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Insider trading research and law reform in Australia

Insider trading has been a subject of widespread contemporary interest in Australia and internationally over the last decade. This was especially so during the stock market boom years leading up to the market crash of October 1987 and it remains a subject of interest and fascination to policy makers, regulators, investors, the media and the public. Remarkably, despite the broad interest in, and criticism of, insider trading, there has been very little criminological research into this form of criminal conduct and market abuse. This article will seek to review some of the reasons for this neglect and suggests that the study of corporate and securities market conduct can contribute greatly to enriching the theoretical and empirical landscape of contemporary criminology.

Material for this article is drawn from a national survey of securities market professionals undertaken in 1988 in Sydney, Melbourne, Perth and Canberra. This research project was funded by the Criminology Research Council and involved interviews with almost 100 subjects drawn from corporate regulatory agencies, the Australian Stock Exchange, partners in large law firms, brokers, merchant bankers and others. Some findings from this study have appeared elsewhere,[1] and a monograph based upon this line of research is in preparation.

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As a consequence of market abuses evident during the mining boom of the late 1960s and early 1970s, the Senate Select Committee on Securities and Exchange, better known as the Rae Committee, was appointed. Its report in 1974 gathered together extensive evidence regarding the prevalence of insider trading and other forms of market manipulation which existed during these years. The early 1970s also saw the enactment of the first Australian prohibition against insider trading in the form of s 75A of the *Securities Industry Act 1970* (NSW), as amended in 1971. With minor variations, the language of this provision has been repeated under the Co-operative Companies and Securities Scheme in s 128 of the *Securities Industry Act* of 1980 and subsequently in s 1002 of the *Corporations Act 1989* (Cwlth).

More recently, a number of other official expressions of concern about the current state of Australian insider trading laws have appeared. For example, in 1986 the National Companies and Securities Commission published a Green Paper on Insider Trading prepared by the distinguished Canadian lawyer Philip Anisman. This made a number of suggestions for the reform of existing provisions but it encountered considerable resistance from many working in the securities industry. However, Anisman's criticisms of the defects of insider trading provisions were largely confirmed by the national empirical study undertaken by the authors in 1988. This was followed by the establishment of the inquiry into Insider Trading and Other Forms of Market Manipulation by the House of Representatives Standing Committee on Legal and Constitutional Affairs, chaired by Mr Alan Griffiths MHR. As the following discussion shows, it is now quite clear that urgent reform of existing Australian laws in this area is necessary.

The principal anti-insider trading provisions are to be found in s 1002 of the Corporations Act 1989 (s 128 of the Securities Industries Act). This legislation prohibits trading upon the basis of price sensitive information which is not generally available, but which, if it were available, would be likely to materially affect the price of the securities traded. The person trading must have been connected with the corporation whose securities are traded (s 1002(1)) or with a corporation which is involved in a transaction with another corporation whose securities are traded in this way (s 1002(2)). Also caught by the prohibition are tippees who have obtained such information from a person who is so connected with a body corporate and where the tippee is or could reasonably be aware of the circumstances by which

Professor Roman Tomasic and Brendan Pentony.

'It could be argued that the broking industry is heavily dependent on trading on the basic inside information.'

the person who provided the information is precluded from trading (s 1002(3)).

A penalty of a fine of $20 000 and/or imprisonment for five years is provided for a breach of the insider trading provisions. The fine is widely perceived to be less than a credible deterrent and it compares poorly with the size of financial penalties available under insider trading laws in the United States and Canada. The US provides for fines of up to one million dollars for individuals and two and a half million dollars for corporations who insider trade. It should also be said that it is theoretically possible for a person who has been harmed by insider trading to bring a civil action for damages under s 1013 of the Corporations Act (s 130 of the Securities Industry Act). This section presupposes that a person has been convicted under s 1002 and is therefore not very helpful. Indeed, and not surprisingly, no civil action has even been brought under s 130. Alternatively, under s 232 of the Corporations Act (s 229 of the Companies Code), compensation or damages may be recovered by a corporation where an officer of the corporation makes improper use of inside information belonging to the corporation. To date no insider trading actions have been successfully brought under this alternative ground.

There are a number of important exceptions or exclusions provided for in section 1002. First, the legislation does not apply to corporations which themselves engage in insider trading, as the New South Wales Court of Appeal confirmed in *Hooker Investments Pty Ltd v Baring Bros Halkerston & Partners Securities Ltd (No. 2)* (1986 10 ACLR 525 at 527. This is a major deficiency in the present legislation. Secondly, an exception is provided where there is a Chinese Wall in place within a body corporate so that a person is not precluded from trading even though another person in the same body corporate has price sensitive information. Chinese Walls are a form of 'procedural architecture' designed to limit communication of price sensitive information between different parts of the one organisation. It is well known that such devices do little to prevent the determined, or even the casual, insider trader from obtaining price sensitive information. Thirdly, the holders of dealers licences, such as brokers, will not be precluded from dealing in securities on behalf of an insider trader. It could be argued that the broking industry is heavily dependent on trading upon the basis of inside information, even though much of this is not price sensitive or likely to materially effect the price of the securities traded.

It should also be said that for a person to be caught by the tippee provisions, that person must either be an associate of the person passing on the proscribed price sensitive information or there must be an arrangement between the persons for the communication of information. The definition of 'associate' is one of the most complex and obscure in this body of legislation and there is also some doubt as to what actually constitutes a relevant arrangement.

In addition to these difficulties, there are major uncertainties concerning what is precisely meant by the requirement that a person be 'connected' with a body corporate, although in the United States the courts have endorsed a wide meaning of this term (see for example the US Supreme Court decision in *Carpenter, Felis and Winans v United States* (1987) 56 US Law Week No. 19, 17). If the general approach of Australian courts to interpreting companies and securities law provisions is any guide, it is unlikely that this term will be read broadly in Australia. Similarly, difficulties are presented by the meanings of other key terms in s 1002. In particular, when is some information not 'generally available' (see further *Kinwat Holdings Pty Ltd & Ors v Platform Pty Ltd* (1982) 6 ACLR 398), when is information likely to 'materially affect the price' of the securities in question, and when is a person in 'possession' of such information.

As may be evident from this discussion of the technicalities of the above positions, it has been extremely difficult for the prosecution to obtain a conviction under s 1002 or its predecessors. There have been no convictions in almost two decades, despite the extensive evidence since the days of the Rae Committee of the prevalence of insider trading in our society. In part, this may be attributed to the complexities of the legislative provisions which are such as to create major problems of proof. As we found in our 1988 national survey of participants in the securities industry, there are however a number of other major explanations for this sorry record of enforcement. Some of these are organisational, some are cultural and others are political. In addition to these, significant evidentiary hurdles need to be surmounted by prosecutorial authorities.

At the organisational level, it is clear that Corporate Affairs Commissions in the States and Territories and the National Companies and Securities Commission (NCSC) have for a long time been under-resourced and have therefore been

'There have been no convictions in almost two decades despite the extensive evidence . . . of the prevalence of insider trading.'

unable to hire highly trained staff of the kind that are available to those likely to be accused of insider trading. This problem has been accentuated by the lack of adequate computer monitoring equipment with appropriate software for the task of detecting insider trading transactions. There are signs that these problems are now decreasing, but it is fair to say that, until recently at least, decisions about the level of available resources and the dispersal of prosecutorial authority were based upon political considerations.

No amount of computer and staff resources is likely to increase significantly the level of insider trading convictions as these probably depend very much upon co-operation with the regulatory agencies by the private sector practitioners working in this area. The self regulatory Australian Stock Exchange (ASX) plays a central role here. Unless it is prepared to be vigorous in dealing with abuses by its members, the government regulatory bodies will be significantly constrained in their effectiveness. All too often, as the Rae Committee and others have pointed out, the ASX has tended to react to securities market abuses when it is too late to do much about the matter, such as when a broker has already gone into liquidation. There are modest signs that the ASX has become increasingly active in response to market abuses in this area, but it cannot regulate those operating in the securities industry who are not its members.

Also, the strength of peer group relationships and mutual inter-dependancies within the securities industry is such that there is little incentive for professionals such as brokers, merchant bankers and lawyers to report breaches of insider trading and related provisions. The strength of these informal ties and networks is such that they provide more potent incentives against co-operation with regulatory agencies than the incentives in favour of co-operation which the deterrent effects of the criminal law itself provide. The fear that professional advisers might not receive further work if they were seen to be prepared to 'blow the whistle' seems to be a significant constraint upon active co-operation with the enforcement efforts of regulatory agencies in this area.

An illustration of the strength of the code of silence confronting regulatory agencies in prosecuting corporate and securities market offences is evident from the 1982 case of *Von Doussa v Owens* (1982) 6 ACLR 692 at 701. Here, Owens, was the Managing Director of the *Adelaide Advertiser* and Chairman of Directors of the company of which the *Advertiser* was part. He preferred to be imprisoned rather than to reveal the names of the parties upon whose behalf he had purchased shares, having given what he described as a 'water-tight undertaking' not to reveal their identities. Owens was asked 'do you consider that you personally will suffer any prejudice in the business community at large if you answer the questions which have been asked of you'. He answered 'Yes, I do. I think that it would become an established fact in the business community that I do not honour undertakings that I have given to business associates and that I have made a situation difficult if not impossible, for those companies to continue to do business with my company . . .' He added that, if he answered the questions put to him, 'I think it highly likely that, not only would I not obtain any future directorships; it's highly likely that I might have to resign some or all of those I have'. As Mitchell, J. observed (at 706), 'The desire to do business with corporations can hardly be a reasonable excuse for failing to do what the law otherwise requires a person to do'. Nevertheless, Owens preferred to go to prison than to breach the informal code of silence and reveal the information sought by corporate affairs investigators.

'I think it highly likely that, not only would I not obtain any future directorships; it's highly likely that I might have to resign some or all of those that I have.'

Licensed professional advisers, such as brokers and lawyers, would probably share this general sentiment, although they would probably endanger their licences if they refused to co-operate in precisely this way. A related difficulty, which is really a matter of proof, arises from the fact that, because insider trading is such a clandestine transaction, it is only the accused who often has the requisite evidence in relation to insider trading. Consequently, where the accused is unwilling to make an admission, the prosecution is generally unable to proceed much further. This problem confronted the prosecution in the Victorian case of *Waldron v Green* (1978) 3 ACLR 289. Often, evidence becomes available in this area because the persons involved in insider trading fall out and one of the parties is prepared to give evidence against the other. Such sources of evidence are of course obviously unreliable. Perhaps, the reversal of the onus of proof is the only serious option in this area if the current legislative provisions are retained. Although there are a number of precedents in Australia where the reversal of the onus of proof is sanctioned, it would however be much more preferable to clarify and simplify the existing legislation considerably. Taxation legislation and the Proceeds of Crime legislation provide two illustrations of where this reversal of the onus of proof occurs because the information sought is only within the knowledge of the accused and it is not possible to obtain independent evidence.

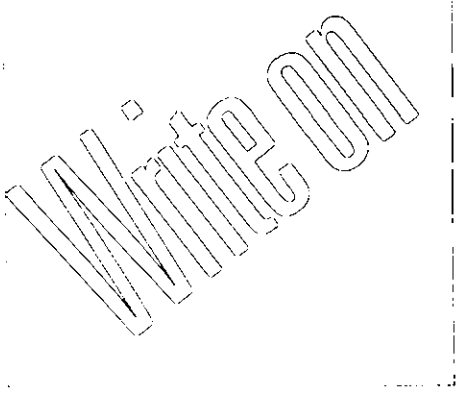
It is quite clear from the American experience in dealing with insider trading that it is possible to be far more effective in dealing with this abuse in Australia. Admittedly, United States insider trading laws are vastly simpler than our own. The question of insider trading prosecution is, however, largely a matter of political will to act against such abuse as well as the climate of professional opinion which has tended to protect and rationalise actions which investors and the community quite clearly find to be less than defensible. As our research revealed, there is a great deal of hypocrisy about insider trading in the securities industry. Although many professionals would be reluctant to be seen to be publicly defending insider trading as a practice, nevertheless, there is sufficient tolerance of insider traders to allow them to continue to operate with little likelihood of effective prosecution. This of course raises wider questions concerning the ethical climate of Australian business and the extent to which the criminal law is relevant in dealing with white collar and corporate misconduct.

There is much room for further criminologically inspired research into these questions. Our research into insider trading illustrates both the frustrations of researching elusive phenomena such as this, as well as the value which empirical research into the relatively neglected area of corporate and white collar crime in Australia can have for the wider policy process. Such research often tends to lead to different characterisations of the nature of the criminal law and its deterrent effects than is usually obtained from studies of more conventional crimes such as crimes of violence and petty fraud.

'This of course raises wider questions concerning the ethical climate of Australian business and the extent to which the criminal law is relevant in dealing with white collar and corporate misconduct.'

References

1. See for example the following articles by Tomasic, R. and B. Pentony: 'The Prosecution of Insider Trading: Obstacles to Enforcement', *ANZJ Criminology* (1989) 22:65–81; 'Crime and Opportunity in the Securities Markets: The Case of Insider Trading in Australia, *Company and Securities Law Journal*, (1989) 7:186–98; 'Insider trading' *Legal Service Bulletin*, (1989) 14:3–5; 'Coming Down on the Insiders', JASSA, (1989) No. 1:24–26, 32; 'Insider trading and Business Ethics' *Legal Studies Forum*, (1989) 13(3) forthcoming; 'Insider Trading Regulation and Law Enforcement' *The Company Lawyer*. (1989) forthcoming. Also see generally, Tomasic, R. 'Insider Trading and the Higher Courts: the Winans and Warner Cases', *Company and Securities Law Journal* (1988) 6:96–104.



A comment on Kate Hannaford's letter on offenders' remorse, another view of victims and offenders from Ms Hannaford, and further disagreement with Dr David Neal's views on firearms.

Remorse

Sir,

Kate Hannaford's letter on the topic of remorse raises some interesting questions. What is remorse? Where does the capacity to experience it come from? Do we have a right to expect it from everyone?

I'm sure Kate would not have been satisfied if the prisoners she had interviewed had simply responded with a reply they had learned was socially correct, simply saying they were extremely sorry for what they had done. Remorse does, of course, involve an emotional disposition, a state of emotional distress that accompanies harming someone or remembering back to having done so.

'Why is that emotional state more evident in some individuals than others' is a question I do not wish to attempt to provide an empirical answer to. Like most individuals who work with criminals though I am struck by the high prevalence of poor socialisation experiences they seem to have been subject to. Among the kind of offenders to whom Kate refers, I invariably find a history of deprivation, violence, or emotional neglect.

If there were to be a relationship between socialisation and the acquisition of remorse, then as a society we could hardly complain about its absence among the poorly socialised

Geoffrey L. Grantham
Forensic and Clinical Psychologist
Highgate Hill, Queensland

Offenders and victims

Confidentiality has been protected in this letter from Kate Hannaford, who is a Churchill Fellow travelling overseas this year to study victim support. We should mention that the case mentioned by Ms Hannaford occurred before the South Australian Government introduced in 1989 a set of principles which protect the rights of victims at various points in the criminal justice process. A booklet *Information for Victims of Crime* is given to every crime victim attended by the South Australian Police. Other jurisdictions are following suit; this letter illustrates why such action is necessary.

Sir,

In 1987, a young couple went for a walk and returned to find that their homes had been broken into. I met them two years later. At the same time I was supervising one of the offenders.

Shirley and David had decided to take their three years old son for a stroll. They were away from their house for twenty minutes and, on return, noticed two bicycles leaning beside a window which had been forced open. Shirley shouted to the intruders: 'We know you are in there'. Her husband ran to the neighbours to telephone the police. The felons had time to escape but were soon caught by the police.

After twenty minutes, when Shirley, David and their son, James, were allowed to enter their house, they were shocked to see how much needless damage had been wrought in twenty minutes: beds were turned upside down, drawers emptied and the lounge suite slashed. James was particularly devastated as his money box had been taken and several toys mutilated. As a result, James changed from an independent three year old to a child who slept with his parents for the next eighteen months.

The twenty year old offenders were arrested and charged. There was a dispute as to the value of jewellery stolen, and, as a result, Shirley spent two days being cross examined in the local magistrate's court. Throughout this questioning, the offenders sat about four metres away and stared straight at Shirley. She realised that, in a country town, they would always recognise her. For the next year she was terrified of meeting one of the offenders in the street.

To cut this sad story short, Shirley and David were never advised of the court outcome. Subsequently, Shirley was told that she would have to give evidence in the District Court. For eighteen months, she woke up every morning with dread that she would receive a phone call that day. It was by chance that I was able to tell her, three months after the offenders had been sentenced in the District Court, that she would not be required to give evidence.

Her relief was unbelievable: 'So it's all over'. We forget how terrifying an appearance in court can be to the normal law-abiding citizen.

I was in the unusual position of being the probation officer for one of the offenders.

> 'Tell me about the offence', I said.
> Complacently, 'Me mate and I were pissed . . .'
> 'No excuse.'
> 'Me mate's got a criminal record; it was his idea.'
> 'If you were the good guy, why do it?'
> On it went until I asked about the victims.
> 'Did you ever consider the effect on the victims, especially the three year old son? Who took his money box? Who slashed his toys?'

. . .

Larry is not really a bad person; his prognosis is promising. Being on probation has meant that he has received fortnightly counselling from experienced social workers for a year. He has been helped with employment, personal relationships, constructive leisure activities and drug and alcohol abuse. In short he has benefited from close and helpful attention.

For Shirley? For David? For James? No real help at all.

I would like to see victim impact statements included in all offenders' files. Offenders should be confronted with the effort of their crimes on their victims and their victims' families.

In the United Kingdom, the police refer to a local victim support scheme and the victim is contacted and helped.

In Australia, more needs to be done.

Kate Hannaford
Adelaide, South Australia

And, of course, guns . . .

***Criminology Australia* referred a discrepancy in statistics (*CA* 1,1 and 1,2) to the Australian Bureau of Statistics. We understand that 'The ABS is investigating the discrepancy in the figures quoted in the correspondence in this matter'. We further understand that 'ABS has pointed out that the two sets of data around which the debate revolves derive from entirely different sources, and that there may be different standards and definitions applying to them. Consequently, great caution should be exercised in making any comparison between them'.**

Sir,

It is with some relief that I have seen Mr John Bradbury's article challenging Dr Neal's article 'God, Guns and Guts' but Dr Neal's response still leaves me troubled. He concludes his response with 'we should initiate stricter gun control now rather than later when it will be more difficult' (*Criminology Australia* Vol. 1, no. 2). Dr Neal is assuming that gun control will have an influence on the violence that he is talking about. Figures from Australia and other places do not show a clear relationship between firearms control and crime. Queensland and Tasmania are widely acknowledged as having the least restrictions on firearms but do not have violence problems above the national figures, in fact the figures suggest the opposite.

Dr Neal's problem with his first article appears to be that he believes firearms

are part of the cause of the problem and he appears to lose his objectivity trying to write articles supporting his beliefs. This is rather alarming considering his position. It is also disquieting that your magazine publishes such material.

Dr Neal also gives some examples of case studies about gun deaths in his original article. All cases show gross stupidity and fundamental breaches of firearms safety codes. He then tries to use this as a reason to tighten gun controls. It is obvious that stupid behaviour can lead to death, whether it be with a gun, car, or any other potentially dangerous item. Dr Neal quotes a couple of cases, I ask Dr Neal what about the millions of firearms that were around the country and handled quite safely during the same period. Doesn't this suggest that the fault lay with the person in each case and not the gun? I put it to Dr Neal that the answer lies in education, not legislation.

If Dr Neal got behind attempts to educate people about the safe handling and storage of firearms he may be able to prevent the types of accidents he quotes and would not place unnecessary restrictions on the law abiding firearms owners of the country.

The whole gun debate has bypassed the issue of education yet people like Dr Neal see it as the solution to motor vehicle accidents, electrical safety, work safety, sex, AIDS, alcohol, drugs and a host of other problems far more serious than any perceived firearms problem.

Why is it that groups proposing strict gun controls ignore education? Is it because they have ulterior motives in seeing the population disarmed or is it that their personal feelings about firearms place a rational approach to firearms control beyond them?

Proposing knee jerk remedies to symptoms without understanding the nature of the problem will get us nowhere. Dr Neal should start looking for the real causes of problems in society and stop pointing the finger at firearms.

Graeme Sawyer
Wagaman, Darwin, Northern Territory

☐☐☐☐☐

Sir,

In defence of criticism of his article 'God guns and guts' (*Criminology Australia* Vol. 1, no. 1), Dr Neal says guns are used twice as often in homicide in Victoria as knives but this does not match up with the figures, unless ABS is hopelessly wrong country wide.

Dr Neal's claim that in Victoria gun homicides are twice the rate of knife homicides simply does not stand up to scrutiny, either for Victoria or anywhere else in Australia.

If Dr Neal's article is to be regarded as being from an expert in this field then what hope is there for a sensible gun debate in this country?

The following table is taken from ABS 1987 'Homicide'.

State	*Gun*	*Knife*	*Gun % of knife*
NSW	38	30	+26%
VIC	26	21	+23%
QLD	17	16	+ 6%
SA	5	6	−16%
WA	8	6	+33%
TAS	0	3	−inf
NT	3	5	−60%
ACT	0	1	−inf
AUS	97	88	+10%

John Bradbury
Urangan, Queensland

Dr Neal responds . . .

Sir,

Mr Bradbury challenges my claim that guns are used twice as often as knives in homicides in Victoria. The claim is based on the following figures:

Figure 1
Gun and knife homicides in Victoria, 1980–87

	Guns (%)	*Knives (%)*	*Total*
1980	24 (43)	9 (17)	56
1981	24 (38)	12 (19)	64
1982	25 (39)	21 (32)	64
1983	32 (48)	12 (18)	67
1984	29 (39)	22 (29)	75
1985	22 (36)	22 (36)	62
1986	31 (43)	16 (22)	72
1987	48 (47)	26 (25)	102
TOTAL	235 (42)	140 (25)	562

Source: Victoria Police, Homicide Squad

Given that the Hoddle and Queen Street shootings occurred in 1987, I was surprised that a pro-gun advocate would choose figures from that year. I suspect that the ABS figures he cites are for the fiscal year 1986/87. I have used the calendar year and have filed a list of the names and dates of the 1987 gun homicides in Victoria with the editor should Mr Bradbury or any of your readers wish to verify the Victorian statistics for that year.

The wide yearly fluctuations and standard statistical methods mean that it is invalid for Mr Bradbury to select one year as the basis for his point about the gun/knife comparison. My figures are based on an 8-year period. The 14-year study, *Homicide: The Social Reality*, showed that in New South Wales, too, guns (35 per cent) were nearly twice as likely as knives (21 per cent) to be the method of killing.

The New South Wales study provides further evidence against your correspondents' claims. It showed that the rate of gun homicides in rural New South Wales was nearly twice as high as in urban areas. Guns were also much more prevalent in rural New South Wales. I cited this finding in my original article.

In relation to Mr Sawyer's point about Tasmania and Queensland, a study by the Australian Bankers' Association — unfortunately for only one year, 1986 — showed that the rate of gun deaths (homicide, suicide, accident, etc.) was nearly twice as high (7.2 compared with 3.7) as the rate for the other states.

These statistics are not conclusive. Unfortunately, we do not have good figures about gun ownership. Registration of guns would greatly assist in testing the claim about the relationship between gun availability and gun death. This measure is resolutely opposed by the gun lobby.

Both your correspondents seem to think that guns are just like any potentially dangerous article. But if this is true, given that virtually everyone has easy access to a knife, knife killings ought to be much more frequent than gun killings. Even an equal number of knife and gun killings would amount to an over representation of guns. Given that knives are so very much more available than guns, something must account for the pronounced over representation of guns in homicides. My claim is that the availability of such a lethal instrument as a gun is a significant part of that explanation.

Despite the limitations, the available statistics, and case studies such as those I originally presented, do provide sufficient evidence for prudent policy makers to maintain and enhance strict gun policies.

David Neal, Commissioner
Law Reform Commission, Victoria

Questionable assumptions in juvenile justice

In Vienna I watched a prosecutor state the facts of a case against a juvenile. When the defence attorney made the closing presentation, it was the standard 'weep and wail'. It did not, however, deal with the facts of the case. The prosecutor rose again and went through the case a second time, this time bringing out points that should have been raised by the defence. I was surprised and told the prosecutor afterwards that I thought he had done both the defence and the prosecution. He said, 'Of course. The defence did a poor job. I am responsible to see that the judges have all the information necessary to make a wise decision. I understand that your system is adversarial. Two lawyers see who can 'win'. Aren't you interested in justice?'

*Jim Hackler is Professor of Sociology at the University of Alberta. He is currently visiting Australia and will spend time at the Australian Institute of Criminology.

There must be a better way.

Photo: David Trood, John Fairfax & Sons Limited

The adversarial system in juvenile justice

This comment made me wonder if the adversary system does in fact 'do justice' to juveniles. As more legal requirements are introduced into North American juvenile justice systems, I do not see evidence of greater protection of civil rights but rather greater injustices caused by delays and detention. There is the further assumption that the same person cannot do both prosecution and defence. Later, when I watched experienced prosecutors in Canada, I noticed that when no defence was present, the prosecutor often did what one would normally expect from the defence. When a defence attorney was present, sometimes with little experience in juvenile court, the prosecutor remained quiet as a defence attorney asked for unnecessary delays and frequently caused grief for the defendant. Was the defendant better served by having a defence lawyer? My feeling was that most of the defendants would have been better served by an experienced prosecutor acting alone.

In Vienna, I once watched an investigating judge act as defence on the spur of the moment. He had investigated the case and recommended it for trial. The family came from out of town, but the defence attorney did not appear. A cancellation would have been a hardship, so the investigating judge offered to do the defence since he knew the case well. He did a brilliant job. I was surprised, but the Austrians expect people to play different roles with integrity. I would like to see our judges act as defence counsel from time to time. It would be healthy. So far judges just smile at my comments.

Keeping judges ignorant

Another assumption we make is that judges must be kept ignorant of background information until a youth is found guilty. Great efforts are made to separate the decision concerning guilt from the later decision regarding the disposition of the child. The French find this utterly naive and unrealistic. The juvenile who has run away from home to avoid abuse may steal food, and the French judge feels the circumstances surrounding the offence directly influence the issue of guilt. Juveniles share that feeling and in North America frequently feel frustrated trying to tell their story.

To illustrate some of the basic assumptions underlying French juvenile justice, let us examine the way juveniles are processed. The French police do not lay charges; they simply refer the case to the procureur, a magistrate who is much like a Canadian or Australian prosecutor. The procureur can screen out the case or send it to the juvenile court judge. Perhaps 90 per cent of these cases are handled informally in the judge's office. That is, the judge foregoes all punitive powers and works with non-punitive 'helping' measures. However, if the case is serious, or if the child continues to offend, the judge refers the case to trial in the formal courtroom where two lay judges sit with the juvenile court judge. In practice, French judges, working through social workers, spend the vast majority of their time offering a wide range of social services.

'Two lawyers see who can "win". Aren't you interested in justice?'

In court, I was surprised to hear a judge read out all the past wrongs of a child and how many times he had been helped in the past. How could a juvenile get a fair trial? But I watched the court acquit a case when the defence pointed out that there was doubt about this particular offence. French judges are expected to be very well informed on the background of the child and family and use that information with discretion. The public places considerable faith in the professionalism of judges and prosecutors and gives them much discretionary power. We do not trust our judges.

The consequences of this paternalistic system

What is the outcome? Relatively few juveniles are in gaol. In Marseilles, the toughest city in France, with the court serving a population of 1 400 000 people, the seven juvenile court judges, all women, were considered severe. About 25 boys were incarcerated and 1 girl. What had she done? Murdered her mother. Where would the second 'worst' girl be? In a facility a little distance away. When I visited, 40 girls lived in the building, but 15 others lived in apartments nearby. All attended schools or worked outside the home. Nurses, psychologists, and the like are not found inside these facilities, because it was viewed as desirable to use the community as part of creating a normal atmosphere. There was no gymnasium or swimming pool. The girls use community facilities. Each girl had a key to the lock on her room, but the staff did not have keys to those rooms. A bicycle trip, organised by a staff member, provided a useful insight. As they left, no one counted noses. When I asked about this, I was told they would be able to find their way back. The staff member missed the essence of my question completely, which was, 'aren't you worried about runaways?' Obviously they were not. A philosophy of persuasion rather than control was readily apparent.

Weekend visits to families were frequent. The question was not if a girl would get a pass, but who was going to pay for the trip this time. Certainly some of the girls did not like being in this home, but if they did not, they could go home and complain to the judge. There was no mechanism for holding a girl against her will.

'Judges are frequently isolated and insulated from the people and information which might lead to more intelligent decisions.'

The type of confrontations which characterise North American facilities seem to be rare in France. Concern about physical attacks characterises many North American institutions. The threat of such attacks creates problems for rehabilitation. This issue was never raised in France. There may be a climate that is more conducive toward behavioural change.

The clear distinction between punishment and help

The French system clearly distinguishes between punishment and helping. When you are punished you are in gaol; when you are being helped you are able to make decisions. There are clear advantages to not pushing your luck too far with the judge. Not only do judges listen to juveniles in France, they can and do offer considerable help.

In conclusion, the legalistic trends in North America may have backfired. Under claims that we are protecting civil liberties, more juveniles are being processed with more delays and a greater emphasis on punishment. Some prosecutors and defence lawyers are unfamiliar with family courts and perform in a ritualistic way. Judges are frequently isolated and insulated from the people and information which might lead to more intelligent decisions. The clearly paternalistic pattern in France assumes the intelligent application of resources by responsible people who can play different roles. It is clearly a more humane system where juveniles are actually listened to and expected to be actively involved in decisions involving their future. When a juvenile in France talks about 'my' judge, he is aware that this person has power, but that power is usually used to help. Naturally, juveniles want such judges to 'understand', to know about their situation. They do not appreciate a situation where the judge remains ignorant of background facts before deciding on guilt and then must rely on formal reports before deciding on sentencing.

'It is clearly a more humane system where juveniles are actually listened to . . .'

How the family can help the juvenile offender

Adapted from a paper entitled 'Youth Justice Reform in New Zealand' given by Michael Doolan, National Director (Youth and Community), Department of Social Welfare, New Zealand at the Preventing Juvenile Crime seminar, 17-19 July 1989, Melbourne.

How can the community rehabilitate young offenders? What is the best way of preventing crime? The Department of Social Welfare in New Zealand is optimistic that new legislation will go some way to providing a solution to these problems in that country.

Under the New Zealand *Children, Young Persons and Their Families Act* which became effective on 1 November 1989, the extended family of young offenders will have a major role to play in their rehabilitation. In the past, formal involvement in the juvenile justice system and restriction in residential institutions, has often led young people to re-offend; ethnic minorities and working class youth have suffered discrimination from the predominantly white, professional decision-makers in the youth justice system; and practitioners in the youth welfare area, as well as some members of the wider community, have been dissatisfied with the effectiveness of costly treatment programs which do little to rehabilitate young people. Is there a practical, effective alternative to punishment through the criminal justice system? The Department of Social Welfare believes there is.

Following detailed consultation with community, Maori and Pacific Island groups, a Department Select Committee reviewed a new Bill with the aim of making it simple, flexible, culturally relevant and directed to providing resources for services rather than infrastructure.

The resulting new legislation will limit the power of police, or other law enforcement agencies to arrest, in preference to proceeding by way of summons, thereby enabling offenders to be diverted away from the criminal justice system as much as possible, and to be dealt with through the Family Group Conference (FGC).

The FGC is a meeting of the offender's family group with officials. The family group is not just the immediate family, but the offender's extended family, as recognised by different cultures. The FGC is convened and facilitated by a new statutory official known as the Youth Justice Co-ordinator (YJC). Where a young offender is charged with an offence, no information may be laid until an FGC has been held. The prosecuting authority must refer the matter to the YJC. Where the offender has been arrested, the court may not enter a plea, but must refer the matter to a YJC who will convene the Conference.

A major feature of this process is that the FGC is authorised to find alternatives to prosecution in dealing with an offender who admits guilt, and where the FGC agrees on an alternative measure, the YJC is bound to try to persuade the prosecuting authority to accept that decision. Families are allowed to have discussions in private before negotiating their plans with the officials present.

If the FGC cannot agree on an alternative, the matter proceeds to court for adjudication, but the Conference has a role in advising courts on appropriate sanctions for the young offender.

Another important feature of the new legislation is that those children (aged 10 to 13 years) found to be in need of care and protection are dealt with under civil proceedings which are now to be heard in the New Zealand Family Court system. A new court, known as the Youth Court, is established for young persons (aged 14 to 17 years) charged with offences.

The new court has a range of orders available to it, namely, Supervision Order (maximum of six months); Community Work Order (between 20 and 200 hours of supervised work within a 12 month period); Supervision-with-Activity Order (three month order of structured supervision activity, possibly followed by a three month Supervision Order); Supervision-with Residence Order (three months, possibly reduced to two, in the custody of the Department of Welfare followed by six months supervision, the place of custody to be determined by the Department); Transfer to the District (Adult) Court for Sentence (only 15 and 16 year olds with a serious offence).

Longer-term community based work, which has greater potential for a rehabilitative effect on offenders than a custodial sentence, has therefore become an option for the court. Moreover, as orders (apart from Supervision-with-Residence) can allow for any person or organisation to administer the order, tribal and cultural authorities are now able to take a direct role in work with their young offenders. However, such a person or organisation must report in writing to the court on the expiry of the order, detailing the effectiveness of the order and the young person's response to it.

The New Zealand approach has also incorporated some privatisation: government funds have been made available to develop professional youth work services in the private and voluntary sector. Authorities and social workers will be able to purchase these services as required in each individual case. The Department's Youth Justice Social Workers will need to manage the system, and have the important role of promoting the principles and strategies of youth justice work.

The benefits of this legislative reform have yet to be felt, but there is a belief in New Zealand that minimising the impact of the criminal justice system on young people and their families has more chance of producing positive outcomes both for the offender and the community. No doubt the Department of Social Welfare will monitor the impact of the reforms and carefully evaluate the outcomes.

Russell Fox*

Examining existing drugs policies

A seminar was held late last year to discuss the United Nations Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances. One of its convenors, the Honourable Russell Fox, QC, looked at the situation with regard to existing policies. *Criminology Australia* publishes his introductory paper here and declares its pages open for a discussion of this matter.

Drugs policy is too important a matter to be left to physicians, pharmacologists, criminologists, penologists or sociologists, or any other group in which, of course, I include lawyers and even ex-lawyers. It is my hope that we shall, as a community and before it is too late, arrive at sensible and salutary strategies capable of practical application. This must be done on a politically bi-partisan basis with the greatest possible degree of public acceptance. The road to achieving the desired results will not be an easy one. There must be the minimum of place for passion and prejudice; convictions must come at the end and cannot be allowed to impede the proper progress of thoughtful examination.

Present policies are unsatisfactory and need urgent review. In particular, the existing penal policy does not work. It is likely that overall consumption of the illegal drugs is a little less than it otherwise would be, but this at best is only a reduction in the extent of failure. The 1988 Convention itself begins by reciting 'the rising trend in the illicit demand for and traffic in narcotic drugs and psychotropic substances' ('traffic' has become an emotive term). There are some who contend that the effect of the prohibition policy has been to increase both the number of users and the total amount consumed but this is not of course capable of any real proof.

That the policy is being seriously counter-productive is not denied. The principal adverse effects are:

(a) cost of enforcement
(b) diversion of resources
(c) increased crime
(d) increased corruption
(e) damage to individual health; and
(f) dangers for public health.

I observed some of these elements as a judge and decided that I would, as a citizen, see what contribution I could make to improving the situation. I have sought to do so as objectively as possible, and what I now say is of course only stating a case for review without attempting to form any final conclusions on what the result of the review might be.

One of the first questions even a superficial study raises is the feature I have already touched upon, namely, how do we justify an ineffectual policy which has the results indicated. Where is the balance sheet of gains and losses? Why is one not called for? Why, if existing policies are not working, do we assume that more of the same, reinforced to a degree, will do so? It seems to me at the moment that such an approach is engendered by fear of the unknown. That is to say, it is commonly (but by no means universally) thought that our people, and particularly the younger people in the community, cannot be trusted, or lack self-control. Their conduct, albeit personal and private, must be made criminal, and some sent off to gaol because of it. Do we not know, or do we not accept, that by creating the black market, and strengthening it, we play directly into the hands of the drug dealers?

Which leads me to the second rather arresting feature.

It is that while the fundamental aim of the legislation must be to control the behaviour of the individual user, most attention is paid to the supplier. In terms of law enforcement, it is not treated as a matter of principal concern that the user goes on using. The focus and the justification seem to relate to the supplier. Even then it is recognised, as it has to be, that the supplier at the lowest level is more often than not a distributor on a very small scale, a user himself, on friendly terms with the person he supplies, and not a pusher.

The villain commonly depicted is not the user, but the supplier, particularly the importer or wholesale supplier. The latter, as matters now stand, is deservedly so stigmatised, but his conduct has two distinct aspects, the immoral and the illegal. It is legitimate to pause and ask what the position would be if illegality were removed.

It is as well, politically, that the stone

*Russell Fox, AC, QC, Formerly Chief Judge of the ACT Supreme Court, Judge of the Federal Court.

can be cast at the supplier. No-one knows how many users of the illegal drugs there are in Australia. Recent estimates suggest that there may be 30 000–40 000 regular users of heroin, 780 000 cannabis users and 84 000 cocaine users in this country. In the USA, it is estimated that there are between 25 and 35 million regular users of the drugs. In both instances, there are a lot of people whose personal and private conduct is to be controlled, quite a lot of people who could go to gaol. All gaol accommodation in the United States would hold no more than 3 per cent of this number. Many, of course, are in states where marihuana has been decriminalised. It is also easier politically to point at people, such as suppliers, in other countries and indeed to blame other countries for the local problem.

This leads to a fundamental consideration: the major premise. On what principle should the law interfere to impose criminal sanctions?

The principles upon which they might be invoked have many times been considered and undoubtedly we now accept more intrusion than was acceptable a century or two ago. We have for many years had controls in relation to pharmaceutical drugs. They have however chiefly been directed at safety and to avoid accidental misuse (excepting those presently in question) rather than voluntary, informed use. An unsuccessful overdose of most drugs is not a crime.

The principle now relied upon is unclear, but it should be enunciated, and with precision. Strangely, perhaps, the purposes which have been expressed by the legislators have been confused. I have read many of the parliamentary debates dealing with legislation implementing the 1961 and later Treaties and they proceed for the most part by a process of caricatured stigmatisation, with little reliance on factual material. There is also quite unwarranted deference to what has been done or said overseas, particularly in parts of the United States. The onus of stating an adequate principle is upon government and an examination of what policy should be followed should proceed forward from that point, not backwards from existing illegality, although that must finally, as a practical matter, be considered. In an imperfect society, direction will in the end be indicated by the least of the perceived evils.

Ratification of the 1988 Convention would effectively preclude consideration of these and other matters. As it says, it extends and reinforces the requirements of existing Treaties. It has detailed requirements respecting penal laws of internal operation, so that use and possession, as well as sale, purchase etc. are to be, or remain, illegal. In so far as it provides for better international arrangements and fuller international co-operation, there would be few who would cavil at the generality of its theme. At the same time, it is to be noted that none of the countries with whose supply we are most likely to be concerned, countries such as Myanmar, Pakistan, Thailand, Laos and Cambodia, has as yet signed the Treaty. They are a trifle more realistic than Colombia and some others of the South American states which have signed, but there has been strong United States pressure on many of them to do so. The United States has avowedly declared war on the external producers and suppliers with which it is concerned and is spending great sums in the endeavour. On the other hand, the probability is that the international arrangement will be of little if any use to Australia.

There is much uncertainty in the meaning of the many provisions of the Treaty and obscurity as to their effect. This is not altogether new in treaties, but in this Treaty they need to be examined closely to see whether we should tie ourselves to them.

When the Convention is looked at in conjunction with the United States *Anti-Drug Abuse Act* of 1986, and what is happening in South America, it is reasonably plain that the focus of attention is the production overseas of large quantities of the drugs. There is apparently a belief on the part of some that most crops in Peru and Bolivia can be destroyed, and the use of the drugs by 25 or 35 million United States citizens can thus be stopped. Not unnaturally, a firm view has already developed that this is not possible. The Director of the Drug Enforcement Agency of the United States has recently said so.

It should be our aim to avoid the example of the United States, rather than get locked into its policies and strategies.

Law students from the University of Michigan visited the Australian Institute of Criminology to attend lectures by research staff. Below they relaxed with an informal lunch in the park opposite the Institute.

David Biles*

Corrections in our region

One aspect of the work of the Australian Institute of Criminology that has received little public attention is its support of the annual conference of Asian and Pacific Correctional Administrators. Ten such conferences have now been held, the most recent in India and the one before that in Australia.

The conference was a brainchild of the first permanent Director of the Institute, the late Bill Clifford, and the then Commissioner of Prisons in Hong Kong, Tom Garner. Clifford and Garner aimed to establish a forum for correctional administrators in Asia and the Pacific that would be equivalent to the Council of Europe and other regional meetings.

Together they promoted this notion to relevant governments and officials until they had sufficient support and interest to organise the first conference in Hong Kong in 1980. Representatives of 14 countries attended that first conference and subsequent annual conferences have tended to attract increasing numbers of delegates.

Over the past ten years a total of 25 different nations in the region have attended one or more of these conferences, with the most regular attenders being from Thailand, Malaysia, Japan, Hong Kong and Australia.

For each conference, representatives of participating nations always prepare written papers on the four or five agenda items which have been decided earlier. All of these papers are made available to delegates and they become significant resource material that is used for policy development and senior staff training in the region. The actual discussions at the conference are therefore only one part of the exchange of ideas.

Another feature of these conferences is the tradition that has developed for the host nation to arrange visits to correctional institutions within the locality of the conference. Thus in association with the most recent conference in New Delhi there were visits to prisons in Jaipur and Agra.

The 1988 conference in Australia was unusual in that it opened in Sydney, then after two days moved to Canberra (where among other things the delegates

Table 1
Asian and Pacific Conferences of Correctional Administrators

Year	*Host nation*	*Participating nations*
1980	Hong Kong	14
1981	Thailand	12
1982	Japan	14
1983	New Zealand	17
1984	Tonga	17
1985	Fiji	16
1986	Korea	18
1987	Malaysia	17
1988	Australia	18
1989	India	17

Prisoner in open prison near Jaipur, displaying his pottery.

were entertained at dinner in the new Parliament House by the Minister for Justice, Senator Tate) and then proceeded by train to Melbourne. Formal conference discussions even continued during the train journey!

The 1989 conference in New Delhi considered agenda items on:

(1) current penal philosophies
(2) alternatives to prisons
(3) changing role of prison staff, and
(4) crisis management techniques

As on other occasions the agenda comprised a mixture of hard-headed practical issues as well as topics that were more philosophical, but no less important.

Similarly, the eleventh conference, which is to be held in Macau will address itself to:

(1) statistics and research
(2) prison education, training and work
(3) discipline and grievance procedures, and
(4) prisons and the community

One of the Institute's responsibilities for this and for other conferences, is to prepare a Discussion Guide which aims to assist participants with the preparation of their papers.

Another responsibility of the Institute is to prepare a report of the conference deliberations. Following a tradition established by Bill Clifford, this is done during the course of the conference so that on the final day the delegates can take with them a draft of the report that will later appear in print.

The conference is now recognised as an important forum for correctional administrators in the region, yet it has no formal constitution, office bearers or budget. Participants pay their own fares and hotel expenses while the host nation provides the venue, internal travel and some hospitality. The Institute's role is generally one of co-ordination and support.

A glance at the list of nations that have participated in these conferences shows that they include the richest and the poorest, the very large and the very small, as well as those that might be described as developed or developing in their traditions and aspirations in dealing with criminals.

The result of this diversity is a stimulating and constructive exchange of ideas that must encourage betterment in an area of public administration that has often in the past been both neglected and lacking in direction. The Institute can take some pride in the contribution that it has made, and continues to make, in this area of human endeavour.

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* Deputy Director, Australian Institute of Criminology, currently seconded to the Royal Commission into Aboriginal Deaths in Custody as Consultant Criminologist and Head of Research.

Table 2
Participation in Asian and Pacific Conferences of Correctional Administrators

	80	81	82	83	84	85	86	87	88	89
Australia	o	o	o	o	o	o	o	o	o	o
Bangladesh										o
Brunei						o	o	o	o	o
Canada	o	o					o			
China										o
Cook Islands				o	o	o		o		o
Fiji		o	o	o	o	o	o			
Hong Kong	o	o	o	o	o	o	o	o	o	o
India		o	o		o	o	o	o	o	o
Indonesia	o			o	o		o	o	o	o
Japan	o	o	o	o	o	o	o	o	o	o
Kiribati					o	o	o	o	o	
Korea				o	o	o	o	o	o	o
Macau	o		o	o	o	o	o		o	o
Malaysia	o	o	o	o	o	o	o	o	o	o
Nepal										o
New Zealand		o	o	o	o	o	o	o	o	
Pakistan										o
Papua New Guinea	o		o	o		o		o	o	
Philippines	o	o	o				o		o	o
Singapore	o	o	o	o	o		o	o	o	
Solomon Islands				o				o	o	
Sri Lanka	o	o	o	o	o	o	o	o	o	
Thailand	o	o	o	o	o	o	o	o	o	o
Tonga	o		o	o	o	o	o	o	o	o

Dormitory in Central Prison, Agra.

Photo: Sun Newspapers

Aspects of the Fitzgerald Report

A new Queensland government is in place and the prosecutions arising from the Fitzgerald inquiry are proceeding. *Criminology Australia* would like you to consider two separate views of the inquiry. These articles have been chosen because each looks at an aspect of the Fitzgerald Report that has not been examined closely elsewhere.

The articles were prepared by speakers at a conference called 'The Fitzgerald Vision for Reform', organised by the University College of South Queensland. Proceedings will be published by the University of Queensland Press.

Brian Toohey*

FITZGERALD: A report without findings

There is a widespread belief that the Royal Commission conducted by Tony Fitzgerald, QC, demonstrated the existence of high level corruption within Queensland before setting out detailed recommendations on how to deal with the problem.

Fitzgerald certainly did not baulk at proposing sweeping changes to the legislative and administrative structure of Queensland, including changes to the electoral boundaries, which since have become mired in party political warfare.

But he made no specific findings about the existence of corruption in Queensland despite the assumption that this was what prompted his recommended changes.

Although a higher proportion of witnesses were heard in public than some Commissioners prefer, the Fitzgerald inquiry followed standard Royal Commission processes up until the point at which it came to report upon the evidence before it.

The media was mostly highly supportive, even adulatory, and when occasionally fractious was reminded of the contempt provisions available to a Commissioner.

The technique of offering indemnities to senior police produced confessions of corruption during the hearings that might otherwise have taken months of exhausting, and possibly inconclusive, investigation.

Other information which was volunteered prompted Fitzgerald to take some intriguing evidence from the former Premier, Sir Joh Bjelke-Petersen, and his Cabinet colleagues, Russ Hinze and Don Lane.

However, Fitzgerald did not go to build upon this evidence to produce an overall picture of corruption, let alone give us findings about particular examples of corruption in the police force or the political and business spheres.

The final Report is remarkable for the way in which Fitzgerald simply ignored the requirements of his initial terms of reference to report upon the behaviour of particular individuals such as Gerald Antonio, and Vincenzo Bellini, Vittoria Conte, and Hector Hapeta.

After the terms of reference were widened, he heard serious allegations against politicians and senior police but, again, refused to make findings on these matters in his report.

Fitzgerald did not lack resources or adequate personal recompense for his task. The Commission cost $24 million of which $2.3 million were fees paid to Fitzgerald himself for a little over two years work.

The failure to make findings on the evidence before him is all the more suprising in view of Fitzgerald's repeated promises during the course of the inquiry that he would 'clear the innocent' at the end of his Commission. These undertakings were given in what Fitzgerald liked to call 'homilies' delivered as part of the hearing process and regarded as sufficiently important to publish in the appendices to the Report.

On 19 October 1987, he said, 'I accept that there will be an obligation on me when I ultimately present a report to the government to ensure to the best of my ability that any unsubstantiated allegations are put to rest'. On 26 October, he added, 'The efficacy of that step to redress any possible damage to an innocent person's reputation must await publication of that report, but, once that occurs, I consider that both the community and innocent people who are named in evidence will be better served by freedom to publish the evidence as it is given than by restrictions which will occasion continued cynicism or lingering suspicions that there has been a cover-up . . .'

Fitzgerald also promised that he would deal with those who, upon consideration of the evidence, were regarded as guilty. On 31 August 1987 he said, 'Once a process such as this is started, it must be carried to a satisfactory conclusion. If significant culprits escape the net, they are to some extent 'sanitised' and in an even stronger position to pursue their activities and escape detection in the future.

Photo: Sun Newspapers

*Brian Toohey is editor of *The Eye* magazine and co-author of *The Book of Leaks* and of *Oyster: The Story of the Australian Secret Intelligence Service*.

Fitzgerald Report

The Deputy Commissioner, Patricia Wolfe, in a homily of her own on 20 June 1988, gave a graphic depiction of the sort of behaviour being dealt with: 'The demi-monde with which the Enquiry is concerned is not a jolly place peopled by happy go lucky fun lovers sampling the pleasures provided for them by generous benefactors. It is a world of greed, violence, corruption and exploitation, where the weak and the immature are preyed on even to the extent of the indescribable evil of the peddling of addictive drugs by which youthful lives are destroyed.'

Strong language, indeed! But an expectation raised that the Commission might make findings on the evidence regarding greed, violence, corruption or drug dealing in its final Report was not fulfilled. In fact, nothing was said about drug peddling in relation to prostitution and illegal gambling although this was specifically required by the terms of reference.

Furthermore, when it came to the actual Report, Fitzgerald made no attempt to sort out who was innocent and who was guilty in regard to anything else covered by the terms of reference or by the evidence actually placed before the Commission.

In the words of his own homily, it appears that many culprits will be 'sanitised' by the omissions of Fitzgerald's Report, or, as he puts it with admirable frankness in the Report itself, 'the guilty will be delighted no conclusions have been reached'.

Instead of carrying out the promises made in the homilies, Fitzgerald contented himself with the assertion that everyone was entitled to be considered innocent unless a court found otherwise.

Royal Commissions, of course, have been in the business of making findings on the evidence before them ever since they were established. Fitzgerald's terms of reference set him squarely within the category of Commission described by the Australian Law Reform Commission in its Issue Paper No. 4, as, '. . . first and foremost, fact finding bodies called on to investigate and make recommendations as to alleged abuses in public affairs, alleged serious crimes or derelictions of duty affecting the public at large'. Moreover, the Act under which Fitzgerald was operating makes plain that a Commission's inquiries are to take precedence over those of any court. His refusal to make findings means that much

Tony Fitzgerald, QC

of the conflicting evidence taken during the hearings will remain unresolved with any harm to innocent people's reputations continuing unabated.

The justification, in summary, was that it was no use dwelling on the past and that the more important task was to erect structures for the future to combat corruption in Queensland. The problem is that he only asserted this corruption to exist and made no attempt to demonstrate it beyond the confessions he had obtained in the course of the hearings. In addition, he strongly warned against any attempts to infer the existence of corruption from what was said in the hearings.

A further argument is that adverse findings could prejudice a future trial. The potential for prejudice may exist but there are numerous examples from the past where courts have not taken such a view of the findings of a Royal Commission.

The Slattery Commission, for example, drew adverse conclusions against former NSW Corrective Services Minister, Rex Jackson, but this was not considered by the courts to have prejudiced his subsequent trial.

The point raised by Fitzgerald is a serious one, even if he did not consider it to apply to the unfavourable publicity surrounding evidence given about several witnesses in the course of his inquiry. He could, of course, argue that findings by him carried more weight in a juror's mind than publicity arising in the course of the hearings.

However, this is a problem that confronts all Royal Commissions in Australia and no satisfactory manner of dealing with it has yet emerged. Many would argue that the situation is no different from committal proceedings in which jurors might be influenced by a magistrate's decision that sufficient evidence exists for someone to stand trial. Others would argue that jurors are more capable than is often assumed of concentrating their minds on the evidence before them rather than something they might have read two or three years before.

From this writer's perspective, the success of a Royal Commission need not be judged on the extent of punitive court action that ensues in its wake. There may well be cases where there is little public benefit in attempting to send some old men to gaol.

Detailed findings about how corruption worked might bring about more public awareness of the need for reform than the often narrow and protracted business of trial. In any event, it is for the courts, not prosecutors or investigators, to decide whether a fair trial is possible or not. But if criminal charges do not proceed because a Royal Commissioner has given a detailed exposition of how corruption has occurred, there is not necessarily any overall community loss.

As Dr Clem Lloyd of the Australian National University has commented in an article in the November 1989 edition of the journal *Politics*: 'For a variety of technical reasons some, probably several, will be acquitted, even some of the most culpable. This of course is a proper judicial process, but, in the absence of findings, it would erode substantially the foundations of Fitzgerald's Report and his quest for reform.'

Not only did Fitzgerald refuse to make findings about individuals, he declined to make findings about the general pattern of corruption in Queensland, confining himself to a supposed neutral summary of parts of the evidence. Given the substantial resources available, it should have been feasible to bring down a four volume report: the first meeting his initial terms of reference on brothels and the like; the second outlining corruption in the highest ranks of the police force (there was no need to chase down every constable who had received a 'freebie' from a freelance prostitute); the third assessing the probity of the relations between politicians and the various businessmen with whom they had financial relations; and the fourth setting out his recommendations for the future.

As Dr Lloyd puts it:

Without analysis and assessment, the structure falls to the ground and the summary is virtually useless for inculcating into the public mind the basis for the transfiguring of the political and administrative culture of Queensland. The summary doesn't do the job that Fitzgerald demands of it . . . Fitzgerald makes much of his Commission's mission to inform the public and establish in the community the basis for urgent reform. It is fair to judge the Report on the basis of the educative and propagandist roles claimed for it, and on both counts it largely fails . . . There seems no valid reason why Fitzgerald should not have properly analysed the historical, causative elements and made appropriate findings upon them. Indeed, his laudable aspirations for quick and substantive reform would seem dependent on such a procedure. Fitzgerald conceived his report as a 'catalyst and platform for continuing reform' designed to restore public confidence and improve political processes — 'the focus is on the future, not the past'. The problem is that without sufficient understanding of the past, it is difficult to design a blueprint for the future and to make it stick. By playing down past abuses, and refusing to make findings upon them, Fitzgerald erodes his case for reform.

Fitzgerald's decision not to make any findings about individuals, critical or otherwise, still leaves the question of what happens to those whose behaviour might not warrant criminal proceedings but nevertheless amounts to public impropriety.

Lloyd draws attention to the 1930 Royal Commission into the behaviour of two former Queensland Premiers, Ted Theodore and Bill McCormack, in the purchase of the Mungana mines.

Historians who have since examined the issue considered the Royal Commission findings of impropriety soundly based although court action did not succeed at the time. For example, K.H. Kennedy writes in *The Mungana Affairs* (University of Qld Press 1978): 'That the Crown failed to obtain a verdict in a civil suit, and would almost certainly have failed in a criminal prosecution, in no way alters the fact that the defendants had acted in collusion to profit dishonestly at the Crown's expense, in flagrant disregard of their public duty'. The Labor lawyer and historian, Michael Sexton, came to similar conclusions in a paper delivered to a Canberra conference in 1984.

Even if it were considered desirable to remain silent about those who might be subject to criminal charges somewhere down the track, this is no reason to refrain from comment on those who fall outside the scope of the criminal law but are in breach of normal ethical standards of public conduct.

Limits in the law relating to secret commissions, for example, might prevent charges of bribery being laid without removing the possibility for a significant finding of conflict of interest whose existence could well fall within the bounds of appropriate comment from a Royal Commisioner.

The issue was given sharp relief in the evidence taken by Fitzgerald about various financial transactions between businessmen and politicians in Queensland. Details were given of large loans (often repayable at an indeterminate time in the future) made to Russell Hinze by property developers and others who were seeking decisions within his ministerial discretion.

The Report notes that in the four years to 30 June 1987, over $800 000 were described as 'loans forgiven' or 'loans written-off' in the Hinze Group financial accounts. Hinze was a man of considerable assets, yet none of the businessmen was called to explain why he should have received such generous treatment.

Unfortunately, Fitzgerald's comments in his final report did not rise above the trite. He says. 'Those (businessmen) with whom dealings took place may have neither sought nor received preferential treatment and no conclusions of impropriety have been drawn'. The businessmen 'may' (or 'may' not) have done lots of things in their dealings with Cabinet Ministers in Queensland. Some 'may' even have been that old fashioned

Photo Sun Newspapers

Geraldo Bellino, left, leaves the Fitzgerald Inquiry.

type who expected a return on funds outlaid.

Expensive Royal Commissions are established, however, because questions have been raised about what 'may' have occurred. At the end of the process of inquiry the public can reasonably expect answers that explain what actually has happened. Yet Fitzgerald did not even seek in some of these transactions to go beyond the corporate entity used to find who were the principals.

Sometimes we get a name but little more. Why didn't the Cowrie Corporation, for example, which wrote off a loan of $80 000 to Hinze's Waverley Park Stud Pty Ltd, make a greater effort to get its money back? All Fitzgerald tells us is that the loan had been made by a Victorian, Roger John Burt, and that Hinze has said he did not know Burt, or whether Cowrie Corp was acting as agent or principal, and if an agent, for whom.

In fact, the Cowrie Corp is associated with a businessman resident in Melbourne who had development interests on the Gold Coast. Even if Fitzgerald won't draw any conclusions about the propriety of the transaction, why can't we be told who was involved?

Those businessmen who are in fact named as involved in the various transactions certainly do not have reputations for being naive. One of them, George Herscu, had previously pleaded guilty to bribing the Builders Labourers Federation's Norm Gallagher, while another, Eddie Kornhauser, in his youth was a business associate of the Kings Cross identity, Abe Saffron.

One of Kornhauser's companies, HSP Nominees Pty Ltd, has been immortalised in the State of Queensland in legislation instructively entitled the *HSP Nominees Act* which facilitated development of his Paradise Centre on the Gold Coast. Two days before Cabinet agreed to this legislation, Fitzgerald records that HSP Nominees paid $50 000 to a Hinze family company: 'The sum was recorded in the books of that company as a loan. No interest was paid and no repayments were made until February 1988, after Hinze had been omitted from Cabinet by the Premier, Michael Ahern, when he took office in the course of this inquiry.'

He made no further comment on this or on another $200 000 loan which has been repaid, but was made at the time of earlier enabling legislation affecting the Paradise Centre. On the basis of Fitzgerald's Report, Hinze's call for his reinstatement to Cabinet is entirely understandable.

Fitzgerald's handling of a $3 million loan from European Asian Bank to a Bjelke-Peterson family company is even more difficult to justify. Sir Joh's friend, Sir Edward Lyons, and Joh himself had been involved in the negotiations for the loan.

A report from a European Asian Bank official produced in evidence said that it had been told that granting the loan would help it get government business and that refusal would have a negative impact on its future in Queensland. Although the loan went ahead, Fitzgerald contented himself with recording that Sir Joh denied that he had 'provided any basis for those comments'.

What happened? Did the bank make it all up? Alternatively, who was it who provided the basis for the comments and were they authorised to do so? Fitzgerald does nothing to enlighten us, simply giving Joh's denial and leaving the Bank's credibility hanging in the air. Even if Fitzgerald did not wish to draw conclusions, calling someone from the bank to give their version of this crucial memo would seem to have been a task well within the time available to him as well as a simple requirement of fairness.

Fitzgerald repeated the formula used in regard to direct transactions between politicians and businessmen when it came to political donations: 'Persons or organisations who made donations to the National Party of Australia (Qld) may have neither sought nor received preferential treatment and no conclusions of impropriety have been drawn'.

Fitzgerald's faith in the purity of the human spirit in dealings with governments may be touching, but it does not appear to be one shared by Adrian Roden QC in comments he has made in the course of the inquiry he is currently conducting on behalf of the Independent Commission Against Corruption into various land dealing on the northern NSW coast.

While Fitzgerald refused to make findings on the evidence before him — something for which he was trained as a lawyer — he was happy to make up much of his report with essays on police culture and possible management structures for the force that could have been written for

someone with more expertise in these areas such as a sociologist, public administrator, or criminologist.

Similarly, although he took no evidence on the topic he was not deterred from making recommendations for an electoral redistribution which has become the main focus of the reaction to his Report. Getting rid of the gerrymander has merit but it hardly ranks at the core of dealing with corruption. NSW has managed to have a flourishing corruption industry for decades without rigged boundaries.

Unfortunately, one of the most superficial sections is on organised crime which repeats all the stereotypes without the slightest attempt to anchor it in the evidence before the Commission. According to Fitzgerald, 'organised crime is like a Hydra, and the removal of some of its heads will not kill it'. Its architects, we are told, hide behind a 'veneer of respectability', while the profits of organised crime are used to 'buy skilled services from expert lawyers, accountants, financial and other advisers. That money also buys sophisticated technology (which) includes electronic communications, interception and monitoring equipment, secure information processing and storage systems, good transport and best weaponry.'

The notion that subjects of Fitzgerald's inquiry such as Hector Hapeta could use anything more sophisticated than a telephone, let alone a 'secure information processing and storage system' is simply fanciful. If Fitzgerald found anyone further up the line who remotely fitted these breathless caricatures of organised crime figures, he singularly fails to share his discovery with us.

That, unhappily, is the result of his decision to depart from the normal requirements of a Royal Commission to make findings on the evidence and to concentrate instead on musing about a new administration structure for Queensland.

Dr Ross Fitzgerald*

FITZGERALD: Judicial culture and the investigation of corruption

Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men.

Lord Atkin, 1936

A central dilemma facing those investigating corruption is determining what procedures — political, investigative and judicial — can be used to detect, expose, and excise corruption from public life. A fundamental problem is that networks of organised crime and corruption are built up in and sustained by existing political, police and judicial routines. In his inquiry Tony Fitzgerald, QC, pointed to the existence of a police culture. Its assumptions and unwritten codes of behaviour shielded the corrupt who used their extensive working knowledge of routine investigative, administrative, political and judicial procedures to further their collective aims.

It can be argued that Fitzgerald also implicitly addressed the role of a judicial culture in the investigation of corruption. He recognised the need for commissions of inquiry to be quasi-judicial; to be effective they demanded stepping outside the normal bounds of judicial procedure. The fundamental task of a commission of inquiry as Fitzgerald understood it was not to determine the guilt or innocence of individuals; rather, it should be an inquisitorial attempt to determine the truth. It must be a wide-ranging inquiry, rather than the investigation of particular allegations conducted on an adversarial basis.

While Fitzgerald's inquiry did not explicitly address the role of judicial culture, nevertheless a set of assumptions and codes of behaviour governing the judiciary was implicit in the formulation of the innovative procedures by which the inquiry was run. Specifically, these innovations addressed the failure of the formalistic judicial procedures, adopted by Justice Harry Talbot Biggs in the 1963-64 National Hotel Inquiry, to remove key corrupt players from the field of play in Queensland, and beyond.

In hindsight the failure of the National Hotel Inquiry can be seen as monumental. Rather than exposing corruption, it had the probable opposite effect of emboldening key corrupt players. In his Report, Fitzgerald observed that the list of police officers represented at the National Royal Commission included many who were again the subject of allegations in 1987 and 1988; for example John William Boulton, Graeme Robert Joseph Parker and Jack Reginald Herbert 'who have now admitted corruption, although Parker and Boulton deny, unconvincingly, that they were corrupt at the time of the National Hotel Inquiry'. Also included were T.E. Lewis and Don Lane.

Yet even without the omniscience of hindsight, the National Hotel Inquiry was doomed to ineffectiveness by its narrow terms of reference, lack of effective investigative powers and procedures, and the absence of witness protection or indemnities.

The inquiry had been set up to investigate specific allegations of police misconduct at the National Hotel, initially raised in State Parliament by Labor MLA for South Brisbane, Colin Bennett. At the end of a speech in October 1963 on conditions in the Police Force, Bennett made a passing claim that senior police officials were drinking after hours and condoning prostitution at Brisbane's National Hotel. On 11 November, it was announced that a Royal Commission of Inquiry under Justice Harry Gibbs was to look into the allegations. After conducting the inquiry for seven weeks, commencing on 2 December 1963 — that is, with virtually no lead-up time at all — the Commission concluded that while laws relating to the sale of liquor had been breached without police detection or

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intervention there was 'no acceptable evidence'

that any member of the Police Force was guilty of misconduct, or neglect or violation of duty in relation to the policing of the hotel, the conduct of the business or the operations or the use of the hotel, or the enforcement of the law in respect to any breaches alleged or reported to have been committed in relations thereto.

Fitzgerald said those findings were understandable. Given the narrow terms of reference of the Royal Commission and the social and political environment of the time, nothing could have alerted the inquiry to 'the possibility that it confronted an orchestrated 'cover up' based on, and supported by, institutionalised police attitudes and practices'.

Evan Whitton is less generous:

It is proper for a judge to operate, as it were, in vacuo in a court action but a person holding an inquisition might be expected to bring a keen perception of men and events. Indeed, if intelligence as to (Police Commissioner) Bishchof's true character had penetrated even the Toowoomba monastery in which (Whitton) was then cloistered, it may seem that Gibbs, in making the positive finding that neither Bischof nor any officer had been guilty of misconduct, must have led a spectacularly secluded and innocent life at the bar and on the bench.

(*Justinian*, October 1989, p. 14)

It is now clear that the way in which the National Hotel Inquiry was set up and proceeded meant that the truth could never be known. Gibbs was provided with counsel assisting, but was not given any real investigative resources. It is interesting to note that Don Lane was one of those members of the Queensland police force who assisted Gibbs by 'making inquiries for the Commission and (serving) subpoenas on its behalf'. This was despite the fact that D.F. Lane was also one of those Queensland police officers listed as being 'represented at the National Hotel Royal Commission'.

The procedures of the courtroom can play into the hands of those who want to prevent the fullest and widest inquiry into the truth. Commenting on the National Hotel Inquiry, Fitzgerald observed a typical modus operandi among corrupt Queensland police for dealing with investigations.

In a pattern that has been repeated many times since, police closed ranks behind those being investigated. Evidence was collected to demonstrate that the National Hotel had been the subject of conscientious police attention, and to discredit those who made allegations against police and their interests.

A key Inquiry witness, prostitute Shirley Brifman revealed in 1971 that police had persuaded her to perjure herself at the Gibbs Inquiry. Jack Herbert also admitted to Fitzgerald that he had given 'entirely fictitious evidence' regarding John Komlosy, one of the witnesses against the police. Herbert had falsely claimed to Gibbs that Komlosy said that he wanted to 'get even' with the hotels owner. Police were able to 'verbal' their opponents, with devastating effect, because the inquiry was conducted within the ethos of adversarial litigation.

The possibility of adversarial intimidation was undoubtedly one reason why very few members of the public came forward with information at the National Hotel Inquiry. But witnesses to the misconduct of others were also not indemnified from prosecution for their own transgressions. Further, Gibbs could not compel witnesses to give self-incriminating evidence and did not have the power to pursue witnesses across the Queensland border.

While these defects were highly significant, it is also clear that Justice Gibbs did not take full advantage of the flexibility available within the legislation affecting commissions of inquiry. He chose to run the inquiry along familiar lines, fully aware that the existing legislation did not demand it.

Although in my enquiry I was not bound by the rules of evidence (Section 17 of 'The Commission of Inquiry Act, 1950 to 1954'), I did endeavour to adhere to those rules as far as possible . . .

According to Ian Callinan's 1988 paper on 'Commissions of Inquiry' this 'formal' approach was 'not likely to be effective'. Yet a closer look at the conduct of the National Hotel Inquiry indicates the establishment of a judicial ethos, rather than the application of strict procedures. The adoption of a judicial ethos meant that the National Hotel Inquiry was conducted according to those procedures

Photo: Sun Newspapers

Dr Ross Fitzgerald

within which the corrupt had learned to work. It can now be seen that by not stepping outside of routine judicial assumptions, Gibbs inadvertently played into the hands of the corrupt.

The fundamental point in regard to the role of judicial culture in the investigation of corruption is that commissions of inquiry should be inquisitorial, not adversarial, in character.

While this may be obvious in hindsight, it is also a logical implication of the conditions which prompt the call for commissions of inquiry in the first place. Usually such commissions are established because, as Callinan argues, 'more conventional measures have failed: breakdowns in proper procedures have occurred, and propriety in public life has failed: such circumstances call for unconventional remedies'.

The Fitzgerald inquiry was headed, not by a judge, but by a QC. However, Fitzgerald had been a Federal Court judge, from November 1981 to June 1984, before resigning to return to limited private practice.

While 24 years previously, Gibbs had started with little more than 'a throwaway remark in state parliament', Phil Dickie of the Courier Mail and Chris Masters of ABC Four Corners (aided by incorruptible ex-Licensing Branch Constable Nigel Powell) had gathered a mass of documentation Fitzgerald could use. Fitzgerald gave himself plenty of time before his inquiry began and set up his own investigative staff, which became virtually a small police force of its own. He did not have to rely on Queensland police files and police services, as Gibbs had, almost exclusively.

The Fitzgerald Inquiry was organised with a particular view to learning the lessons of the past. A number of specific improvements were sought, including expandable terms of reference, provision of adequate investigative and administrative resources, indemnity for witnesses, and a willingness to conduct an open public inquiry.

Fitzgerald had a clear and operational understanding that the aim of a commission of inquiry was to be inquisitorial in the best and proper sense of that word. In contrast, Gibbs thought of himself as a judge when he was conducting his commission.

For Fitzgerald there was no question of pursuing questions of individual guilt or innocence in regard to specific misdemeanours. Instead, he aimed to bring to light the conditions under which corruption could occur and to offer recommendations for reform.

Fitzgerald understood the procedural implications of the fact that organised crime and corruption is not simply a chaotic manifestation of disorder, but is also the dark-side of existing economic, political, social and judicial structures. To successfully conduct his inquiry the nexus between current institutionalised practices and organised corruption had to be broken.

To take one example. In the National Hotel Inquiry 'A very strong counsel Sir Arnold Bennett, QC, acted on behalf of the members of Cabinet but treated the police force and the Ministers as if . . . the two were monolithic, that is without any different interests'. This had the effect of heightening the adversarial character of proceedings and intimidating witnesses.

Fitzgerald broke the institutional nexus at this point by adopting the practice that 'any Cabinet Minister or policeman or official against whom a real basis for a case to answer was established, obtain his own separate representation'.

The most controversial tactic used by Fitzgerald was undoubtedly the granting of indemnities to corrupt witnesses. To many members of the public, thinking simply in terms of fingering the guilty and punishing wrongdoers, this was often mystifying. Some believed that indemnities were only given so that 'bigger fish' could be netted. More correctly, the indemnity tactic was integral to a context-based inquiry; that is, it was thoroughly consistent with Fitzgerald's intention to uncover corrupt systems rather than to prosecute individuals. Concerning the highly controversial granting of indemnity to one of the 'big fish', Jack Herbert, Fitzgerald stated:

It is . . . vital that whatever steps are available be taken to maximise the prospect that the truth is told. If individuals escape, even important criminals, even if all escape, but a basis is laid for a new and better future, that is preferable to a continuation of the past.

The importance of removing the players from the field was paramount, as Fitzgerald's comments on former Assistant Commissioner Graeme Parker chillingly confirm:

Many of the offences for which indemnity was granted would otherwise never have been discovered, let alone prosecuted. It is fanciful to pretend that those indemnified would otherwise have all been sentenced to lengthly prison terms. Parker, for example, would probably still be an Assistant Commissioner, quite possibly in line for appointment as Queensland's next Commissioner of Police.

Fitzgerald's purposeful adoption of the inquisitorial style in the context of a public inquiry inevitably created tension. It seemed to some, not least to those mentioned adversely at the Inquiry, that the innocent could become too easily embroiled. Fitzgerald's solution was openness; individuals were given the freedom to present their point of view and deny allegations, but without any procedural impulse to engage in adversarial contest.

Clearly, Fitzgerald has proved that the battle against corruption requires a carefully controlled (and suitably checked and balanced) set of non-routine procedures. Law-enforcers and judiciary must at times step outside formal zones and legalistic procedures to pursue the corrupt.

As far as Fitzgerald was concerned, the behaviour of judges legitimately fell within his terms of reference. 'Truth', he argued, 'does not cease to be truth because prominent citizens are involved, and an investigation which aims to find the truth cannot be curtailed or circumscribed to exclude categories of persons from its purview'.

Any contention that any investigation (except an inquiry which has been appointed by the Parliament to recommend whether a judge should be removed) which comes up against some matter in which the behaviour or relationships of a judge arises for consideration should be abandoned or curtailed is unrealistic and untenable in practice.

Those judges named in the inquiry (Angelo Vasta of the Supreme Court and District Court Judge Eric Pratt) were offered the same rights as others to appear before it and to make statements. Vasta in particular claimed that to appear before the inquiry struck at the heart of that focal symbol of judicial culture, the independence of the judiciary. Vasta also vigorously questioned whether Fitzgerald, as a QC, was qualified to inquire into the behaviour of a Supreme Court judge.

The ethos of judicial culture, which had procedurally undermined the effectiveness of the National Hotel Inquiry, threatened to disrupt Fitzgerald. Indeed, Fitzgerald was so dismayed at Vasta's attacks on the inquiry that he contemplated abandoning it. Judicial independence was being drawn upon to claim that judges could exclude themselves from participating in an inquisitorially based inquiry.

It could be argued that Fitzgerald's concern for the independence of judiciary led him to forego his full inquisitorial rights. For reasons which we need not examine here, he gladly handed over the task of inquiring into the behaviour of the judges to a Parliamentary (Judges) Commission of Inquiry, to be carried out by three retired judges: the Rt Hon Sir Harry Talbot Gibbs (Presiding Member); the Hon Sir George Herman Lush; and the Hon Michael Manifold Helsham.

Fitzgerald, however, still questioned whether an inquiry seeking to determine whether a judge should be removed from office needed to be 'effectively adversarial'. Vasta certainly demanded an adversarial style contest. Fitzgerald had remarked in a letter to the then Premier: 'Many who have been caught up in the Inquiry share Mr Justice Vasta's wish to be excluded from such a process and to

be called upon to face particularised allegations of which evidence is already available'. Indeed, it could be argued that Vasta achieved his wish, to a degree, in the Parliamentary Judges Inquiry. It is doubtful given his fate, however, that he achieved it to his satisfaction.

The conclusions reached by Gibbs et al. in the Parliamentary Judges Inquiry raise serious questions as to whether an inquisitorial style will be adopted in the future. The Parliamentary Judges Inquiry was, in part, a retreat into the formalistic and familiar ethos of the judicial culture. While they did recommend that Parliament remove Vasta from office, they trenchantly voiced their doubts about the value of wide-ranging inquiries:

The Commission, as a result of its experience in conducting this inquiry into Mr Justice Vasta and into Judge Pratt, has formed the clear opinion that the holding of an inquiry into the question whether 'any behaviour' of a judge warrants removal is open to grave objection. It is one thing to inquire into specific allegations of impropriety but it is quite another to conduct an inquisition into all aspects of a judge's life.

'Why not?', one might ask.

In the light of comparison of the National Hotel and Fitzgerald Inquiries we need to ask how realistic is it to expect that inquiries conducted by judges will be inquisitorial? The pressure on Gibbs in 1963-64, and on Gibbs et al. in the Parliamentary Judges Inquiry, show how easy it is for those steeped in the judicial method to adopt the adversarial position. A person whose training has been in such a method must display especial singularity and courage in order to assume an avowedly inquisitorial stance, as Fitzgerald did so ably in his inquiry.

Ironically, it was precisely the wide terms of reference, in particular the reference to 'any behaviour', which was responsible for Vasta's demise at the Gibbs panel. The question of influence between Lewis and Vasta was quickly dealt with; there rarely is any hard evidence for such things. Yet, despite their conclusion that judges should only be required to face specific allegations, Gibbs et al. were of the opinion that it was not necessary for them to determine whether any specific behaviour 'in itself' was enough to warrant his removal. Taken together however, they were.

On the one hand Gibbs et al. were claiming the desirability of abandoning an inquisitorial style in the case of judges and dealing only with specific allegations. On the other, they refused to determine whether any specific behaviour of Vasta warranted his removal from the bench.

Consequently the Parliamentary Judges Inquiry has not helped to clarify the issue of judicial standards. Moreover, the return to formalism has created a disturbing public perception that there is in judicial culture a concern for tree-and-leaf detail, which seems to miss the woods for the trees. In the end, as Quentin Dempster said, it appears that the retired judges had beaten Vasta with a feather for his alleged tax fraud.

As well as not determining whether, for example, Vasta's stance in the 1986 Matilda defamation case was in itself misconduct warranting removal from office, the retired judges also determined that there was no evidence that Vasta's judicial judgement had been affected. Whitton points out that it is not entirley clear whether the judges based this determination upon any detailed examination of the transcripts of Vasta's cases (*Justinian*, July 1989, p. 10).

The wider community has every right to be confused. A public understanding of the basis for judicial ethics is no clearer after the Parliamentary Judges Inquiry. Yet, it is precisely such a clarity which, according to the Hon Mr Justice Thomas, in his book *Judicial Ethics in Australia*, is of the most urgent necessity.

An inquiry into activities at the National Hotel (demolished under protest in 1987) exposed the limits of judicial culture in corruption investigation.

Photo: Sun Newspapers

If Gibbs et al. have called into question the value of an 'inquiry into judges', what will happen in the future? When it comes to investigating judicial misconduct, will the pressures within the judicial culture to exclude non-judges from the field of play be too great to withstand?

The general community expects its judges to be of the highest calibre. But this is not guaranteed by the office itself, nor is it a genetic attribute of those called. What we have learnt of our police applies also to judges. Tony Fitzgerald claimed that the police are 'likely to reflect the general social culture, including its weaknesses (for example materialism) and also to include a roughly represented proportion of individuals who break the law'. Yet judges too are drawn from the wider community and presumably are also prone to every human weakness. According to Fitzgerald 'unpalatable though it may be, the harsh reality must be faced that a community, especially an affluent and quite widely corruptible community, may occasionally throw up a corrupt judge'.

This is an honest starting point. The best way to ensure the independence of the judiciary is to develop effective mechanisms which will guard and protect it. This means not only recognising the possibility that judicial misconduct may occur, but also developing enlightened strategies for dealing with it. At the forefront of the development of such strategies must be the recognition that there are contexts in which formalism with regard to judicial procedures may inhibit reforms.

It would be an irony if the independence of the judiciary prevented the widest possible implementation of an effective approach to dealing with public corruption.

Already, judges have been at the forefront of attempts to modify the Fitzgerald recommendations for a Criminal Justice Commission (CJC). This is despite the fact that Fitzgerald himself, aware of the need for 'special sensitivity' with regards to the judiciary, recommended that the authority of the Chairman of the Criminal Justice Commission should be required and that the Chairman ought consult with both the Chief Justice and the Attorney-General before initiating any inquiry into the official misconduct of a judge. His report also made it clear that any such investigation should be confined to allegations which, if established, might warrant removal of a judge from office. Interestingly, while the *Criminal Justice Commission Act*, which came into operation on 4 November, incorporated these suggestions, it omitted any reference to the Attorney-General.

The Queensland community has already learnt valuable lessons from dealing with police culture. The community must now judge whether in the investigation of corruption the judicial culture and its claims to independence should also remain untouched. In the end, it will be of little use reforming legislation and structures if the codes and assumptions employed by the judiciary do not take full advantage of flexible procedures.

The bitter lessons of the past must be learnt. If they are not, Queensland could well see the need for another Fitzgerald inquiry within the next 24 years, or even less.

Profile: HANS JOACHIM SCHNEIDER

Hans Joachim Schneider, Prof. Dr.jur. Dr.h.c. (PL) Dipl. Psych., presented a paper to the National Conference on Violence held late last year by the Australian Institute of Criminology, and also gave the closing summing up.

Here an edited interview with Professor Schneider complements a brief excerpt from his closing remarks to the Conference.

Q. *What are your main areas of interest as a criminologist?*

A. I am interested in the causes of crime. My own experiences in the 1939-45 war led me direct to an empathy with victims which as you can see has stayed with me ever since. My interest in the influence of the mass media on criminal behaviour comes about as a result of having seen hatred created by propaganda. I see the causes of crime in societal values and personal learning processes. These are very important in the history of a society.

Q. *Your own philosophy then tends to a liberal one?*

A. Yes, since the 1960s I have visited the United States, perhaps once a year, and the greatest influences on me would have been Marvin Wolfgang, Donald Cressey and other well known scholars.

Q. *Are the ideas of these men applicable internationally?*

A. I feel they are. Another of my areas of interest is comparative criminology. I have made a study of different systems, from the third world to the super powers. Social development towards American conditions and, incidentally, those of West Germany bring many benefits but also many disadvantages. I see the disadvantages as including social dislocation, destruction of traditional society, loss of values, alienation . . .

Q. *Can the potential alienation be prevented, or can alienation be reversed?*

A. I hope so.I have great hope in the many social control developments taking place. There needs to be a balance between the interests of the individual and those of the community; between, to put it another way, the rights of the offender and the rights of victims

Q. *Tell us about that. The victims' groups in Australia seem to divide into those who are first and foremost looking after the welfare of victims and those who feel everything can be solved by greater punishment, higher penalties.*

A. These two strands — revenge versus treatment — can be brought together. In my opinion, restitution is peace making. It is a creative process. Not just payment of money but an interaction between victim and offender. It can not be done in a formal legal system; I endorse dispute resolution, arbitration, conciliation and mediation.

Q. *Have you seen such processes in action?*

A. In some of your Aboriginal communities, some Asian, some Islamic.

Q. *Have you looked at Australian victims' services?*

A. Australia has given a great deal to the study of criminology, and your victims' services are in most cases receiving more attention than in many other countries.

Professor Schneider

International diary

1928 Born 28 November.

1961 Began lifelong association with United States; International Society of Criminology, International Society for Social Defense, International Association of Juvenile and Family Court Magistrates, American Society of Criminology.

1971 Appointed Professor in criminology, corrections, and psychology; Director, Department of Criminology, University of Westphalia in Munster.

1974 Visited USSR, Japan.

1976 Organised reciprocal visits of law faculties between Warsaw, Poland, and Munster, West Germany.

1977 Founded, with other public figures, the 'White Ring', a public welfare association aimed at the support of crime victims and the prevention of criminality.

1978 Addressed Crime Prevention and Criminal Justice Branch of the United Nations; also Thirteenth Conference of Directors of Criminological Research Institutes of the Council of Europe.

1979 First President of World Society of Victimology (until 1985).

1980 Member Board of Directors of the International Society of Criminology, Paris, (until 1985).

1982 Guest lecturer Australian Institute of Criminology; President, International Organising Committee for the Fourth International Symposium on Victimology in Tokyo and Kyoto (1982).

1983 Ninth International Congress of Victimology, Vienna.

1986 Addressed United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI), Tokyo, on 'Economic Crime: Its Impact on Society and Effective Prevention'.

1987 Researched and lectured in Australia, New Zealand Poland and Costa Rica.

1988 Advised North Rhine/Westphalia Parliament on future criminal justice policy; lectured Spain, Hungary, Czechoslovakia, Austria, Finland and USSR.

1989 Advised UNAFEI; Lectured in Greece and China; played key role in National Conference on Violence, Canberra, Australia.

Four suggestions . . .

Professor Schneider's closing remarks to the National Conference on Violence

'The time has come to say goodbye. This conference in my judgement was one of the best I have ever taken part in. It was not only well organised, but managed to create an atmosphere of understanding and togetherness.

Now I have been asked to give some recommendations. I am quite hesitant to do that. I am reluctant because we, as Germans, have no good reasons to give suggestions and proposals to other nations. During the world wars Germany has hurt and harmed many other nations. Europe and others outside Europe suffered from the Germans, especially during the second world war — many nations, especially Jewish people suffered from the holocaust. So the Germans should be silent and they should listen to the advice of other nations.

However, since I was asked, I will, in all modesty and in all humbleness, give you four recommendations:

1. Ban racial violence

In 1945 I was 15 years old, so I experienced the war years aged 10 to 15. I experienced racial fanaticism: the Germans as superior, the master race, and other peoples as inferior, slave races. It was for me as a youngster a terrifying and disgusting experience.

During 1986 I visited, with the generous assistance and support of the Australian police, settlements of the Aborigines in Central Australia, which you call the Red Centre, near Alice Springs. I lived with the Aborigines for some weeks. In my opinion the Aborigines are not only just human beings: they are in my view very valuable human beings with a great cultural heritage which can enrich the Australian culture enormously. So please integrate the Aborigines into your society.

2. Corporal punishment in child-rearing in school and family should be legally interdicted

The use of physical violence as a method of child-rearing should be legally inadmissible. Please ban corporal punishment from child-rearing. As a teenager I was the victim of physical abuse. The SS — one of the so-called elite units of Hitler — bashed me nearly to death. I could feel their boots on my back when they trampled on me. I could feel their rifle butts on my body. The only reason: I expressed an opinion they did not like.

3. Please do something for the victims

They deserve it. Of course the constitutional and procedural rights of the accused must not be restricted, but do not forget that victims have constitutional rights too. The victims must be given more consideration. This is nowhere more obvious, in fact, than during criminal procedures. In some cases, they become victims a second time.

4. Please preserve your freedom of opinion and your freedom of the press

I experienced during my youth the hate propaganda of national socialism. A whole civilised nation was pushed into crime by the mass media. Depictions of violence on television and in videos must be considerably reduced.

□□□□□

I come to my conclusion and I would like to make a few short farewell remarks. To quote Goethe, 'Guter America' — America you are better off. He admired American democracy and the American lifestyle. Let me now paraphrase his remark: Australia, you are better off than we are in Europe. You have such a wonderful country, not only beautiful landscape and resources; you have a rich culture and a remarkable democratic tradition. Improve it. You have the best pre-conditions.

I enjoyed very much this third visit to this country and I am looking forward to my fourth visit. Thank you.
Auf wiedersehen.

In these service pages, *Criminology Australia* intends to present as much news as possible on new publications, conferences and appointments. To do this we will need to receive the notification as early as possible, preferably over six months ahead in the case of conferences, seminars and courses. News about events in South East Asia and the Pacific are particularly welcome. Please address copy to Jack Sandry, Editor *Criminology Australia*, GPO Box 2944, Canberra, ACT 2601.

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The first in a new Australian Institute of Criminology series, Australian Studies in Law, Crime and Justice:

Grabosky, P.N. 1989.
Wayward Governance: Illegality and its Control in the Public Sector.
ISBN 0 642 14605 5. 355 pp. $20.00.

Wayward Governance provides 17 case studies which offer some revealing insight into public sector administration in Australia. Issues which are discussed include: maladministration, government abuse of powers, effects of criminal or otherwise unlawful conduct occurring in government instrumentalities, and the form of remedial responses which are best suited to deter future abuses, to make whole the injured citizen, and to restore the rule of law. Each case is carefully analysed with the intention of illustrating what went wrong and how a repetition of the incident might be prevented in the future.

Devine, F.E. 1989.
Bail in Australia
ISBN 0 642 14732 9. 210 x 297 cm. 38 pp. $10.00.

Bail in Australia provides a comparison of selected topics in the bail laws of all Australian jurisdictions. Most Australian jurisdictions have some form of right to bail but these differ considerably in extent and forcefulness, although there are some similarities. Described are the incentives or controls which are relied upon to ensure that the accused will appear when required, and will behave as directed in the meantime. The considerations which are reviewed in the granting or denying of bail are compared in detail. Also included are details of the duties and rights of sureties, and a summary of recent developments and trends in bail laws.

Swanton, B. and Walker, J. 1989
Police Employee Health: A Selective Study of Mortality and Morbidity, and their Measurement
ISBN 0 642 14890 2. $12.00.

This study provides data relating to selected dimensions of police health over time and makes some comparisons with other occupations and other police agencies. It is not a strictly comparative study but presents gross descriptions of aspects of police mortality and morbidity, highlights areas for future research and formulates a series of policy and measurement related recommendations for consideration by police administrators.

Trends and Issues in Criminal Justice Series
General Editor, Dr Paul Wilson
ISSN 0817-8542
(Subscription $20.00 per annum)

No. 21, Norberry, J. and Chappell, D. 1990.
AIDS in Prisons
ISBN 0 642 14742 6.

National Committee on Violence

Monograph series

Grabosky, P.N. and Lucas, W. 1989.
Society's Response to the Violent Offender
ISBN 0 642 14777 9. 78 pp.
Cost: $10.00.

The third monograph in this series canvasses a number of issues concerning the violent offender: how does the Australian criminal justice system deal with violent offenders, are there policy measures other than imprisonment which may be more effective in reducing violence, is it possible to rehabilitate violent offenders? The principles of punishment are reviewed and the range of sentencing options outlined. Details are given of the extraordinary expense of imprisonment. The need for careful analysis and evaluation of penal policies, as well as the need to review other policies for the prevention and control of violence, is also discussed. Case histories illustrating the variety of violent acts and the diversity of violent offenders appear throughout the monograph.

Violence: Directions for Australia
ISBN 0 642 14975 5. 336 pp. $30.00

Violence: Directions for Australia is a unique analysis of violence in Australia, and of strategies for its prevention and control. It is the Final Report of the National Committee on Violence and represents fourteen months' work by a broadly-based Committee of prominent Australians. Among the issues covered in the Report are domestic violence, child abuse, violence in the streets and violence on public transport.

The Report's three main parts address the incidence and prevalence of violence in Australia, the causes of violence, and policy options, which include 138 recommendations made by the Committee for the prevention and control of violence.

The Committee's wide-ranging recommendations bear upon such key areas as family support, child care, employment training, and address such controversial topics as firearms control and the punishment of violent offenders.

The Report is illustrated with several evocative colour drawings by Sir Sidney Nolan.

Violence Today series
ISSN 1032-7894
$4.00 each or $20 complete set.

No. 5, Swanton, Bruce 1989.
Violence and Public Contact Workers
ISBN 0 642 10496 4.

No. 6, Wright, Andree and Aisbett, Kate 1989.
Violence on Television
ISBN 0 642 14831 7.

No. 7, Hazlehurst, Kayleen 1989.
Violence, Disputes and their Resolution
0 641 148 63 5.

No. 8, Nugent, Stephen; Wilkie, Meredith; Iredale, Robyn 1989.
Racist Violence
0 642 14924 0.

No. 9, Pinto, Susan and Wardlaw, Grant.
Political Violence
0 642 14995 X.

Publisher: Cambridge University Press

Distributed by The Law Book Company Limited 44-50 Waterloo Road, North Ryde, NSW 2113

Braithwaite, John 1989.
Crime, shame and reintegration
ISBN 0 521 35668-7. 236 pp. $19.95 (paperback), $55.00 (hardback).

In this book John Braithwaite argues that some societies have higher crime rates than others because of their different processes of shaming wrongdoing. Shaming can be counterproductive, making crime problems worse. However, when shaming is done within a cultural context of respect for the offender, it can be an extraordinarily powerful, efficient and just form of social control. *Crime, shame and reintegration* is an important contribution to general criminological theory.

Publisher: CCH Australia Ltd

PO Box 230, North Ryde, NSW 2113

Australian Income Tax Legislation
estimated availability February 1990. $68.00 payment with order ($78.00 if invoiced).

Four volume 1990 edition comprises:

Vol. 1A
- ☐ Index (covering all four volumes)
- ☐ Assessment Act Sec. 1-89

Vol. 1B
- ☐ Assessment Act Sec. 90-315

Vol. 2
- ☐ Income Tax Regulations and Index
- ☐ Fringe Benefits Tax Legislation and Index
- ☐ Rating Acts and Index
- ☐ Tax Administration Act, Regulations and Index
- ☐ Administrative Appeals Legislation and Index

Vol. 3
- ☐ International Agreements and Index
- ☐ Occupational Superannuation Legislation and Index
- ☐ Other Legislation and Index
- ☐ Full text of amendment Bills

Law of Employment in Australia
by CCH Industrial Law Editors in consultation with Peter Punch 1989. 784 pp. $58.00 payment with order ($66.50 if invoiced).

Publisher: Figgie International Inc

1000 Virginia Center Parkway, Richmond, VA 23295 USA

1988
The Figgie Report Part VI
The Business of Crime: The Criminal Perspective

This book is the final report in a six-part series of reports on crime in America. It is included in *Criminology Australia* as it makes a valuable new contribution to the field of criminology, as the focus of the report is an examination of criminal activity from the prisoners' viewpoint. A copy of the Report is held in the Barry Library.

Dr Simon Dinitz and Dr Ronald Huff of the Criminal Justice Research Centre led the team of researchers who surveyed 589 offenders serving sentences for property crime. Dr Gerald Swanson led a team of economists who studied the economic perspectives on crime. The combined observations of these two groups provides a revealing insight into the reasons for committing crimes, and gives prisoners' views on possible solutions to the property crime problem. The report discusses perceptions of the costs and benefits of crime, provides useful ratings of crime prevention indexes and gives profiles of the different categories of property offenders.

The Business of Crime: The Criminal Perspective has important public policy implications, as well as useful information on crime prevention for the general community.

Earlier reports in the series discussed the attitudes and opinions of crime victims, and of the professionals involved in the fight against crime. They are namely:

Part I *America Afraid — The General Public*
Part II *The Corporate Response to Fear of Crime*
Part III *A Fourteen City Profile*
Part IV *Reducing Crime in America Succesful Community Efforts*
Part V *Parole — A Search for Justice and Safety*

Publisher: The Federation Press

PO Box 45, Annandale NSW 2038

Grabosky, Peter and Sutton, Adam (Eds) 1989.
Stains on a White Collar
ISBN 1 86287 009 8. 288 pp. $22.95 paperback.

Stains on a White Collar presents 14 case studies of harmful conduct by Australian business. The authors recount the facts and the consequences surrounding corporate misconduct in each case, and describe what can be done to prevent a recurrence. The harmful conduct may be criminal, may involve negligence or may be the result of a government regulatory agency failing in its responsibility to ensure corporate compliance. This important book makes a valuable contribution to the analysis of the causes and consequences of corporate misconduct in Australia.

Wallace, Jude and Pagone, Tony (Eds) 1989.
Rights and Freedoms in Australia
ISBN 1 86287 026 8. 225 pp. approx. $15.95 paperback.

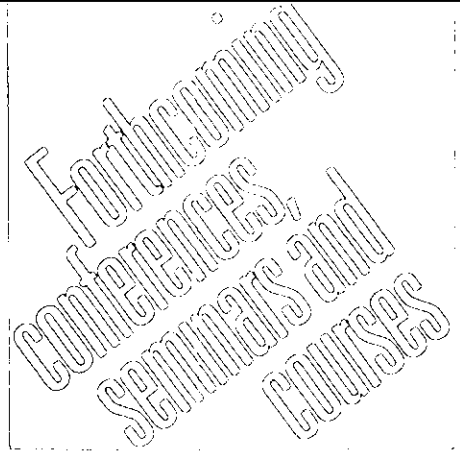
This book describes the basic political and civil rights of citizens. It is a major examination of freedom in modern Australia and is published in association with the Victorian Council of Civil Liberties, whose members have contributed chapters in their specialist areas. The subject matter is divided into eight parts covering Freedom, Welfare, Dealing with the Government, Crime, Rights against Others, Marriage, Aborigines and Human Rights.

Publisher: Redfern Legal Centre Publishing

13A Meagher Street, Chippendale, NSW 2008

Anderson, Tim 1989.
Inside Outlaws: A prison diary
ISBN 0 947 205 07 1. 184 pp. $16.95 paperback.

Inside Outlaws is an important contribution to our knowledge of the Australian prison system. In a series of personal essays, Tim Anderson recounts his experiences of seven years in gaol. He describes the violence, drug use, corruption and brutalities of our prisons. This book is strong evidence of the need for reform of the Australian prison system.



Australian Institute of Criminology

Keeping People out of Prison
27-29 March 1990, Hobart

The increasing use of community-based correctional orders, and the demand that such orders be used to reduce prison populations form the focus for this conference. These orders include not only the traditional probation and parole orders but the newer community service and home detention orders. Such changes have produced strains for some community-based correctional officers and their changing range of duties and roles will be discussed. The conference will also allow for discussion of the successes (and failures) of various community-based correctional activities that have been introduced in Australia.

The Future of Committals
1-2 May 1990, Canberra

Removing committal hearings has been suggested as one means of making better use of scarce court resources. Some committal hearings in Australia have taken considerable time and absorbed great resources, and it is reasonable to question the appropriateness of such procedures. The conference will therefore consider the virtues and drawbacks on a national level, of eliminating committal hearings. Those deliberations will draw upon the experiences of the various jurisdictions.

Librarians in the Criminal Justice System
29-31 May 1990, Canberra

This will be the seventh biennial conference for ciminal justice librarians to meet and discuss the developments in library services, databases and technology that affect their work. The staff from the Barry Library at the Institute will provide an update of the various national and international developments in accessing criminological sources. The conference will be practically oriented and will involve workshops and on-site visits to other relevant library facilities in Canberra.

Preventing Youth Suicide
24-25 July 1990, likely venue Adelaide

The continuing problem of youth suicide is an issue of major concern in Australia

today, and a topic of recent research within the Institute. While that, and other contemporary research will be reported, this conference will focus on preventive programs, and in particular those that have proved successful overseas and which could be used in Australia.

For further information on any of these conferences please contact Julia Vernon:

Programs Section
The Australian Institute of Criminology
GPO Box 2944
Canberra ACT 2601, Australia
Ph: (06) 274 0200

International

Where is Crime Going to? Recent developments in Crime, Criminal Policy and Crime in the East and the West
First International Conference of the Indonesian Society of Criminology
The Samur Beach Hotel, Bali, Indonesia
17-20 December

This major Conference in the Asia-Pacific region is being organised in joint co-operation with the Australian Institute of Criminology. The Australian Institute will provide secretariat facilities, and register English-speaking and European participants. Indonesia and Japan will also provide secretariats.

The new Indonesian Society has recently been established under the chairmanship of Boy Madjuno. The Conference will be sponsored by the Dutch Government and the Asia Foundation, and has the theme 'Where is Crime Going to? Recent developments in Crime, Criminal Policy and Crime in the East and the West'. Speakers include international experts in criminology/law as well as Indonesian Government Ministers.

During the Conference there will be special cultural events. For further information contact:

The Australian Institute of Criminology
GPO Box 2944
Canberra ACT 2601, Australia

9th Commonwealth Law Conference
Auckland, New Zealand
16-20 April 1990

More than 100 speakers will deliver papers in over 50 sessions at the conference. The speakers represent the peak of legal tradition in their home country and include: the Rt Hon Sir Shridath Ramphal, Secretary-General of the Commonwealth Secretariat; the Hon Madame Justice Bertha Wilson, the first woman to be appointed a judge of the Supreme Court of Canada; the Hon Mr Justice Rasjoomer Lallah, recently appointed chairman of the United Nations Human Rights Committee; the Rt Hon Lord Mackay of Clashfern, the British Lord Chancellor; and many others.

The program will cover a number of wide-ranging issues including:

- ☐ international environment problems
- ☐ liability for technological disasters;
- ☐ indigenous peoples and the law;
- ☐ China and Hong Kong in the 1990s;
- ☐ juveniles and the legal process.

For further information, contact your Law Society or Bar Association, or:

Commonwealth Law Conference
PO Box 12-422, Auckland, New Zealand
Telephone (649) 525 1240
Facsimile (649) 525 1243

Crime Congress: 1990
8th United Nations Congress on the Prevention of Crime and the Treatment of Offenders
Havana, Cuba (tentative)
27 August-7 September 1990 (tentative)

The objective of the United Nations Crime Congress is to promote international co-operation in the field of crime prevention and control. The Congress is also expected to finalise and recommend for adoption by the legislative bodies of the United Nations a number of draft model treaties, standards, norms and guidelines. The theme of this congress is 'International Co-operation in Crime Prevention and Criminal Justice for the Twenty-First Century'.

For further information please contact:

Eduardo Vetere
Executive Secretary
Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders
United Nations Office at Vienna
PO Box 500, A-1400 Vienna, Austria
Tel: 21131-4272 or 21131-5278
Telex: 135612
Facsimile: 232156

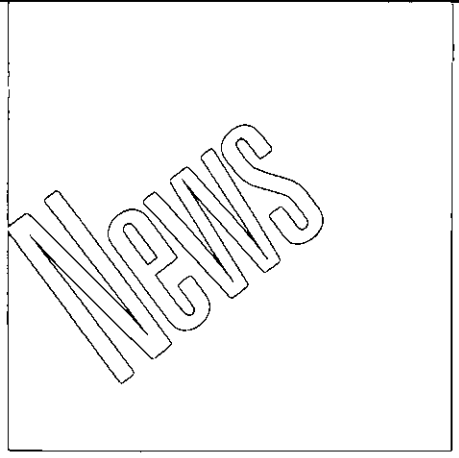
Housing Debates — Urban Challenges
International Housing Research Conference
Paris, France
3-6 July 1990

Eight principal workshops have been established to examine the Conference theme, 'Housing Debates — Urban Challenges': Housing and Public Policies; Housing Tenure; Changes in Lifestyle and Housing; Residential Mobility and Urban Changes; Production: Systems and Actors; Metropolitan areas: divided and polarized cities; Housing, Urban Spaces, Safety/Insecurity; Rehabilitation, new Constructions and Urban Restructuring. Three panel-discussions will be held on the following topics: 'Illegality, informality, irregularity in housing'; 'Diversified needs, special-purpose housing'; 'Foreshadowing in the field of housing'. In addition, specialised workshops will be held.

The Conference will be held at the Cite des Sciences et de l'Industrie (La Villette), 30, avenue Corentin Cariou, metro Porte de la Villette. After each afternoon session during the Conference, participants will be offered a choice of organised visits to relevant sites of interest in and around Paris.

The cost of Conference participation has been fixed at the convertible value of 180 ECU (around US$200). For further information please contact:

CILOG — Fondation des Villes SN
28 bis, bd de Sebastopol, F-75004
Paris, France
Telecopie/Fax: 33 1 42 74 52 62



New Institute of Security Studies

The Institute of Security Studies is a specialist research and development unit which has been established within the Western Australian College of Advanced Education to service the needs of public activity including:

- ☐ corporate, industrial and domestic security;
- ☐ computer hardware, software and database security;
- ☐ specialist staff training for personnel involved in key security activities;
- ☐ communications and office security;
- ☐ the protection and security of information;
- ☐ protection against industrial and commercial espionage;
- ☐ retail store and commercial security.

As well as undertaking research and development and data gathering activities, the Institute initiates and supports tertiary level studies for those engaged in security-related occupations, and organises conferences and workshops in the areas of security studies.

For further information contact:

Dr Clifton Smith
Director
The Institute of Security Studies
Western Australian College of Advanced Education
Nedlands Campus, Hampden Road
Nedlands, Western Australia 6009
Tel: (09) 386 0342

Appointment to new crime prevention unit at Telecom

Mr Dennis Challinger, formerly Assistant Director, Information and Training, Australian Institute of Criminology, has undertaken a challenging new position with Telecom Australia. Mr Challinger is the head of new internal crime prevention unit established at Telecom in November 1989. The Unit will focus on proactive anti-crime strategies rather than investigating crimes after they have occurred.

Appointment to Queensland Criminal Justice Commission

One of the major recommendations of the Fitzgerald Inquiry in 1989 was the establishment of a Criminal Justice Commission in Queensland. Dr Satyanshu Mukherjee, Principal Criminologist, Australian Institute of Criminology, has been appointed the Director of the Research and Co-ordination Division of this new Commission. This division will conduct research on administration of the criminal justice system in Queensland; co-ordinate all activities concerned with the administration of criminal justice in Queensland; and make known its findings to the Chairman of the Commission, and with his approval, all other criminal justice agencies in the State.

Dr Mukherjee, who has been with the Institute for 13 years, will be on leave of absence for the period of his contract with the Commission.

Appointment to Monash Professorial Board

Mr Arie Frieberg, Law Faculty, Monash University, has been elected to the Monash Professorial Board.

Australian Institute of Criminology moves to new building

The Australian Institute of Criminology will move from the offices in Colbee Court, Phillip, which it has occupied since 1973, to new offices in Canberra City. The Institute will occupy the Criminology Building, 2 Marcus Clarke Street, Canberra City, ACT 2601 (Tel No. (06) 274 0200). The new building is conveniently located close to the Law Courts, Australian National University and several government departments.

American Criminologist visits Australia

Dr T. Duster, Director of the Institute for the Study of Social Change in the United States, will be a Visiting Fellow with the Criminology Department of the University of Melbourne from 1 March to 30 April 1990. Contact Dr Kenneth Polk of the University on (03) 344 5561 for further details of Dr Duster's program.

Canadian Criminologist visits Canberra

Professor Clifford D. Shearing of the centre of Criminology, University of Toronto, Canada, is currently visiting Australia at the invitation of the Federal Attorney-General's Department, and is working with the law Enforcement Coordination Unit on policy development. Professor Shearing will leave Australia on 8 March.

Korean Criminologists visits the Australian Institute of Criminology

Mr Haechang Chung, President of the newly established Korean Institute of Criminology, will be visiting the Australian Institute of Criminology, Canberra, at 2 pm on Tuesday, 20 February, with a view to exchanging ideas and observing various activities of the Institute. Mr Chung will be accompanied by his wife and Mr Young Sunwoo, Director of Planning and Coordination Office of the Korean Institute.

Drug Policy in the Mersey Region, UK — A seminar

On 12 February, Dr Pat O'Hare, the Executive Editor of the *International Journal on Drug Policy*, gave the first seminar in the Australian Institute of Criminology Occasional Seminar series for 1990. Dr O'Hare, who is located at the Mersey Drug and Information Centre in England, spoke on 'Drug Use and Drug Policy in the Mersey Region, UK'.