : Person showing offender how to use firearm x gun in focal offence – Northwest Aborigines and remainder of sample.

Person		Gun Users	No-Gun Users	Total
Grandfather	NW Aborigines	–	–	–
	Remainder	0	1	1
Father	NW Aborigines	0	6	6
	Remainder	4	20	24
Uncle	NW Aborigines	0	1	1
	Remainder	0	7	7
Army Cadets	NW Aborigines	–	–	–
	Remainder	0	6	6
Army Reserve	NW Aborigines	–	–	–
	Remainder	2	7	8
Brother	NW Aborigines	–	–	–
	Ramainder	2	2	4
Cousin	NW Aborigines	–	–	–
	Remainder	1	2	3
Friend	NW Aborigines	0	1	1
	Remainder	6	15	21
Criminal	NW Aborigines	–	–	–
	Remainder	2	2	4
Other	NW Aborigines	0	2	2
	Remainder	0	9	9
Total	NW Aborigines	0	10	10
	Remainder	17	71	88

It is recognised, of course, that even in cases where there is comprehensive information available about interrelationships, it is not always easy to say who is an authority figure and who is a peer-group member. The categories may merge, and sometimes the formal situation may be positively contra-indicative.

Nevertheless, this insight – valid for individual psychology – is not helpful when trying to identify and develop hypotheses about broad phenomena. Thus, one can sensibly say that grandfathers, fathers and uncles typically represent authority figures, whilst brothers, cousins, friends and criminals typically represent peer-group members; the remaining categories are unclear. With regard to the inclusion of criminals in the category of peer-group, incidentally, it will be seen later that this sort of peer-group involvement continues markedly into the criminal career of gun-offenders – a factor which certainly serves to justify this mode of categorisation.[50]

On that basis, it is interesting to note that 47% of the main sample were first introduced to firearms by peer-group members, as opposed to 24% of Northwest Aboriginals. More cogently, when it came to the more active role of showing offenders how to use firearms, it emerges strikingly

50 See below, p. 22.

that the greater the influence of the peer-group the more firearms were likely to be chosen as crime-weapons, and the greater the influence of authority figures the less likely are firearms to be chosen: see Table 5.

TABLE 5 : Categories of persons showing offender how to use firearms x gun use in focal offence: remainder of sample.

	No-gun Use	Gun Use	Total
Authority Figures	28	4	32
Peer-Group Members	21	11	32
Other	22	2	24

Another striking difference concerns the gun-owning patterns and motives of fathers. Surprisingly high percentages of offenders were brought up in situations where their fathers lived at home when they were kids: 90% for Northwest Aborigines, 75% for the remainder of the sample. Of these fathers, some 71% of the Northwest Aborigine group owned guns, whereas only 49% of the remaining sample of offenders did so. Obviously, therefore, the opportunity for "authority figure" impact, in gun use as everything else, was correspondingly diminished in relation to the remaining sample.

With regard to the fathers of the remainder of the sample, about one in six owned their guns for some aspect of protection or defence – in contrast to the Northwest Aborigine group none of whose fathers owned a firearm for this reason. Quite the contrary; the Aboriginal fathers owned their guns for legitimate and practical reasons, such as hunting (shooting tucker again) and employment on a station where vermin has to be shot from time to time, sick cattle destroyed, and so on.

When the main sample was broken down into gun-users and others, it was found that a greater proportion (58% as opposed to 49%) of fathers of gun-users owned firearms and that a greater proportion of these (27% as opposed to 16%) in turn owned them for some aspect of protection or defence. This observation is worthy of further research, and plugs back in to the whole debate about permissible motives for gun ownership in Australian society.[51]

Wright and Rossi have comparable findings as to early exposure to firearms by persons who use guns in crime. They comment:

> [t]he average gun-owning criminal, like the average legitimate gun-owner, was raised around guns and introduced early in life to their use. It may well be that there are multiple gun-cultures, some of which strongly disapprove of the illegal (or quasi-legal) uses of guns and some of which do not. In any case, gun ownership in the population at large and among our sample

51 See above, pages 5–6.

> of prisoners displays unmistakable cultural aspects.[52]

The observation that gun-criminals are markedly more exposed to peer-group members than to authority figures as they learn gun-use might, perhaps, seem to be diluted in its significance by the fact the knife-criminals manifest similar patterns – 63% of them having learnt how to use firearms in the company of peer-group members as opposed to 22% with authority figures.

However, the initial observation is fortified by data as to the reinforcement of shooting experience, i.e. the persons with whom respondents went shooting when young. These show that gun-users were overwhelmingly more likely to have gone shooting with brothers, cousins, friends and brothers-in-law than any other group. More specifically, none of these respondents learned their gun-use habits by shooting with authority figures.

Moreover, as previously foreshadowed, gun-criminals maintain their social habits of mixing with peer-group gun-users even after attaining adulthood. It emerged that 82% of this group had friends who owned a gun, and that 71% of them had friends who had committed offences with guns – a markedly higher figure than the next highest (52% re knife-criminals).

Pursuing, as with the fathers of gun-users, the motives of such peer-group members for owning guns, it emerged that 18% did so for the very purpose of committing crimes and 50% for some aspect of self-protection. This astonishingly high protection figure also ties in, as will be seen, with the instrumental reasons for which gun-robbers, in particular, use firearms in crime – reasons which Wright and Rossi characterise as "protection or defence" but which in reality amount to the desire to control events through superior power.[53] It should be put on the record that, once more, knife-criminals are most proximate in their patterns – 9% of their gun-owning peer-group doing so for the purposes of committing crimes and 52% for some aspect of protection.

Wright and Rossi recorded their own findings as follows:

> In short, we witness in these data a rather intriguing pattern. When considering the more normal or legitimate aspects of firearms behavior (whether the felon ever owned a gun, how many he has owned, how old he was when he first fired or acquired one, etc.), fathers appeared to be the predominant influence (reinforced to be sure by all the other agents of socialization as well). When considering the seamier or clearly criminal aspects of firearms behavior, however, the influence of fathers (and other family agents)

52 Wright and Rossi, p. 116.

53 Ibid., chapter 6, particularly at pp. 136, 139.

> paled considerably, and the effects of one's peer group came to dominate.[54]

The Western Australian data arguably point in a slightly different direction. Wright and Rossi in effect try to compartmentalise family or paternal influence, ascribing neutral or desirable traits to it but not anti-social ones, which are somehow magically derived from peer-group contacts. Our data would seem to indicate that the interplay of influences is more complex than that, but *that peer-group influences do have an especially strong influence in a continuing way upon many young gun-criminals*.

A question which seems to arise from the foregoing is that of *how best to break up such sub-cultures* and whether doing so may be *effective as a means of secondary crime prevention*, i.e. preventing crime from occurring in its most dangerous form.

In summary, the overall thrust of the socialisation arguments seems to be as follows:

(i) strong acculturation against criminal use of firearms will hold even in the face of their widespread availability, as demonstrated by the example of the Northwest Aborigines;
(ii) persons who commit gun crimes are for the most part socialised to gun use at an early age, though in this respect they are little different from violent criminals generally;
(iii) such persons are socialised significantly more through peer-group members than authority-figures; and
(iv) their socialisation tends to be continuously reinforced by their moving in a sub-culture where gun use generally, and also in crime, is relatively normal.

54 Ibid., p. 122.

6. Decision-making Processes of Armed Offenders, Particularly Robbers

At an instrumental level, this is essentially the issue of victim-management. What will emerge is that gun-criminals have a different perspective as to the tactical aspects and imperatives of crime from other violent offenders, including those who were armed with a knife or some other weapon. In summary, it will be seen that the gun-criminal is generally more calculating than other violent offenders. How he has come to be so and what can be done about it are, of course, key questions, to be examined in Part 7.

In particular, these observations emerge graphically in relation to armed robbers, as previously foreshadowed. It will be recalled that the total sample was 123. Of these 37 were armed robbers of whom, in turn, 15 used firearms in carrying out their crimes. As emerges from Table 6, the remaining 86 offenders thus included only 3 who had used firearms in the focal offence.

TABLE 6 : Use of guns and other weapons x robbers and other violent offenders.

	Guns	Knives	Other	None	Total
Robbers	15	10	4	8	37
Other Offenders	3	17	11	55	86

What follows, therefore, is an analysis of the decision-making processes and the behaviours of robbers. The contrast will usually be between gun-robbers and other robbers. Occasionally, however, the conduct or thought processes of armed offenders generally will provide a backdrop.

Before getting to the detail, it is necessary to reiterate the point that was made at the outset – namely that *gun use*, in this context, *does not equate with firing a gun*. In fact, only 2 of the gun-crime incidents picked up by this study involved actually firing the gun; the remaining 16 involved threats and intimidation. A major concern of this research is the impact that fear of violent crime can and does have upon the development of crime and justice policies. In that context, the fear engendered within the broader community, as well as amongst victims in the particular situation, is likely to be much the same in either event. It is enough that random infliction of violent injury can occur in such situations. Accordingly, throughout the remainder of this report *the phrase "gun use", and all derivative phrases, describes carrying and displaying a firearm in a crime-event, whether or not that firearm was actually discharged.*

Turning, then, to the survey results, it was not surprising to discover that gun-robbers had put some effort into planning their crime. It was claimed that 87% (13/15) of gun-robbers planned their crime, whereas only 40% (9/22) of other robbers made a comparable claim. This planning is not done, however, in the expectation of encountering armed or systematic resistance. Thus, 80% of gun-robbers positively did not expect the victim to be armed; 90% of the other categories of robber had similar expectations.

Nevertheless, gun-robbers were more inclined to make some kind of a check on crime-scene security arrangements, 53% (8/15) having done so. Other robbers were more casual, apparently much more inclined to leave things to chance, only 20% of them having made a check. In much the same way, gun-robbers turned their minds more to the possibility of being caught, 73% having pondered this question and its implications. By contrast, less than 20% (4/21) of other robbers had thought about the matter at all. A distinct picture of the gun-robber as the top-of-the-range, forward-planning criminal is beginning to emerge.

Of course, "planning" in this context does not involve the sort of planning that might go into a corporate takeover. Kapardis, for example, had found with regard to his Melbourne sample that 23% of robbery incidents were completely unplanned.[55] A further 11.5% of cases involved only an hour's lapse of time between getting the idea to commit the offence and actually doing so; and a further 28% took place within 24 hours. On the other hand, the lapse of time in carrying out the remainder was from 3 days to more than a week.[56]

These observations are closely analogous to those of Gabor et al. with regard to their Quebec sample. They found that 20% of robbers did no planning whatsoever and a further 20% who considered themselves to be planners in fact spent less than an hour working it out. However, a further 40% spent days or even weeks planning their enterprise.[57]

Neither of these surveys specifically identified whether there was any great difference between gun-robbers and other robbers; but as in Kapardis' study 66% and in Gabor's 72% of offenders had been involved in gun robberies, clearly some gun-robbers must have been fairly casual in their approach to planning.[58] To that extent, their findings differ somewhat, albeit imprecisely, from our own.

However, it is considered that the most important thing for present purposes is the view robbers have of themselves. If they think of themselves as planners and thinkers, that very fact is potentially important for crime prevention purposes, regardless of whether those of us who are not armed robbers would be satisfied with the degree of "planning" they put into their enterprise.

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55 Kapardis, "One Hundred Convicted Armed Robbers in Melbourne: Myths and Reality", in Challinger (ed.), *Armed Robbery*, Australian Institute of Criminology (1989), at p. 41.

56 Ibid.

57 Gabor et al., *Armed Robbery: Cops, Robbers and Victims*, Charles C. Thomas, Springfield, Illinois (1987).

58 See Kapardis, cited in footnote 55 above, at p. 42. The Melbourne study was strikingly different from the Western Australian one in that (i) there was a much greater incidence of gun use, and (ii) where guns were used they were actually fired during approximately one gun-robbery event in four. See also Gabor, cited in footnote 57 above, at pp. 31–33.

The picture of the gun-robber as something of a planner is fortified as one considers the reasons given for carrying a gun. As foreshadowed, they relate to victim-management and situation-control. The first point to note is that guns are the most favoured weapon of choice in commercial crime situations. Thus, when ordinary citizens and relatives were the victims, guns were the least used means; whereas when employees and shop-owners were victimised, guns were the most frequently-used means: see Table 7.

TABLE 7 : Victims x gun/no gun use in focal offence.

Victim	Gun Users	No-Gun Users	Total
Ordinary Citizen	7	41	48
Relative	1	17	18
Criminal	1	9	10
Employee	10	11	21
Shop-owner	3	7	10
Householder	1	2	3
Other	2	19	21
Total	25 (19.1%)	106 (80.9%)	131 (100.0%)

Computing difficulties prevented this point being pinned down in the specific context of armed robbery. However, such a likelihood accords with the findings of the NSW Bureau of Crime Statistics and Research. In its Final Report on *Robbery* (1987), data are set out in Table 2.7. showing gun or assumed-gun use in 64% of commercial robberies, as compared with 8% of personal robberies. Conversely, the New South Wales study showed that no weapon at all was used in 78% of personal robberies, as opposed to 15% of commercial robberies.[59]

In North America, such observations have been commonplace for many years. As previously mentioned, Lettkemann observed in his 1973 Canadian study that victim-management is the key to successful commercial robbery: "the establishment of authority is no doubt enhanced by the display and use of weapons."[60] Skogan, in a 1974 study of weapon use in commercial and personal robberies in the United States, found that guns were used in 64% of commercial robberies but only 19% of personal robberies. He observed: "Having more firepower available enables miscreants to choose targets with more impunity, to select desirable victims, and to discount their conventional forms of resistance or retreat."[61]

With regard specifically, then, to armed robbery, Table 8 sets out the reasons given for gun-use. In each case, the numbers and percentages agreeing with any given proposition are set out, as well as the percentage of those in agreement who considered that the reason was very important to them.

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59 *Robbery: Final Report*, N.S.W. Bureau of Crime Statistics and Research (1987), at p. 35.

60 Lettkemann, *Crime as Work*, Spectrum Books, Prentice-Hall, New Jersey (1973) at p. 114.

61 Skogan, "Weapon Choice in Robbery", in Inciardi and Pottieger (eds.), *Violent Crime: Historical and Contemporary Issues*, Sage Publications (1978), at p. 68.

TABLE 8 : Gun use by armed robbers – reasons.

	Agree – Number and % of Respondents	Very Important – Number and % of those in Agreement
Enables offender to get the victim to do what you want.	15 (100.0%)	9 (60.0%)
Enables offender to control victim.	13 (86.7%)	9 (64.3%)
Prevents resistance by victim.	15 (100.0%)	10 (66.7%)
Enables several people to be controlled at the same time.	14 (93.3%)	9 (64.3%)
Enables robbery to be carried out quickly.	13 (86.7%)	11 (84.6%)
Reduced the chance of offender himself getting hurt.	14 (100.0%)	11 (78.0%)
Made offender feel more self-confident.	13 (86.7%)	8 (61.5%)
A gun is a tool of one's trade.	10 (71.4%)	7 (77.8%)

These reasons for gun-use are classic aspects of victim-management. The impression is strong that armed robbers who use guns are very much aware of the volatile and dynamic nature of the enterprise upon which they are embarking, and consider the gun is instrumentally the optimum means for keeping it as static and predictable as is feasible.

This victim-management perspective is reinforced when one considers the reasons which were regarded as positively invalid for choosing a firearm. They are set out in Table 9.

TABLE 9 : Gun use by armed robbers – false suggested reasons for use.

Reason	Number and % of Gun Robbers Deeming it False
The victim might have been armed.	7 (3.9%)
Offender knew victim would be armed.	13 (92.9%)
Security guards might be armed.	9 (60.0%)
Offender knew security guards would be present at scene.	13 (100.0%)
Gun needed as protection from security guards.	11 (84.6%)
Gun needed as protection from Police.	9 (64.3%)
Gun needed as protection from other criminals.	11 (84.6%)

What emerges very strongly from this table, then, is that protection from the use of force by victims or by law enforcement personnel does not really rate as a reason for gun-use at all. This observation ties in with the previously-cited data relating to the non-expectation of encountering armed or systematic resistance – data which, it will be recalled, related to gun-criminals generally.

The "protection" sought is thus not protection in a defensive sense at all, but rather *protection against the situation developing in a way which is beyond their control.* In their own perception, *gun-robbers are behaving rationally,* optimising their chances of committing their crimes successfully. They are managing their victims, controlling their work environment.

One odd result that should also be noted is that only 33% characterised as false the suggestion that guns were carried so as to minimise the chance of the victim getting hurt, whereas 67% said that was true.

Whether this is a self-serving afterthought or part of the rational assessment referred to previously is impossible to determine.

One should interpose at this point the findings of Wright and Rossi. They state:

> Our data suggest that the possibility of using one's gun to commit a crime is not the only motive for carrying one. Most gun criminals appear to have acquired and carried guns also for their own self-protection in what is clearly a hostile and violent environment...[62]
>
> Concerning the most recent handgun acquisitions, the predominant motive by far was self-protection: 58% of ... the sample cited this as a "very important" reason why the most recent handgun was obtained. No other reason even comes close. The next highest "very important" percentage was for "target shooting" (31%). Thus most felons who acquired a handgun did so, they said, for their own self-defence. Remarkably, "to use in my crimes" was cited as a "very important" reason by only 28% of the sample; the proportion citing self-protection was more than twice as large.[63]

However, they later acknowledge the essential ambiguity of their question and the answers by acknowledging that the self-protection of which their respondents speak is to a considerable extent "protection against the risks involved in the commission of crimes",[64] or what we describe here as victim-management.

Their results, therefore, although presented almost from the point of view of the "rationality" of gun ownership per se – by anyone, criminal or potential victim – do not seem to contradict our own observations.

Robbers armed with knives were the next most numerous group (9 persons). It emerged that they had made at least a passive choice *not to use a gun;* i.e. their decision had not simply been forced upon them by circumstances, but rather they had turned their backs on the possible opportunity of using a gun in their crimes.

The number of responses to each question is too low (7/9 at most) to justify a percentile mode of description. But it should be noted that it was apparently false to suggest that (a) they would not know where to get a gun, or (b) that they would not know how to use one (a point which ties in well with the very high levels of gun-familiarity amongst the whole group), or (c) that it was too much trouble to get a gun. Nevertheless, the sub-sample agreed that it could be *difficult* to get a gun – a judgment not inconsistent with their other views.

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62 Wright and Rossi, at p. 14.

63 Ibid., at p. 136.

64 Ibid., at p. 139.

A nice blend of cowardice and self-knowledge also underlay the decisions of members of this knife-user group not to use a gun. A substantial number thought (i) that they would not trust themselves with a gun, (ii) that someone (others? themselves? – this was not clear) might get hurt if they had one, and (iii) that they themselves were more likely to get hurt by the police.

Finally, we come to the extremely important factor of sentence-expectation. Slightly more than half of knife-robbers considered that they would get a harsher sentence if caught, and *each one of these respondents considered that this was a very important reason for not using a gun in carrying out their robberies*. These reactions were representative of knife-criminals generally, not merely knife-robbers.

The findings of Wright and Rossi in relation to armed offenders who did not use guns are strikingly reminiscent of our own. They state:

> The armed-not-with-a-gun criminals were also asked why they had opted not to carry fire-arms; the unarmed criminals were asked why they had opted not to carry any weapons. Remarkably, there was virtually perfect agreement between the two groups... In both cases, the most important reason for not carrying was that "the guy who carries [a gun or a weapon] is just asking for trouble",... followed by "you get a stiffer sentence if you get caught with [a gun or a weapon]"... The other top four finishers in both groups were: "I never needed [a gun or a weapon] for the kind of crimes I did"...; "if you carry [a gun or a weapon] somebody is going to get hurt"...; "I just wouldn't feel right [carrying a gun or a weapon]"...; and "I just never thought about carrying a [gun or weapon]."[65]

Later, they state:

> Finally, it is of some relevance to note that the decision not to carry a gun had little, if anything, to do with availability, knowledge, or price. The least important of all factors asked about was, "A good [gun or weapon] just costs too much money"... "It is too much trouble to get a [gun or weapon]" and "I wouldn't know how to use a [gun or weapon] if I had one" were also not important to the large majority. As noted previously, a substantial majority of the unarmed criminals in the sample, in fact, had owned guns. That these men did not use guns to commit crimes is not, therefore, the result of

65 Ibid., at p. 132.

> inadequate knowledge about or exposure to them.[66]

Clearly, on the basis of the Western Australian and the United States evidence, knife-robbers in particular, and other non-gun-using robbers generally, are, as a group or entity, *different from gun-robbers in that they contemplate the operational possibilities and risks of gun-use and decide not to take them,* whereas gun-robbers having contemplated those risks decide nevertheless to take them. From the point of view of the standard "just deserts" model of sentencing, as well as from the points of view of secondary or marginal deterrence, this would seem to be a crucial factor in sentencing such offenders.

66 Ibid., at p. 133.

7. Deterring the Use of Firearms

Inexorably, then, the question of possible modes of deterrence arises. The classical theory of deterrence[67] revolves around the highly rational principles of pleasure and pain, rewards and punishments. Of course, modern criminological theories have broken down the strength of this notion – for example, because of the importance given to labelling theory, interactionist perspectives generally, ecological and demographic insights, and conflict theory. Never-theless, this basic concept of the working of individual deterrence retains validity.[68]

As indicated previously, our theoretical model is that offenders, and in particular armed robbers, have come to choose firearms as their crime-weapons partly because of past and continuing socialisation. They have been and continue to be particularly susceptible to the workings of differential association. We have argued that this has not been a mindless or deterministic process, but has certainly been reinforced by their own evaluation of the instrumental advantages that are apparent in carrying out their particular crimes. The hypothesis is that such persons may be more deterrable than more impulsive offenders precisely because of the intellectual overlay they bring to the process of differential association as it affects them. They may, in other words, be susceptible to "unlearning", or holding in check, their decision-making with regard to the choice of firearms.

It has already been seen that gun-robbers assess and calculate their conduct quite thoughtfully before the event. Victim-management is a prime consideration. It also emerged that they also tended to give advance thought to the sentencing implications not only of robbery generally but also their use of a gun. Moreover, this does not seem to have been an abstract exercise, for as mentioned previously gun-robbers also turned their minds directly to the possibility of being caught. These factors emerge from Table 10. As can be seen, the differences in expectations between gun-robbers and other robbers are striking.

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67 See generally, for example, the works of Beccaria, Bentham, Andanaes, and the summaries found in chapters 1 and 2 of Zimring and Hawkins, *Deterrence: The Legal Threat in Crime Control*, University of Chicago Press (1973).

68 See, for example, the growing literature on random breath testing, and in particular, for Australia, *Random Breath Tests and the Drinking Driver*, South Australian Office of Crime Statistics (1983); Cashmore, *The Impact of Random Breath Testing in New South Wales*, N.S.W. Bureau of Crime Statistics and Research (1985); Homel and Wilson, *Death and Injuries on the Road: Critical Issues for Legislative Action and Law Enforcement*, Australian Institute of Criminology (1987).

TABLE 10 : Arrest and sentencing expectations of Robbers : gun x no-gun.

Pre-Crime Attitudes	Gun		No-Gun	
	Yes	No	Yes	No
Prior to the offence, did offender think of possibility of being caught?	11 (73.3%)	4	4 (19%)	17
Prior to the offence, did offender think about consequences of carrying a weapon?	10 (66.7%)	5	3 (15%)	17
Prior to the offence, did offender think he might get a harsher sentence for weapon use?	10 (66.7%)	5	3 (15%)	17
Prior to the offence, did offender know that weapon use involves higher sentencing tariff?	14 (93.3%)	1	8 (40%)	12

Gun-robbers were even more self-confident about their own ability to predict the sentence they would receive. The overwhelming majority of them (87%) answered affirmatively when asked: "Did you have any idea of the sentence length for this type of offence?" In other words, they considered that their *intellectual comprehension* of sentencing spilled over into *working knowledge*. By contrast, only 35% of the remaining robbers answered affirmatively, the most "knowing" sub-group being non-weapon-users.

The source of this supposed knowledge was predominantly the gun-robber's peer-group – i.e. other criminals, accomplices and friends (66%). For other robbers, the family was the single most important source of such knowledge.[69] It is interesting to note that *the media is almost irrelevant as a supposed source of this sort of information*, only 5% of all respondents nominating this as the principal source of information. This fact ties in neatly, of course, with differential association theory as to the primary manner in which crime susceptibility develops.

Yet, despite all this supposed sentencing savvy, *gun-users were quite surprised at the sentence they actually received* – no less so than other armed or violent offenders. Overall, 62% of respondents received a longer sentence than they had expected; for gun-criminals the figure was virtually identical at 59%.

Reflecting on court outcomes, 73% of gun-robbers considered that their sentences would have been shorter but for the presence of a weapon, whereas only 54% of knife and other weapon robbers shared this perception. The counterpoint was that 72% of unarmed violent offenders thought that their sentences would have been greater if they had used a weapon.

The following picture of gun robbers is thus emerging. They are by nature forward-planners; they assess risks and work out strategies, most notably the carrying of a gun, to manage those risks; they are not frightened either of the situations in which they involve themselves or of the victims with whom they come into contact; however, realising how potentially dynamic their working environments are, they set out to keep

69 These figures in fact relate to the whole group of gun-criminals, rather than the slightly smaller sub-group of gun-robbers. The same is true of the figures contained in the next paragraph.

them as stable and predictable as possible; they actively contemplate the possibility of being caught (a notion readily reconcilable with their careful planning) and contemplate also the possibility that their sentence might be greater because of their chosen modus operandi; they balance this intellectualized and somewhat abstract notion of sentencing possibilities against what they consider to be fairly precise information about the tariff, derived from their peer-group including other criminals; and yet when they are actually caught and sentenced they are as surprised as the other group of much less calculating, less forward-looking robbers that they have under-estimated the sentence they would get.

For all their unpleasant surprise, *the overwhelming majority (91%) of gun-robbers, and also of gun-criminals generally (92%), would still carry a gun if they committed the focal offence again.* By contrast, less than half of all other robbers, and a tiny percentage of all other armed criminals, would carry a weapon if they committed the focal offence again. However, those non-gun criminals who would use a weapon again for the most part would be prepared to "graduate" to gun-use – presumably, because of their perception of the advantages this would bring in carrying out their enterprises. Despite this minor sub-trend, however, there seems to be a marked contrast in the deterrability of non-gun criminals and gun-criminals. The latter group is apparently *incorrigible and ineducible,* at least within existing sentencing mechanics and rules.

A key question is: *how and why does this deterrence hiatus, this failure in the decision-making calculus, arise?* This question is, once more, most productively explored in relation to robbers.

Two factors seem particularly worth exploring: first, the fact that, in Western Australia, the tariff component for use of a gun in armed robbery is buried in the overall tariff and incapable of being separately identified; second, the fact that there is a close association between drug use and gun use in armed robbery.

With regard to the tariff component for gun use, the WA Criminal Code, section 392 defines "loaded arms", which would include any kind of firearms though not it seems an imitation gun. Yet the only sentencing relevance of this definition is with regard to *attempted* robbery, under section 394. For this offence, having a loaded arm would increase the maximum penalty from seven years to life imprisonment.

If the offence of robbery is completed – which it is if the other components of robbery are met and anything at all is stolen – then the crucial sentencing fact is whether the offender "is or pretends to be armed with any dangerous or offensive weapon or instrument." In this regard, a knife or a nulla-nulla or a fence-picket is treated on the same basis as a firearm. Accordingly, case law has not developed in Western Australia around the particular tariff aspects of a firearm per se.

This is quite remarkable. All the literature testifies to the particular dangerousness of guns, and the offender-group itself also perceives the matter in this way. Yet the sentencing laws equate such weapons, in relation to a completed offence, with any other dangerous weapon. Quite clearly, an early C20th Code, in this regard substantially unamended, is penologically quite inadequate.

Nor has the development of judicial sentencing principles taken explicit account of the particular dangerousness of guns and the fact that their presence operationally permits crimes to be committed which otherwise would probably not be practicable. In other words, the firearm opens up opportunities for crime which would otherwise not be available at all.

The recent case of *Chester*[70] circles around the sentencing implications of these points. It holds that the words of section 662(a) of the WA Criminal Code – which permit an order for indeterminate detention to be made by a sentencing court if it thinks fit, "having regard to the antecedents, character, age, health, or mental condition of the person convicted, the nature of the offence, or any special circumstances of the case" – must have superimposed upon them the notion that "the convicted person [should have] shown himself to constitute a danger to the public."[71] In the particular case, the offender was not on the facts such a person. His offence was that of robbery armed with a knife. But it is not explicitly suggested by the judgment that the use of a gun might have been regarded as constituting the necessary dangerousness to justify an order under section 662(a) or to bring the situation within the section by virtue of any other aspect, such as "the nature of the offence".

It is in this context that reference should be made to the Canadian Code, in particular section 83. This section, enacted as part of the 1977 Peace and Security legislative package, provides for mandatory additional penalties for use of a firearm in the course of committing, attempting to commit or fleeing from the commission of an indictable offence.

This penalty is to be imposed regardless of whether the offender causes or intends to cause bodily harm by so doing or whether the gun is fired or not. In other words, it is the potential dangerousness of that type of conduct, rather than the particular outcome, to which the sentencing policy is directed. The quantum of the penalty depends upon whether this firearms offence (i.e. not the head offence) is the first or a subsequent offence. For a first offence, the range is 1–14 years; for a subsequent offence, 3–14 years.

A question which was raised at the time this law was first enacted was whether the provision would be circumvented by either the prosecution service (by way of plea-bargaining) or the judiciary (by way of reduction of the sentence for the head offence so as to compensate for the loss of discretion by the requirement to impose a mandatory sentence with regard to the firearm-use component). Initial research carried out by the Solicitor-General Canada and by the Decision Dynamics Corporation[72] on behalf of the Solicitor-General Canada indicates that neither of these things happened.

It is stated in the Final Report that: "The percentage of robbery convictions with section 83 charges that resulted in jail terms was consistently higher than for robbery convictions without section 83 charges. This indicates that there was no systematic compensation in the severity

70 High Court of Australia, (1989) 82 A.L.R. 661.

71 Ibid., at p. 667.

72 See the references contained in footnote 23, above.

of robbery sentences because of the mandatory section 83 term."[73] Likewise, in the 2nd Interim Report it is stated: "Compared to jail terms imposed on accompanying robbery convictions, the average term for the latter offence was 37 months in 1979. This figure increased to 40 months in 1980. From these figures it appears that the courts have not compensated for the [mandatory] minimum [section 83] sentence by reducing the jail term on the robbery charge."[74]

In the Executive Summary of the Final Report, gun use in robbery in four city jurisdictions – Vancouver, Calgary, Toronto and Ottawa – was analysed. In each case the period analysed was five years or more. It was stated: "The robbery data from the four city jurisdictions showed a decrease in the relative use of firearms in each city except Ottawa ... Robbery in Canada is becoming a more frequent occurrence. On the other hand, nationally and in three of the four city jurisdictions, the percentage of robberies involving firearms decreased during the four-year period following the legislation."[75]

Has this displacement occurred because of the imposition of mandatory additional sentences for firearms use? One cannot say with absolute certainty. However, in *Firearms Control in Canada: An Evaluation*, which is the Solicitor-General's own analysis of the 1977 package, there are data which "suggest a trend towards criminals with less lengthy records becoming less likely to be charged with new firearms offences. The thief with one or two convictions is less likely to continue carrying a gun than the thief with five or more convictions."[76]

If one consolidates with this observation the fact that "about 90% of [firearms] robbery charges were accompanied by section 83 charges"[77] and that "over 90% of section 83 convictions resulted in jail terms, increasing from 92.9% in 1979 to 96.4% in 1981",[78] it is a fair inference that the use of sentencing techniques generally may be marginally deterring robbers from either "graduating" to gun use or, once they seem to have graduated, may be deterring them from continuing in that mode.

This trend has been confirmed by a 1989 report.[79] In the decade since the introduction of the Peace and Security package, including section 83, gun-robberies have decreased from about 36% of all robberies to about 25%. Partly, of course, this has been due to the gun control implications generally of the 1977 legislation, making firearms more difficult to obtain. Nevertheless, there has been nothing to undermine the earlier observations.

In this regard, note should be taken of the following information from the Western Australian study. Gun-criminals admit to having used

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73 Scarff, *Evaluation of the Canadian Gun Control Legislation: Final Report – Executive Summary*, Solicitor-General Canada (1983), at p. 9.

74 Scarff, *Evaluation of the Canadian Gun Control Legislation: Second Progress Report*, Firearms Policy Centre of the Solicitor-General Canada (1983), at p. 10.

75 See reference cited in footnote 73, above, at p. 3.

76 *Firearms Control in Canada: An Evaluation*, Solicitor-General Canada (1983) at p. 33 and in particular Figure 16.

77 Scarff, reference cited in footnote 73, above, at p. 9.

78 Reference cited in footnote 76, above, at p. 23.

79 Canadian Centre for Justice Statistics, *Crime Statistics 1988*.

weapons in previous offences to the same extent (about 50%) as other armed offenders (though non-weapon users are somewhat different in this regard). Also, this group for the most part starts out with guns as their crime-weapons, by-passing other alternatives. The next most dangerous weapon – a knife – evidently has no appeal whatsoever, none of them having used one after their gun-use pattern has come into existence. Indeed, once the habit is established, it seems to become chronic, a quarter of this group admitting to having committed more than 10 offences with a firearm.

Gun-criminals are, one could say, utterly different from other armed or violent offenders, a factor which certainly emphasises the benefits of achieving deterrence. *The fear they engender is a function not merely of their modus operandi nor simply of their numbers qua offenders but also of the numbers of such offences which they commit.*

Canadian experience suggests that gun-robbers are somewhat deterrable, at least in a context where penalties are clearly and unambiguously delineated. However, as we have seen, penalties for gun-use are not manifest in the Western Australian context. Moreover, the decision-making processes of the Western Australian focal group – gun-robbers – appear to be distorted by an additional factor, drug-use.

In this regard, the following factors emerge. First, the majority (79%) had taken drugs in the hours immediately preceding the offence. Of these, three-quarters considered that they were still under the influence of drugs at the time they committed the offence itself. By contrast, only 45% of other robbers had done so.

By contrast, only a minority of gun-robbers (28%) had taken alcohol during that period, whereas two-thirds of other robbers had done so. In turn, two-thirds of the latter considered they were still under the influence of alcohol when they committed their crimes.

Confirming these observations were general data about drug and alcohol use. Gun-criminals reported having committed other crimes whilst under the influence of drugs of dependency far more frequently than other violent offenders; heroin and marijuana were the most popular drugs. Not surprisingly, they also reported regular (i.e. virtually daily) use of these drugs in their non-criminal activities.

Of course, a factor which should be acknowledged – even though, given the non-random nature of the sample who were surveyed, it cannot be confirmed – is that drug-using gun-robbers may be caught more frequently than non-drug-users. This might be because of their incompetence in actually carrying out their offences or because they commit more crimes, thus putting themselves at risk of apprehension more often or because of a combination of these factors. Certainly, the data of Dobinson and Ward, in their study of the relationship of drugs and crime amongst the NSW convicted prisoner population, would lend some support to this hypothesis.[80]

Nevertheless, one can say on the basis of the surveyed group that these are the two bases upon which the deterrence calculus apparently

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80 Dobinson and Ward, *Drugs and Crime*, Research Report No. 2, N.S.W. Bureau of Crime Statistics and Research (1985), p.53.

breaks down – lack of a deep conviction, fortified by clear quantification, that the sentence really will be greater if a firearm is used; plus the temporary suspension of those faculties that enable the deterrence calculus in any case to be worked out effectively. Gun-criminals, particularly robbers, seem to have the intellectual apparatus and the crime-scene know-how to assess their chances; but at the crucial time they fail to do so.

A factor which might in principle inhibit them, or trigger the deterrence calculus in their own heads, would be difficulty in obtaining a firearm. But, as we have seen, even those robbers who chose not to use a gun did not consider they would have faced insuperable difficulties in obtaining one. Difficult or awkward, yes; impossible, no.

That being so, it is no surprise that a group whose sub-culture and peers are so familiar with guns, in both a criminal and a non-criminal context, had no difficulty at all in obtaining one. More than half of the gun-criminals bought their guns – on the black market, from licensed dealers, or from friends or relatives. Other sources were theft and loan. Not surprisingly, such guns were not licensed under the Firearms Act (though, intriguingly, one offender used a licensed firearm, presumably having previously convinced authorities he was a "fit and proper person").

Where do these observations lead? There is some merit, I believe, in experimenting with Canadian-style sentencing approaches. *There should be a mandatory additional sentence for gun-use in any crime.* This does not, of course, include offences whose very essence is dealing with or mishandling or failing to comply in some way with regulations relating to firearms. Rather, the proposal refers to discrete crimes which by their nature can be committed with or without the use of a firearm.[81]

That additional sentence should be clear, straightforward and *should not be reducible by whatever are the prevailing parole rules.* As the primary source of sentencing savvy for such offenders is peer-group knowledge, it is essential that there be absolutely no ambiguity, no room for misunderstanding, as to what is involved. A suggested period for a first offence of using a firearm in the course of carrying out a crime is one year. The penalty for subsequent offences should be greater – though there is some point at which it would become not only unduly harsh but probably ineffective.

In contrast to this proposal, even the Canadian scheme perhaps falls short of ideal deterrence requirements inasmuch as there is a *range* starting from a mandatory minimum. Available data confirm that sentences do in fact differ from case to case. Moreover, the additional penalty goes into the head sentence only; the operation of parole could muddy its impact, or at any rate the offender's perception of its likely operation in relation to him. In these circumstances, the fact that the scheme seems to have had the impact which it has suggests that this sort of strategy may indeed be a powerful one.[82]

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81 See generally the decision of the Supreme Court of Canada in *McGuigan v. The Queen* (1982) 66 C.C.C. (2d) 97.

82 A Massachusetts study concerned with the impact of the Bartley-Fox law mandating a one-year prison sentence for anyone found carrying a handgun outside his home without a permit found a delayed-reaction reduction in gun-robbery. The authors state: "The relatively immediate changes in gun and non-gun assault rates

More recent information emanating from the United States has lent guarded support to the view that this strategy could be productive. In a 1989 paper, Loftin et al. have analysed the preventive effects of mandatory sentencing laws for gun crimes in six U.S. cities. Previous isolated studies of the six cities had suggested that such laws had no preventive effect upon gun-homicides. However, re-working and consolidating the data, Loftin concluded that "taken together,... the patterns are consistent with a model in which the [mandatory sentencing] laws prevent hom-icides."[83]

It must be said that the research team did not consider that there were statistically significant intervention effects for armed robbery. However, "gun robberies declined while other armed robberies rose slightly." That very finding – relative reduction in gun-robberies – would seem, in conjunction with the Canadian results[84], to justify pursuing the matter in a focussed way, as proposed, with a view to careful monitoring and evaluation.

There is always some resistance to the creation of mandatory penalties. Alternative ways in which the same objective might possibly be achieved might be: (a) as a sentencing guideline laid down by the Court of Criminal Appeal, and/or (b) by clearer legislative differentiation between various kinds of weapon use in armed robbery. However, it is considered that the data revealed by this study are cogent enough to justify favouring the mandatory sentencing approach, at least for a long enough period to enable evaluation of its impact to be made. In the meantime, comparative data relating to Australian jurisdictions which do not take such an approach would continue to be accumulated, facilitating evaluation.

An additional factor which must be considered when putting forward such a proposal is its impact upon prison populations. At any given time, the number of gun-robbers, or other gun-offenders, in Western Australian prisons is quite small – about 100. Such a proposal would thus add no more than 100 man-years to the prison population at any given moment. In other words, calculating from the basis of time actually served at present by such offenders (approximately 3 years), the accretion to the average daily prison population would be no more than 10. In a context where the present daily average population is of the order of 1500, this addition of less than 1% would not be unmanageable.

Yet in a small but significant way such an approach could begin the long, slow process of convincing a disenchanted public that courts and governments are starting to get serious about serious crime. It would indicate that differentiations between crimes and criminals are being made in ways which accord with public perceptions of what really matters.

Just as important is the fact that the punitive aspects of public opinion – or at least politicians' perceptions of public opinion – may not

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suggest that it was the law's punishment potential that altered assaultive behaviour. The more delayed reduction in gun-robberies suggests that the actual implementation of the law in the courts may have been more important in altering robbery behaviour." This unpublished study, by Pierce and Bowers, is described by Friedland in "Gun Control in Canada", a chapter in Friedland, *A Century of Criminal Justice*, Carswell Legal Publications, Toronto (1984), at pp. 124–125.

83 Loftin, "The Preventive Effects of Mandatory Sentencing Laws for Gun Crimes in Six Cities", Draft 1.2 of a paper presented to the Annual Meeting of the Law and Society Association, Madison, Wisconsin, June 1989.

84 See above, at pp. 34–36.

continue, as at present, to spill over indiscriminately into crime and justice policy generally. In other words, firm sentencing policies in relation to a particularly feared and potentially dangerous group of offenders could clear the ground for less harsh approaches to sentencing non-dangerous offenders.

Of course, to incarcerate gun-criminals with each other for a longer period hardly helps to break up the kinds of peer-group which, as this survey has indicated, is so important in the outside lives of gun-criminals, particularly gun-robbers. However, the remedy for this lies not in a retreat from the proposed sentencing strategy but in changes to classification procedures and the allocation of prisoners within the custodial system. The present approach to housing maximum-security prisoners seems to lead directly to a strengthening of such peer-groups.

The question of drug use must also be confronted. If, as posited, the deterrence calculus has failed to work partly because of recent use of drugs or an overwhelming desire for more drugs, longer terms of imprisonment will not per se alter that. The constructive point of a longer period of confinement could be, therefore, participation in a well-designed, labour-intensive, resource-generous, drug rehabilitation program.

Finally, consideration must be given to the general question of gun availability – to the non-criminal as well as the criminal. In his review of Wright and Rossi, Zimring made the telling point that their "findings do confirm the important link between licit and illicit gun ownership. This is a persistent frustration for systems that attempt to allow unlimited citizen access to firearms to all but very high-risk individuals. It is very difficult to give the good guys as many guns as they want and still make guns scarce for the bad guys, with so many guns to steal from homes, cars, apartments, and stores". The authors conclude that the data suggest 'little by way of a method by which the gun theft problem could be attacked.' At a minimum, one would expect the authors to acknowledge that consistent findings of linkage between general availability and availability to abusers has been a foundation for modern proposals of restrictions on civilian... ownership."[85]

In Western Australia, far fewer crime-guns had been stolen – between 10% and 20% in comparison to Wright and Rossi's figure of 40-70%. But black-market and "informal" (i.e. from friends, peer-group members, etc.) dispositions to gun-criminals were commonplace. This seems to point to the need not only for a gun-registration sytem, as already provided for by the applicable law, but for more rigorous enforcement of it, so that unauthorised dispositions may in principle be picked up at an early stage.

85 Zimring, reference cited at footnote 19, above, at p.226.

8. Conclusion

The pilot research project, described above, has not purported to answer crime control questions which arise in relation to violent crime generally. But it has pointed to ways in which we might begin to tackle the difficult and socially sensitive problem of *gun-use in violent crime.* Mandatory sentencing has been highlighted as a key strategy, worth introducing at least on a trial basis. If this were to be done, monitoring and evaluation of its impact would be essential.

Moreover, any such innovation would have to be introduced as one aspect of an integrated program to reduce criminal gun-use in Western Australia. Thus, the group targeted by the new sentencing strategy – gun-user offenders, particularly gun-robbers – would be morally entitled to receive enhanced drug-rehabilitation treatment programs, where required, whilst in prison. The evidence is strong that their propensity for gun-use is associated to some extent with their dependence upon addictive drugs. A strategy based solely on deterrence would be inequitable and probably inadequate, therefore.

In addition, the law and practice relating to the acquisition of firearms in Western Australia should be fine-tuned, as has happened in Canada. This could have a beneficial impact upon general levels of gun-use in crime, bearing in mind the importance of availability to spontaneous crime. Also, our data have thrown up some fascinating possibilities for micro-research in this area – for example, the relationship, if any, between paternal motives for ownership and the subsequent filial use of guns in crime. The defence or protection gun started to come through in this research as even greater an ogre, from the public policy point of view, than we had previously suspected.

Other detailed matters are worth exploring further. This is not the place to do so. Other Australian research, currently in progress, and possible future research in Western Australia itself, may enable the worth and validity of this pilot project to be fitted into a broader picture of applied crime prevention research.

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