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Neglected to death

Infanticide

NSCA-type risks

Counting rapes

Committals

Lives unlived

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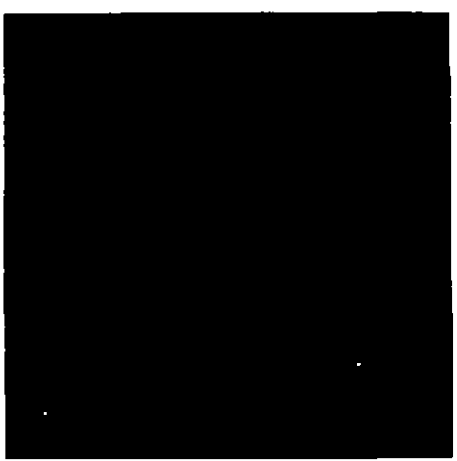

Myles McGregor-Lowndes*

LIMITED BY GUARANTEE

Limited to what? Guaranteed by whom?

A public company that did not have to lodge any financial returns, annual reports or notice of change of directors, that had its member's liability limited to one pound and one shilling for each member and did not use the warning tag 'limited' in its name, would be an attractive vehicle for any entrepreneur, let alone someone contemplating a fraud. Such companies do exist and are known as companies limited by guarantee. The recently collapsed National Safety Council of Australia, Victorian Division, is just one of some 2000 such companies in Australia. Companies limited by guarantee were little known publicly until the collapse of the National Safety Council, are still barely mentioned in any of the legal texts and are largely ignored by regulators as merely harmless non-profit organisations.

Although the investigations into the National Safety Council are far from over, the liquidation of the company is still progressing and legal actions look like taking years to finalise, this article ventures some insights into the regulation of companies limited by guarantee.

On 21 December 1988 the auditors of the National Safety Council of Australia Victorian Division informed the directors that they had qualified the audit reports for the company for the financial years 1986 and 1987 and were unable to complete the audit of the financial year 1988. One director has been reported as saying that the auditor's qualification had been removed from a loose leaf audit report; a lending bank claims that the qualification was erased by use of scissors and photocopier. The board moved to engage a firm of chartered accountants to investigate and report on the accounting procedures, controls and records of the company.

The firm of investigating accountants soon became concerned about the validity of financial records, particularly for major trade debtors and a category of non-current assets known as 'containerised safety equipment'. The chief executive of the company, known as John Friedrich, was stood down on the 14 March 1989 and the accountants were authorised to approach clients, debtors and creditors of the company to ascertain the true financial standing of the company. It was discovered that the company was hopelessly insolvent, the executive director had fled across Australia and banks were unlikely to recover much of the $200 million loaned to the company. The principal executive officer now faces 91 fraud charges involving $244 million.

How could this have happened in a non-profit company whose board was filled with high profile directors, being lent money from commercially astute banking institutions and regulated not only by a companies code but also by a comprehensive policy manual? The answer to this question, if it ever can be authoritatively answered, will perhaps emerge as investigations and legal proceedings end.

However, there are some issues that need to be addressed as a matter of urgency.

John Friedrich, facing 91 charges.

Photo: Age

Systemic policy deficiency

The English Parliament first created the corporate entity known as a company limited by guarantee in an amending Act passed in the same year the English Parliament permitted the Board of Trade, which supervised the administration of the Act, to license limited companies to be incorporated without the word 'limited' as part of their name. A licence would also exempt the company from supplying a list of its members, directors and managers. When company accounts were required in later acts, these too could be waived for companies limited by guarantee.

This was not the only regulation of such companies, as charities were required to lodge accounts and be scrutinised long before the same requirement was imposed on companies. It could be argued that the exemption was granted to companies limited by guarantee not because they need not be regulated, but because they were already regulated by other authorities in England.

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Even today an English company limited by guarantee cannot obtain exemptions unless it is a registered or exempted charity. This is not the state of affairs in Australia.

The states of Australia adopted the English Companies Acts with slavish devotion. The provisions relating to companies limited by guarantee were copied almost word for word for a century. The regulation of English charities outside the Companies Act was not replicated and not until the sixties was there the beginning of substantive state regulation of charities. The regulatory policy allowed companies such as the National Safety Council to operate in a regulatory vacuum. Even when the states began to regulate charities under other Acts, there was gross regulatory failure. A study by Williams and Warfe of the Victorian charities register in 1978 found that only 50.1 per cent of the charities required to lodge annual reports and financial information had done so. When McGillivray, Romano and Williams did a repeat study five years later the percentage was only 56.4 per cent. The author's studies of the Queensland register for 1988 indicate that less than 40 per cent of charities had lodged returns for that year.

The exemptions which can apply to companies limited by guarantee in Australia were taken out of context and there was no other effective regulator of their activities. The introduction of charity legislation in recent decades still does not ensure any real supervision of the activities of companies limited by guarantee. The regulation of companies limited by guarantee was systemically defective from its transplantation into the Australian environment.

The proposed Commonwealth Corporations Act Section 383 appears finally to alter the thrust of the regulation of companies limited by guarantee. It allows only a licence for the omission of the word 'limited' from the corporate name. There is no provision for the exempting of returns of directors or annual financial reports. Sub-section 11 of Section 383 purports to continue only those previous licences for omission of the tag 'limited' and will not save dispensations under previous Acts from annual reports and returns. If this Act withstands constitutional challenges and the negotiations of state, territorial and federal politicians the regulatory framework will be in place, but will the regulators take a pro-active role? The present state of their records does not permit a confident reply.

The state of the regulator's records

After the media headlines of the National Safety Council collapse, the Victorian Attorney General placated a noisy media by ordering the Victorian Commissioner for Corporate Affairs to undertake a review of all companies holding a Section 66 licence. The results of this review have not been made public, but the author submitted a request under the Victorian Freedom of Information Act, which yielded a summary of the review which was presented to the September 1989 National Ministerial Council Meeting of the Ministerial Council on the National Companies and Securities Legislation.

There were at the time 710 companies limited by guarantee with exemptions from lodging accounts. These companies were sent letters by the Victorian Commission requesting a copy of their last audited financial accounts which they are required to prepare but not lodge with the Commission. Sixty-two per cent were able to send back financial statements. The scrutiny of these accounts by appointed accountants Deloitte, Haskins and Sells revealed that 20 per cent had accounts which did not include an audit report, nine per cent had a qualified audit report and 35 per cent showed evidence of non-compliance with the Companies Code's accounting requirements.

Perhaps the most worrying statistic is the 28 per cent of companies limited by guarantee that did not supply their financial returns. Nineteen per cent of companies could not be contacted at the last address given as their registered office. This is a serious regulatory failure when the Commission and the public cannot even find the location of the company and its records. If there are no annual returns to be lodged there are no warning signs readily visible to the Commission that the company has changed its address or has folded. Nine per cent were later found while the other 10 per cent have disappeared and cannot be located. About 18 per cent either received and did not reply or replied but refused to forward their financial statements to the Commission. This is despite the Commission having power under Section 275A of the Companies Code to gain access to such financial records.

The author's research into the Queensland register for the year ended 1988 confirms that Section 66 licensed companies limited by guarantee were not abiding by the terms of their licences and accounting requirements, and more than 15 per cent had disappeared. These statistics do not paint a rosy picture of the regulation of companies limited by guarantee. Even if you can find the company records, the chances are that they do not accurately record the company's financial affairs and have not been independently verified.

The new Corporations Act requires these companies to lodge annual returns, it will provide the corporate regulators with an ideal opportunity to clean up their registers and signal to the controllers of companies limited by guarantee that they are persons with responsibilities under the Act. Whether the Australian Security Commission has the resources or the will to attend to this task is yet to be seen.

Specific regulation of the National Safety Council of Australia, Victorian Division

An examination of the Commission's public record of documents relating to the National Safety Council of Australia, Victorian Division, supplemented by those obtained by the author by a freedom of information request, raises some

Extensive equipment was purchased by the NSCV for use in rescue and safety work.

Photo Age

interesting questions. The National Companies and Securities Commission issued a comprehensive procedures handbook for dealing with Section 66 licences in 1982. This document sets out detailed procedures and policy extending to more than 100 hundred pages. These procedures do not appear to have been completely followed. While clarity of vision that hindsight brings must be borne in mind, regulators lost valuable opportunities to regularise the affairs of the company.

The company was registered in 1928 under the name 'National Safety Council of Australia' with a licence allowing the exemption from financial reporting, directors' returns and having to use the tag 'limited'. The memorandum of the company in most clauses equates with that of the model set down in the procedures handbook. However, there are some crucial differences.

The objects permit the company to seek financial support from state and federal governments and to foster public appeals for donations and to raise credit from external sources. These objects did not contravene the policy of the administration of Section 66 licences in 1928 when approval was given, but are not normally permitted under present policy.

The Articles of Association have been entirely replaced twice in the history of the National Safety Council. There are instances where the articles have deviated from those proposed by the procedures handbook.

An example is the election of members of the governing body. The NCSC procedures handbook states at page 808509,

In order to ensure some measure of freedom of control by any outside body, the articles of association must provide for the members of the governing body to be elected by the general body of members of the company. Likewise, measures that may be interpreted as enabling a 'power group' within the organisation to be self perpetuating, such as the election of the governing body by an electoral college will be objected to. All directors must be members of the company.

The membership of the National Safety Council consists of different classes of members from individuals, corporate members, associates and nominees. A State Council was formed from these members. It consists of a representative from each of eight government departments and other organisations such as the Trades Hall Council and National Council of Women of Victoria and such other members as the State Council decides. Such persons' term was only one year, a relatively short term given it only involved two meetings. The State Council has the responsibility of electing not more than nine members of the State Council to the board of directors. It is the board which then elects office bearers such as the president, vice presidents and treasurer.

'The soft treatment of charities because of their voluntary and laudable activities should not mask the fact that many are substantial businesses . . .'

To further assist member control of a company limited by guarantee with a licence, the procedures manual entrenches the right of members to inspect the accounting records of their company at any reasonable time. There was no such right entrenched in the articles of the National Safety Council. It is not on the public record yet whether increased company member involvement would have prevented or curtailed the collapse of the company.

While it is understandable that the licence was not revoked when the new policy came into force in 1982, it is not understandable when the company tried to alter its memorandum and articles that the Commission did not take the opportunity to bring the company into line with NCSC policy. Such an opportunity was given to the Victorian Commission in 1986 to ensure that the company fell into line with the restrictions imposed on Section 66 companies.

On 5 November 1986 it appears that a extraordinary meeting of the company was held to amend the memorandum without the mandatory prior approval of the Commission.

The Victorian Commission in giving consent to the alteration of the objects appears to have not followed the procedures handbook. It states at page 808515 that,

Where an application is received for approval to the alteration of the company's articles by the substitution of a new set of articles or the alteration of the company's objects by substitution of a new objects clause, the new articles or objects as a whole are required to conform to Section 66 policies and standards.

It is clear from documents provided under the Freedom of Information request that the Victorian Commission did peruse the proposed alterations to the memorandum and articles of the company. The Commission does not appear to have taken the opportunity to require the other unamended provisions to comply with their policy. The National Companies and Securities Commission (NCSC) as distinct from the Victorian Commission was approached to approve one amendment which departed from the procedures handbook. Although no reply from the NCSC was discovered from the Freedom of Information Documents, the NCSC agreed to the amendment as the request was in the following terms:

Vic CAC does not object to proposed amendment and will grant approval unless instructions to the contrary are received within 14 days.

In the world of 'ifs' and 'but for' perhaps the review of the memorandum and articles may have resulted in greater membership scrutiny of the financial affairs of the company or revocation of the licence and compliance with lodging audited accounts which could have been scrutinised by the public and the Commission.

Conclusion

There is still a long way to go in the legal investigation surrounding the affairs of the National Safety Council, Victorian Division, and until all the facts are established final conclusions are a risky undertaking. There are, however, some points which need to be heeded before there are more regulatory defaults.

The regulation of non-profit enterprise whether structured under the Companies Acts or other Acts requires serious examination. There is gross regulatory default in the area and confidence in the veracity of non-profits is crucial to their performance of a beneficial role in our society. Non-profit organisations last only as long as the public and state have confidence in their pledge to return all profits to the aims of the organisation or the public remains in ignorance of the true state of affairs. The soft treatment of charities because of their voluntary and laudable activities should not mask the fact that many are substantial businesses, although the profits are not distributed to their members but to the furtherance of their objects. The opportunity for fraud and anti-social behaviour does not stop when an organisation does not distribute its profits to its members. There are many other ways of distributing profits other than by way of dividends, be it in gifts to staff or excessive staff payments.

The regulators need to be well staffed, funded and supported by politicians to enforce a proper code of behaviour by companies and their controllers. The ordering of affairs under previous laws, exemptions or customs should not be a shelter once regulation is tightened and transition to the new regulation ought to be provided for in any new legislation. An exemption granted in 1928 ought not to exist where it would not be granted in 1990.

The controllers and members of companies ought to be aware of their rights and liabilities and obligations. The sooner incorporation is viewed as a privilege rather than a right the sooner a sustainable code of conduct will be agreed on and abided by. Education and qualifications as suggested recently by commentators and a Senate enquiry will go only part of the way in ensuring socially acceptable behaviour is returned to corporate governance.

Evaluating the committal

In the more serious criminal cases, it has long been standard practice in Australia for a committal, or preliminary hearing, to be held before a magistrate. These hearings were initially designed to ensure that cases did not proceed to trial unless there was a substantial case against the defendant. Although this is still seen by many as their primary role, committals have also been credited with performing a variety of other functions, such as serving as a mechanism for the early identification of guilty pleas, and providing a forum in which accused persons can ascertain the case against them and test the evidence of prosecution witnesses.

There is still a substantial body of opinion which favours the retention of committals, but in some quarters they are now regarded as an ineffective means of filtering-out weak prosecution cases and as a significant cause of unnecessary delay and expense in the criminal justice system. These criticisms have received their strongest expression in New South Wales, where the Government is now moving to abolish committals in their present form. Elsewhere in Australia, the emphasis to date has been more on streamlining committal hearings than on replacing them altogether, but here also, a growing number of interested parties are asking whether committals still serve any worthwhile purpose.

John Willis, David Brereton, Don Weatherburn (Director, NSW Bureau of Crime Statistics and Research) and Peter Berman at the Australian Institute of Criminology's conference on the future of committals.

In late 1988, in response to the increasing attention being paid to this issue, the Australian Institute of Judicial Administration (AIJA) commissioned us to undertake an Australia-wide evaluation of committal proceedings. As part of this project, we visited all jurisdictions except the Northern Territory, conducted a large number of interviews with relevant personnel, and accumulated a range of comparative data.

This article summarises the main findings of this study, focussing specifically on the effectiveness, or otherwise, with which committals perform the following functions: the screening-out of weak cases, the early identification of guilty pleas, and the disclosure of the prosecution's case to the accused. It also assesses the major costs attributed to committals, in particular the amount of court time and resources which they require and the contribution which they make to overall delay.

'In New South Wales, it is true, committals appear to be fairly ineffective filters . . .'

The filter function of committals

A common criticism of committals is that magistrates discharge very few defendants at the committal stage, particularly when compared to the frequency with which indicting authorities later drop, or no bill, charges. In contrast to this view, our research has established that in some jurisdictions a good deal of filtering takes place at this stage.

As shown in Figure 1, on the most recently available evidence, more than 8 per cent of defendants subject to committal hearings in Victoria and South Australia were discharged on all charges. In Victoria, the discharge rate was also well above the no bill rate (that is the proportion of defendants committed for trial or sentence who subsequently had all charges against them no-billed by the indicting authority). For matters under the

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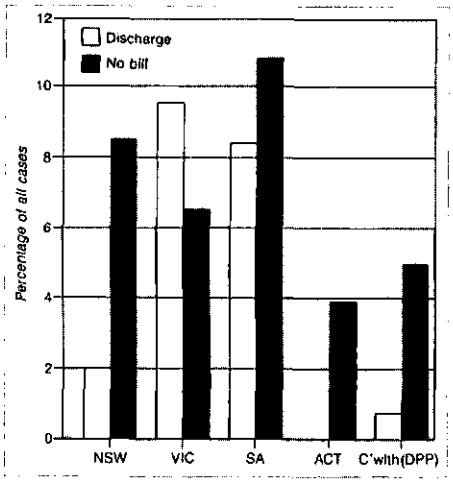
Details on data sources and other relevant information can be obtained from the paper 'Evaluating the Committal', presented to the Australian Institute of Criminology Conference on The Future of Committals, Canberra May 1990. Copies of this paper are obtainable from the authors on request.

Figure 1
Discharge and no bill rates



Notes: 1. The discharge rate is the percentage of defendants subject to committal proceedings who were discharged by the magistrate on all charges. 2. The no bill rate is the percentage of defendants committed for trial or sentence who had all charges against them no billed by the indicting authority.

Sources: Victoria—discharge rate calculated from unpublished data provided by the Victorian Criminal Delay Reduction Program, covering all committals in the City Court for the period September 1989–March 1990 (960 defendants). No bill rate based on 1565 defendants disposed of in the Melbourne County Court in 1989 from data provided by Management Information Section, Courts Division, Attorney General's Department.

South Australia—discharge rate obtained from unpublished data for 1987 provided by the Office of Crime Statistics (based on 681 defendants). The no bill rate is from Office of Crime Statistics, *Crime and Justice in South Australia*, 1987, Table 4.1; based on 1273 defendants appearing before the Supreme and District Courts.

New South Wales—discharge rate quoted in Coopers Lybrand Report, p. 100. This data was provided to Coopers Lybrand by the NSW Bureau of Crime Statistics. The number of cases or defendants on which this rate is based is not stated. The no bill rate was calculated from data published in the Office of the Director of Public Prosecutions, *Annual Report 1988–89*, Appendices 5–6, and is based on 5220 defendants disposed of by the District and Supreme Courts in 1988–89.

Australian Capital Territory—discharge rate obtained from the Commonwealth Director of Public Prosecutions, *Annual Report 1989*, Table 6(a). No bill data provided by Canberra Office of the Commonwealth DPP. Both rates are based on 129 defendants disposed of in the ACT Supreme Court in 1988–89.

Commonwealth DPP—discharge rate obtained from the Commonwealth Director of Public Prosecutions, *Annual Report 1989*, Table 6(a). No bill data from *Annual Report 1989*, pp. 18–19. Both rates are based on 541 defendants disposed of Australia-wide in 1988–89.

jurisdiction of the Commonwealth Director of Public Prosecutions (which include all ACT prosecutions) the discharge rate was very low, but importantly the no bill rate was also low, an indication that relatively few weak cases had made it past the committal stage. In New South Wales, it is true, committals appear to be fairly ineffective filters, but care must be exercised in interpreting these data because the discharge rate shown in Figure 1 is considered by many to be unreliable.

It should also be kept in mind that committals can act as filters in less direct ways. Thus in a significant number of cases the evidence that comes out at the committal makes it clear to the relevant prosecuting authority that the case has little chance of success and a no bill is filed as a consequence. In addition, the anticipation that a matter will be discharged by the magistrate may be sufficient to prompt the prosecution to withdraw some or all charges prior to committal, as appears particularly to be the case in Victoria and for matters prosecuted by the Commonwealth DPP.

Early identification of guilty pleas

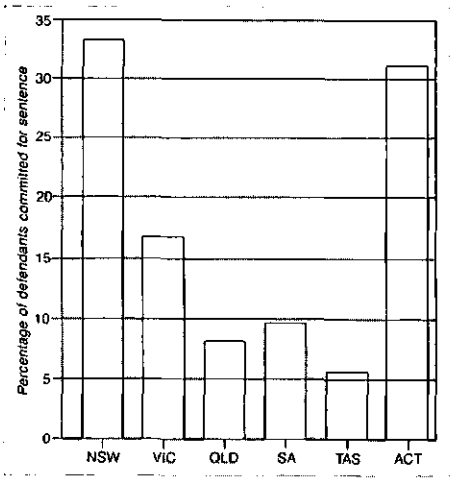
Given that the great majority of defendants dealt with by Australian higher courts ultimately plead guilty to one or more charges, there are obvious advantages in being able to identify pleas of guilty at the committal stage. However, in most jurisdictions, as Figure 2 indicates, only a small minority of defendants exercise this option.

The reluctance of most defendants to plead guilty at the committal is understandable. For the most part, charge negotiations, if any occur, do not take place until after a matter has been taken over by the indicting authority. Moreover, in many cases defendants are simply not in a position to make an informed decision about plea at the committal hearing, especially as rules governing the granting of legal aid mean that a substantial number of defendants are unrepresented, or are represented for the day only through a duty solicitor.

Not only are there few incentives to plead guilty at the committal hearing, but in some states a defendant who does so is placed at a significant procedural disadvantage. For instance, in Western Australia a presumption against the granting of bail is created once a defendant has been committed for sentence, and in Queensland and Western Australia defendants who have pleaded guilty at the committal cannot subsequently change their plea without the approval of the presiding judge.

Although committals in most jurisdictions, do little to aid the early identification of guilty pleas, there are some fairly obvious ways in which this shortcoming can be addressed. One simple measure would be to remove the above-mentioned legal barriers. Thus in New South Wales and the ACT, where the guilty plea rate at committal is comparatively high, there is no obstacle to defendants later changing their plea to one of not guilty. Moreover, if there were greater involvement by the Crown and legal aid at the committal stage, both sides would be in a much better position to engage in serious negotiation over charges.

Figure 2
Guilty plea rate at committals



Note: The guilty plea rate is the number of defendants committed for sentence expressed as a proportion of all defendants committed for trial or sentence.

Sources: Victoria—unpublished data provided by the Victorian Criminal Delay Reduction Program, covering all committals in the Melbourne City Court for the period September 1989–March 1990.

South Australia—Office of Crime Statistics, *Crime and Justice in South Australia*, 1987, Table 3.47.

Tasmania—unpublished data for Hobart Police District for year 1988, provided by Prosecutions Division, Tasmanian Police.

Queensland—*Annual Report of the Director of Prosecutions for the Year Ended 31st December, 1989*, Appendix III.

New South Wales—Office of the Director of Public Prosecutions, *Annual Report 1988–1989*, Appendix 7.

Australian Capital Territory—Commonwealth Director of Public Prosections, *Annual Report 1989*, Table 6(a).

There are also incentives that can be used to promote early guilty pleas. In all jurisdictions, a guilty plea can be a mitigating factor in sentencing. However, in Victoria an amendment to s.4 (1) of the *Penalties and Sentences Act 1985* has provided that a court, in passing sentence, can also take into account 'the stage in the proceedings at which the person pleaded guilty or indicated an intention to plead guilty'. Since this amendment came into force in mid-1989, the guilty plea rate in Victoria has increased significantly from 12 per cent to 20 per cent. This is a strong indication that the guilty plea rate at committal in other jurisdictions could also be lifted substantially if a reward for an early plea was institutionalised and made explicit.

Committals as a disclosure mechanism

Proper and early disclosure of the prosecution's case against the accused is desirable not only to ensure fairness to the accused, but also because it contributes to the efficient operation of the criminal justice system. In the past, the effectiveness of the committal as a disclosure mechanism was certainly open to question, as the police often took the view that they need call only enough witnesses at the committal to establish

that there was a prima facie case against the accused. More recently though, several decisions by higher courts supportive of the principle of full disclosure, and changes in the attitudes and practices of the police and prosecuting authorities, have meant that the position has improved considerably—an assessment supported by most of the defence counsel interviewed as part of our project.

In addition, whatever the past and present shortcomings of committals as a disclosure mechanism, one very important role which they perform is to provide a date, well in advance of the trial itself, by which a substantial part of the prosecution's evidence must be made available to the defence. The same result can probably be achieved without a committal if prosecution authorities set and adhered to their own disclosure dates, but arguably, externally enforced deadlines will be complied with more consistently.

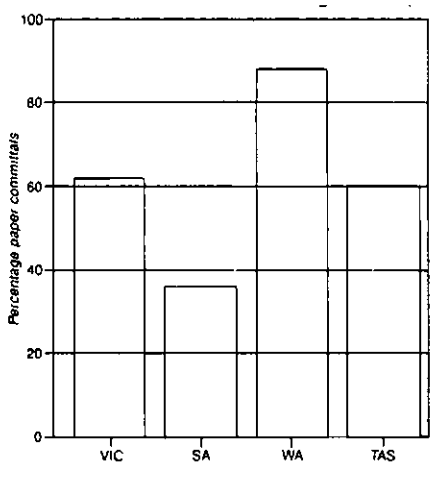
Committals and court time

Every jurisdiction has its horror stories of committal hearings which have run for months or even years, but it is important not to treat these cases as typical. The widespread adoption of 'paper committal' procedures means that in most jurisdictions the majority of cases are now dealt with as full hand-up briefs in which no oral evidence is given and the prosecution case is based solely on the written statements of witnesses (see Figure 3). Even where witnesses are called most hearings are relatively short. For instance, only 4 per cent of the oral committals conducted in South Australia in 1987, and 5 per cent of those held in Victoria in the same period, ran for five days or more. Overall, we estimated that in most jurisdictions committals probably accounted for 10 per cent or less of all lower court sitting time.

It also should not be assumed that lengthy committals are invariably a waste of time. While some hearings may be needlessly drawn-out by repetitive cross-examination of large numbers of witnesses, others take a long time to complete primarily because the issues involved are complex. In addition, the time spent on a committal may well be recouped if it leads to the subsequent trial being run on tighter lines, or to a trial being avoided altogether because material produced at the hearing prompts a discharge, or the later entry of a no bill or guilty plea.

'This is a strong indication that the guilty plea rate at committal in other jurisdictions could also be lifted substantially if a reward for an early plea was institutionalised and made explicit.'

Figure 3
Use of paper committals



Note: This figure shows the proportion of all committal proceedings in which no oral evidence was taken.

Sources: Victoria—unpublished data provided by the Victorian Criminal Delay Reduction Program, covering all committals in the City Court for the period September 1989–March 1990.

South Australia—unpublished data provided by the Office of Crime Statistics for 1987.

Western Australia—unpublished data provided by Perth Clerk of Petty Sessions for 1988

Tasmania—unpublished data for 1988 provided by Prosecutions Division, Tasmanian Police.

Committals and delay

Delay at the committal stage is a problem in some jurisdictions, but the situation must be kept in perspective. In Victoria and New South Wales—the two states where delay is of most concern—delays pre-committal are clearly less substantial than those which occur post-committal. Thus in Victoria, the period from charge to committal accounts for less than one-third of total elapsed time between charge and trial; in New South Wales, the equivalent proportion is only 21 per cent.

It is also a mistake to assume that all, or even most, of the time between arrest and committal could be saved if only committals were abolished. Rather, a substantial part of this time is used to carry out tasks, such as the preparation of police briefs, which would have to be performed regardless of whether a committal was required or not. Certainly, committals often take longer to finalise than they should, due to inefficient scheduling practices, inadequate resourcing of police and the courts, and a failure to take time standards more seriously. But in most jurisdictions it is difficult to see how the abolition of committals could reduce the average time between charge and listing for trial or sentence by much more than two or three months, even assuming that the replacement arrangements did not generate their own delays.

'. . . if it were possible to list matters for trial or sentence more quickly, there would still be no guarantee that total elapsed time would be reduced . . .'

Indeed, even if it were possible to list matters for trial or sentence more quickly, there would still be no guarantee that total elapsed time would be reduced as a consequence. For example in New South Wales, according to the Coopers and Lybrand Report, cases are continuing to enter the District Court lists at a higher rate than they are being cleared. Under these circumstances, the main effect of a reduction in listing time would probably be a proportionate increase in the backlog of cases, brought about by a surge of new matters entering the lists.

Conclusion

In short, claims that committals are clogging-up the lower courts, and that their abolition would lead to substantial time and money savings do not, in their present form, withstand close empirical scrutiny. Certainly, there are unnecessary delays in the pre-committal period in some jurisdictions, but the reductions in overall case processing time which might result from the abolition of committals are likely to be modest, especially if nothing is done about delays elsewhere in the system. More importantly, the evidence indicates that committals continue to perform worthwhile functions in the criminal justice system. In particular, they are more effective at filtering-out weak cases than their critics claim, are a potentially useful forum for the early identification of guilty pleas and provide a reasonably effective mechanism for disclosing the Crown's case to the accused. On the basis of these findings it can be said that the case for the retention and improvement of committals is much stronger than the case for their abandonment.

Rod Broadhurst*

Counting rapes

Reporting and recording practices in Western Australia

Measuring the prevalence and incidence of crimes has proved an intractable problem in criminology. Indeed the problem of what measures can be relied on is a familiar one. The difficulties (albeit often ignored) impose severe limitations on the evaluation of criminal justice policies. Conventionally crime is monitored and policies evaluated by relying on the official records of police forces, courts and correctional services. The nature of these records makes them, by themselves, unsuitable for even simple tasks such as monitoring increases or decreases in particular behaviours.

Despite the development of crime victim surveys in the late 1960s as an alternative measure of the quantum of crime, many problems remain in reconciling such data to the demands of evaluation. In Australia, the data from victim surveys is sparse (only two national surveys have been conducted, one in 1975 and the other in 1983), plagued by technical problems and limiting their utility to policy makers. Moreover useful information on victims, collected by hospitals and victim services, which may corroborate trends for certain serious offences has been neglected.[1]

Given these difficulties in measuring crime there has been revived interest in the use of self-report crime surveys as yet another method of measuring the quantum of crime. In the 1950s this technique was employed to measure the 'dark' figure of hidden crime and considerable technical development has occurred since. Comprehensive and properly constructed random surveys of self-reported crime have not been attempted in Australia, no doubt because decision makers have been skeptical about whether such surveys can generate reliable estimates of the prevalence and frequency of offending in the adult population. Co-ordinated data bases and self-report estimates are necessary for the evaluation of crime policies.

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Victim surveys

The incidence of sex offences has been estimated by victim surveys which attempt to measure the 'true' extent of crime by interviewing random samples of the population. In Western Australia such estimates can be derived from a crime victim survey undertaken throughout Australia in 1983 by the Australian Bureau of Statistics (ABS 1986). Sexual assault was defined in this survey as *'any incident of a sexual nature considered by the respondent to be forced upon her'*. National victimisation rates based on this definition are in the order of five per 1000 persons per annum with an estimated 26 700 victims per annum nationally or 3100 victims per annum in Western Australia.[2]

Based on raw data provided by the Australian Bureau of Statistics, 30 per cent of these reports related to rape or attempted rape and 29 per cent of all reports related to verbal threats only; but as few as 28 per cent of these offences were reported or became known to police. A factor in this may have been that in 42 per cent of the sex incidents, the offender was known to the victim and of these most (80 per cent) were related in some way.

Fear of reprisal and the belief that police 'could do little' were the main reasons given by respondents for not reporting offences to police.

Experience of victimisation was also sensitive to age (ages 20–29 were most at risk), to place of residence, (more prevalent in large cities), to socio-economic status (higher educated more at risk), and to marital status (single/separated more at risk). These are findings common to victim studies in many jurisdictions. They reflect the characteristics of the respondents to the survey.

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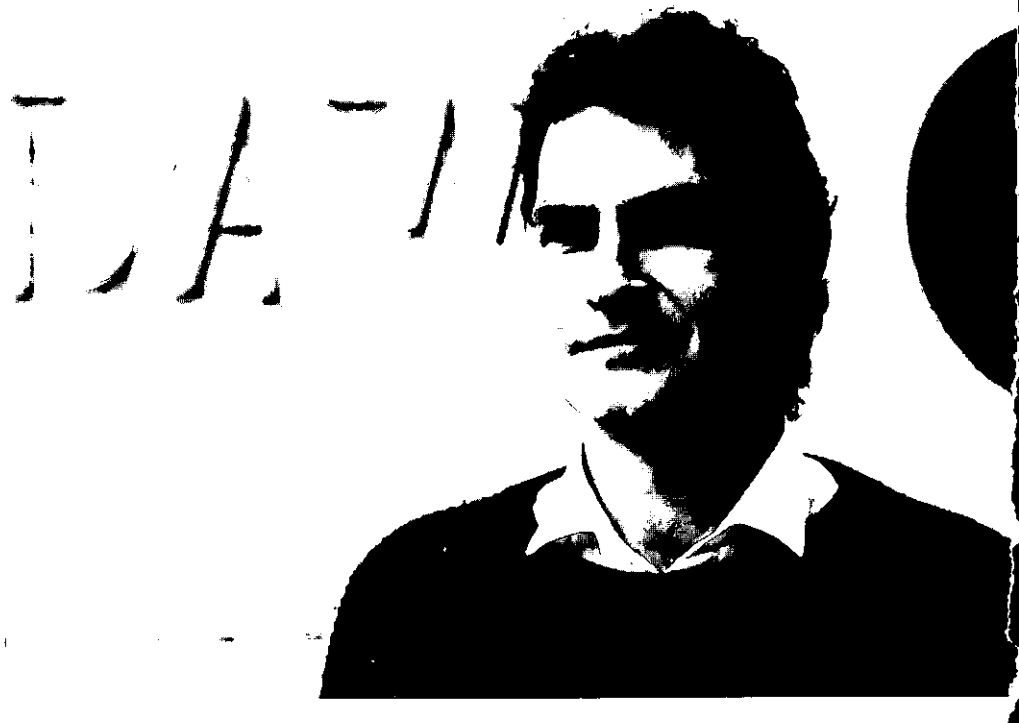

Thus about one in four of these incidents were said to be reported to police/authorities. We may assume this estimate to be conservative. In the two sweeps of the British crime surveys for example,[3] very large differences in estimates of the proportion of victims reporting incidents were noted. Proportions varied from one in four to one in ten, suggesting significant sensitivity to definitions and survey protocols.

Police records and victimisation rates

Victim estimates are subject to substantial standard error and to possible biases due to sampling and reporting inconsistencies. Nevertheless we may use these proportions to calculate the annual number of rape offences occurring in Western Australia during the early 1980s and thus 'guesstimate' the 'hidden' or unreported extent of crime. Discounting verbal threats and sexual assaults not regarded as rape or attempted rape by respondents, approximately 513–853 victims per annum are estimated by these means. Of these, approximately 143–238 are expected to report to police. Reports to police in 1983–84 are lower than this although by 1984–85 the reported number closely matches the expected number.

Converting these figures to a per capita estimate the rate of victimisation is 80–133/100 000 incidents per year of which 22–37/100 000 should be reported to police. Given the crudity of the calculations this estimate accords with the 30.6/100 000 estimated for 1986 from official records suggesting that in conjunction the available data are better measures than expected. Only repeated and regular victimisation surveys will permit improved cross-validation with police records. The estimates may be further refined by hospital records as well as estimates derived from offender self-report studies.

There have been increases in reports and increases in offenders over the period 1966–86. Controlling for population we observe these increases in reports.

Police records

Table 2 summarises rape cases reported to Western Australian police since 1963, adjusted by removal of 'unfounded' reports, or those 'not confirmed' by police, to ensure comparable counting rules. The discretion to record a report as unfounded rests with the investigating officer and his assessment of the complaint. However a few complaints, never more than a handful each year, deemed unfounded result in charges for false complaint.

Table 2 shows that the numbers of reports confirmed in 1982–83/1983–84 were 87 and 73, considerably lower than estimated by the victim survey, although much closer when unconfirmed reports are added. However by 1984–85 the reported confirmed number of 163 is closer to the expected figure. This suggests that the increases recorded by police could reflect a greater willingness to report by victims and police to formally record. Furthermore it indicates that the reporting rate, one in four, roughly tallies with official records.

Table 2 also includes the number of reports 'solved' by charge (plus percentage cleared by charge), the number of offenders involved in the clearance of a reported case by charge, and the number of adult offenders eventually incarcerated. In the absence of individual level data, a crude average attrition rate of 44 per cent from charge to incarceration can be calculated from these records.

The proportion of reports 'unfounded' by police has decreased over the last decade from as much as 53 per cent of all reports in 1976–77 to 8 per cent of reports in 1977–88, suggesting considerable sensitivity to attitudinal and policy changes in the reporting of this offence over time. It is worth noting that the recording of 'unfounded' complaints did not occur until 1974–75 and coincides with increased demands for improved enforcement and the establishment of dedicated services for victims.

As can be seen below the proportion of reports recorded as 'unfounded' has been halved every subsequent five years. It is probable that the victim service also acts to screen cases that do not 'fit' the precise (or misogynist) legal criteria required to punish transgressors.

Average percentage of reports 'unfounded':		
	1975–80	39.9
	1980–85	20.4
	1985–89	11.8

While there has been a very substantial increase in the number of rape/sexual assaults reported to police, we cannot assume this necessarily reflects a real or actual increase in the offence rate. The willingness of victims to report and of police to record has from all accounts greatly increased, but the evidence for this is poorly documented.

The treatment of 'unfounded' reports

Table 1
Incidence of rape from police records

Census*	*Reported rapes per 100 000 females*	*Offenders charged per 100 000 males*
1966	2.2	4.2
1971	6.6	5.7
1976	9.9	8.2
1981	15.5	5.4
1986	30.6	14.8

Table 2
Trends in the number of rape/sexual assault offenders known to police by year (involved in clear up)

Year	*Reports Adjusted*[a]	*Cleared by charge*[b]	*%*[c]	*Offenders charged*[d]	*Under 16*[e]	*Adults imprisoned*[f]	*%*[g]
1988–89	358	215	60	154	(21)	53	40
1987–88	274	164	60	154	(16)	36	26
1986–87	221	121	55	109	(17)	30	33
1985–86*	163	88	54	78	(10)	26	38
1984–85	163	76	47	90	(18)	26	36
1983–84	73	39	53	44	(6)	35	92
1982–83	87	59	68	71	(5)	35	53
1981–82	82	32	39	35	(7)	27	96
1980–81	98	54	55	50	(8)	19	45
1979–80	84	40	48	62	(12)	—	—
1978–79	62	40	64	77	(13)	—	n.a.
1977–78	56	40	71	57	(9)	—	—
1976–77	44	34	77	48	(14)	—	—
1975–76	40	31	77	38	(1)	—	—
1974–75	43	36	84	61	(10)		
1973–74	31	28	90	42	(7)		
1972–73	31	31	100	33	(2)		
1971–72	33	30	91	30	(4)		
1970–71	15	6	40	11	(2)		
1969–70	9	7	78	9	(0)		
1968–69	5	5	100	8	(0)		
1967–68	3	3	100	5	(1)		
1966–67	9	7	78	20	(3)		
1965–66	9	9	100	18	(5)		
1964–65	10	7	70	7	(0)		
1963–64	4	4	100	5	(0)		

Notes: (a) 'Unfounded' reports are removed. (b) The number of reports leading to the offender(s) being charged. (c) The percentage of reports cleared by charge (d) The number of offenders charged. (e) The number of offenders under 16 years charged. (f) The number of adult offenders imprisoned—data prior to 1980 not available. (g) The percentage of those charged who were incarcerated after removing juveniles (under 16) from the count.

* Denotes changes to the criminal code abolishing the offence of rape and replacing it with the offences of sexual assault and aggravated sexual assault.

in Western Australia demonstrates these sorts of changes.

Police recording practices have been shown to vary widely between and even within police forces, and can contribute in themselves to apparent increases in crime rates. Thus there has been a tendency to discount increases based on official statistics. Certainly even small shifts in the willingness of victims to report, and/or improved or less discretionary recording practices by police would contribute significantly to official increases. Possibly the charge rate (see Table 1), which shows a less clear but nevertheless steep increase better reflects behaviour, but we have no way of confirming this. There is no compelling reason however to discount these official figures so completely as to negate an increase in prevalence or incidence.

It is worth noting that the population of Perth has grown very substantially since 1963 and it can no longer be regarded as a large provincial town. Increases in crimes of violence or against the person are more readily associated in the literature with the ecology of the large city. Attitudes to gender and sexual relationships have also changed over the ensuing years and may have significantly increased both the opportunity and risks of sexual assault. In any event these changes in attitude and approach are reflected in the recording of the offence irrespective of how this may reflect the 'true' or hidden prevalence of the offence. The reliance on official records as an index and sample of offending assumes reporting and recording practices are constant.

Other data sources

Data provided by a service for rape victims records that a third of its 1987–88 clients were referred by police[4], but as this service is metropolitan based, has low utilisation rates by Aboriginal women, and all referrals are not officially reported, this figure overstates police reporting. Adjusting for this provides further corroboration that the reporting rate estimated by the victim survey approximates reality.

One further source of information is offenders themselves but as yet no Australian study has attempted to derive estimates of incidence from this source. Yet medical authorities report that incarcerated offenders attending treatment frequently report many more offences than known to authorities, confirming a long standing picture that known offenders account for a considerable proportion of reported and unreported offences.[5]

Conclusion

Thus while the gap between the number of recorded offences and known offenders on face value appears substantial and even immense when the 'dark' figure of offences is included this assumes known offenders account only for the number of offences for which they are charged. The data from sex offender self report studies and common sense suggest otherwise and the size of the gap between the known and the unknown is substantially less than often supposed.

In the example of rape in Western Australia, reliance on one or even two of the traditional measures of crime does little to help answer basic questions, such as, 'is the offence increasing or have our policies increased reporting by victims, etc?'. However, if information from these and other sources such as self report studies and hospital records (even if incomplete and fragmentary) are included our picture of the offence improves.

It is possible to conceive that a combination of such information (official records, victim and self report data) would permit estimates of the prevalence and incidence of offending (for some if not most crimes) vastly superior to those currently available. In effect a 'triangulation' of the possible sources of information would enable a reliable estimate to be calculated of the basic measure of any inquiry—the quantity. Nevertheless no such estimate could be reliably turned to practical use unless consistency and constancy of recording practices was achieved, a fact as shown by the above example, yet to be accomplished even by traditional sources of information—police records.

It seems that, without the essentials of measurement, criminology is incapable of developing beyond a chaotic and contradictory catalogue of facts upon which competing suppositions and speculations can only thrive.

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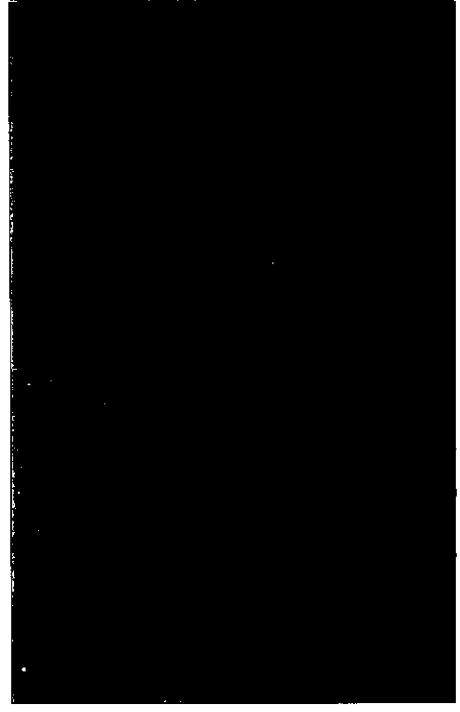

This article was based on a keynote paper presented to an Australian Institute of Criminology conference on paralegals held in Adelaide during February 1990. The conference came about after a number of individuals and organisations had noted that for a number of reasons, not least the accessibility to and the costs of the established legal profession, the importance of people working in the legal system without professional standing was increasing. In addition, the Senate Standing Committee on Legal and Constitutional Affairs had found it necessary to inquire into the high cost of justice in Australia.

Most of the themes addressed by Professor Goldring in this article were taken up by other participants in the conference. Interest centres on questions of cost, access to justice, and training. Most speakers were concerned with how to meet the unmet need for legal services, without excessive cost, and without unduly reducing the quality of legal services. Most of those who were working, or had worked, with paralegals, in such different environments as Aboriginal law centres in North Queensland and 'megafirm' law offices in Adelaide, saw a need for paralegal workers of different kinds, who needed different kinds of training. Some tertiary institutions expressed interest in paralegal training. Most participants felt that the acknowledged success of the conference might catalyse action to emphasise the importance of paralegal professionals in the delivery of legal services.

Can paralegals improve access to justice?

The concept of a 'profession' is not easy, but sociologists agree that some community of purpose, personnel and knowledge distinguishes a 'profession' from other associations. Members of a profession share language, values, and roles, and they influence selection of future members. At least a working definition of a profession is necessary to make sense of talk about 'paralegal professionals'.

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However, legal professionalism is defined predominantly by lawyers, who present it as necessary in the public interest, thereby justifying elaborate training and constant monitoring to ensure competence and the preservation of public standards. They claim to possess discrete, technical knowledge, rendered in a non-partisan manner within an overall commitment to justice according to the rule of law' (Dhavan, 1989:276).

Members of professions may not be concerned so much with knowledge or the provision of services as much as with enhancing or maintaining their own power. As one commentator put it, 'the professionals are entrepreneurs and self-serving agents like everyone else, presumably including their radical political critics who are more often than not academic professionals themselves' (Halmos 1973:6). To say this is not necessarily to be 'anti-professional'. I am proud to be a lawyer, and I believe in law. Good professionals will, however, be self-critical. Members of the legal professional probably have not been sufficiently critical of themselves or their profession.

The legal profession, with the clergy and the medical profession, was traditionally regarded as a learned profession, but the concept of a profession has changed. Many people are concerned with lack of access to legal services, but is the answer to establish another 'profession'? Consider what is required of a legal professional:

- ☐ Lawyers must be qualified by completing prescribed academic and practical courses.
- ☐ Lawyers enjoy a special market position: as officers of the court, lawyers are subject to certain legal and ethical duties, in return for which they are given a monopoly of specified types of paid legal work (called 'legal practice') and no one else may carry out such work for reward.
- ☐ The market position is related to lawyers' functions: virtually all advocacy before courts and many tribunals; a great deal of the preparation of documents used in the courts and for the sale or lease of land; the preparation of wills and most documents required for the formation and registration of companies; preparation of contracts and other commercial documents; and general counselling, advice and negotiation.

An important element of the concept of a profession is the idea of the independent expert who provides a service, including professional skill and judgment. This may mean that professionals exercise power over the clients; they not only satisfy, but also define, clients' needs. However, most clients know fairly clearly what they want when they seek legal services from solicitors in 'general' practices.

There are several different sources of legal services in Australia. Barristers do not provide services directly to the public. Private solicitors tend to be either

- ☐ sole practitioners or in small firms, providing a wide range of general services to individual clients and small businesses, or
- ☐ in the larger firms catering to the legal needs of companies, public sector departments and agencies and trade unions, which have been described as 'mega-lawyers'.

Community based and publicly funded legal services in some respects are more like the 'mega-law' offices than solo practitioners or small firms: they work in teams of relatively specialised workers.

What is a paralegal professional?

A 'paralegal professional' may be any person who does 'legal' work, under the supervision of a qualified professional, but who lacks the formal qualifications which a lawyer must have. Traditional paralegals included managing law clerks, police prosecutors, some court clerks, and articled law clerks, or legal apprentices, who performed a wide range of tasks while learning to be 'real' lawyers. Today, the description might include people who would formerly have been described as legal secretaries, library assistants and clerks. The introduction of electronic data processing and information retrieval systems to legal environments has led to a new class of professionally qualified personnel—specialists in data processing and information systems—working in legal environments, doing the job for which

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their occupational and professional qualifications fit them, yet who are not regarded as autonomous professionals. Their work is subsidiary to, and controlled by members of the legal profession. It is difficult to identify what work is specifically 'legal' unless lawyers have defined it as such. A range of workers, ranging from the unskilled to the highly skilled, may be involved in the delivery of legal services. Any who lack the formal qualifications for legal practice might be regarded as 'paralegal professionals'. The idea of paralegal is not new, and their employment on a wide scale was advocated in the early 1970s as one way of satisfying the 'unmet need' for legal services.

The most obvious analogy is with the health care professions, where highly qualified persons—pharmacists, nurses, physiotherapists, dieticians and social workers—work as part of a team delivering health care. Each member of the team has a skilled and specialised function. A question now being raised in health care systems is whether the doctors should retain their position at the apex of the hierarchy; indeed, whether there should be a hierarchy. Similarly, in the construction industry, the role once played by the engineer or architect is now filled by a team of specialist professionals, each with a special skill. In this team the organisation tends to be far less hierarchical.

The mega-lawyers tend to supply members of teams of expert providers of corporate services, or to form such teams themselves. Suggestions for 'multi-disciplinary' partnerships of lawyers, accountants, and bankers are part of this development. The legal services they provide are only part of a wider package of specialised corporate services. This is not unique to the large firms of 'corporate' lawyers. Lawyers in government departments have been doing this sort of teamwork for years. This raises questions about their professional identity and loyalties.

What functions are currently performed by paralegals?

The work being done in legal offices has changed. Much of it is not done by fully qualified lawyers. Some—for instance, information retrieval or forensic biology—is carried out by professional specialists in those disciplines, who are not paralegals; but other work is clearly ancillary to professional lawyers' work so that those without formal qualifications who do it can be described as 'paraprofessionals'. They are, with few exceptions, employees of large institutions or qualified legal practitioners. Studies of Australian lawyers' work have largely ignored the other types of work that is done in legal offices, who does it, and how it is done, except for the limited study by Abbott (1978). However, unless accurate information is available about what 'paralegals' are, or should be doing, it is difficult to suggest what sort of training they require, and other ways in which they could be useful.

Before too many plans are made for future deployment and training of paralegal professionals, further enquiries need to be made as to whether the functions currently performed by paralegal workers are different from those performed by fully-trained lawyers. If there is little or no difference, it would seem either that lawyers are overtrained, or the public is not getting the services it is charged for.

Can paralegal professionals affect access to justice?

If there is an 'unmet need' for legal services a number of different ways of meeting this need should be explored. These include:

- ☐ allocating greater resources to the provision of legal services
- ☐ reallocating resources available for the provision of legal services
- ☐ changing the nature of the legal services provided
- ☐ changing the way in which the legal services are provided
- ☐ educating the users of legal services to do without lawyers.

Though there is not time to do so here, the assumptions on which this is based need to be examined. They include:

- ☐ there is a need for legal services
- ☐ that it is not met
- ☐ access to justice requires those legal services
- ☐ the legal system provides justice.

Many legal problems are problems because lawyers insist that the law be applied to certain facts in certain ways. If ordinary people can be enabled to develop and protect their own interests without lawyers' intervention, this is probably the most desirable way of removing any 'unmet need': it is cheaper, and gives the people affected a greater sense of control over their lives. However, the law is likely to remain relatively complex and mysterious, and only rarely will people have sufficient skills and information to find their way through the legal maze. They will need legal services. Employment of paralegals is a way of changing the resources devoted to, and the means of providing, legal services. If paralegals are paid less than fully-qualified lawyers for the same output, then the same services will cost less, at least in the short-run, but there is a question whether or not the quality of those services will change.

How should changes be evaluated?

The effect of paralegal professionals on access to legal services should not be evaluated simply in terms of their effect on the volume of services provided. Meeting unmet demand may significantly improve overall the level of services available to the community. However, the effect on the quality of services provided is also important. It may be more or less important that legal services includes the 'overview' element: the experience, skill and judgment that only a properly trained and experienced professional can offer. In cases of routine conveyancing or debt collection, it probably is not. Formal qualifications are not the sole test of whether people can provide such an overview, and some clients may choose not to have this service. Although the full professional service is the ideal, people in desperate need should not be denied the services of a 'barefoot doctor', just because they cannot afford a neurosurgeon. Similarly, if legal services can only be provided because paraprofessionals are employed, they may be better than none, but might in some cases be worse.

From whose perspective should any changes be evaluated? The entrepreneurial lawyer will think first of the bottom line, even if she or he is also concerned with the quality of services. Employment of paralegals may make more economic sense than employment of salaried junior lawyers or keyboard operators. Institutional legal offices which have rigid budgetary constraints may reach the same conclusions, or will not be able to employ salaried lawyers even when they wish to.

The client's perspective is more important. Clients may see services provided by paralegal professionals in different ways. Some want to be served only by a lawyer and feel that attendance by a paralegal is somehow inferior. The analogy with medical services is obvious. Ultimately clients determine what services are required, and a few may appreciate that some services peformed by paralegals represent better value for money than the same service provided by a fully qualified professional. Appearances are important. A professional may insist on personal contact with clients, even though the routine aspects of the work are performed by an unqualified paralegal worker.

People are now more aware of legal rights, and demand legal services, but their income may not have kept pace with the current costs. Provision of those services at lower cost may be the only way ahead. The legal system as a whole must balance the interests of quality and quantity. The survival of social ordering in Australia may depend on ensuring that the legal system can provide the legal

services demanded by an increasingly informed and articulate population.

The question of the cost of justice (currently under consideration by the Victorian Law Reform Commission and the Senate Standing Committee on Constitutional Affairs) is probably the most important question facing the legal system in Australia today. The cost of services provided by legal professionals is a significant part of the cost of justice, and if employment of paralegals can reduce that cost, without significantly reducing the quality of legal services, then wider use of paralegals is indicated. But who will form this body of paralegal workers? How they will be trained?

Training paralegal professionals

What sort of education and training is required?

It has been suggested that employers have a vested interest in breaking down work into simple, mechanical tasks, so that no single worker becomes indispensable, and any is easily replaced. The law is not yet the sort of process that can be compared to a production-line in a car factory. The assignment of certain more routine tasks to paralegal workers does not necessarily mean that the tasks are being 'deskilled'; indeed, there may be a greater chance of obtaining the meticulous skill and attention to routine detail which many conveyancing and litigation-related tasks require. 'Good' paralegals will develop particular skills, requiring particular knowledge and ability to make judgments, though within a narrower range than a qualified legal practitioner would be expected to cover.

The next question is whether special formal education or training is needed. Some paralegal work, and some of the work done by lawyers, may be and should be learned on the job, but formal coursework seems desirable for complex or technical work, or if training as a paralegal is seen as a step to full qualification. In the United Kingdom the Institute of Legal Exectuves has offered a certificate course for 'managing clerks' by correspondence for many years, and those who complete this course may go on to be admitted as solicitors. In Australia, the NSW TAFE system has announced a special course for legal secretaries, which includes some elements of study of law. The Graduate Diplomas in Legal Studies now available in several Australian tertiary institutions have attracted graduates working in legally related areas.

A university degree course in law should provide both a general education and the academic foundation for a career in legal work, which gives the graduate a broad perspective on the operation of law in society and sufficient knowledge of the main areas of law to found an ability to recognise where specific rules may apply. It could be argued that, based on the work most lawyers do, most law students are overtrained, so it may be even less desirable to copy the broader aspects of university legal education in the training of every paralegal. What paralegals need depends on the sorts of tasks they will have to perform. For example, those engaged in land transactions need basic knowledge of land law and the law of contracts; those engaged in probate work need some knowledge of the law of trusts and succession, and those engaged in litigation support need knowledge of the rules of evidence and procedure. But how much and in what context?

Secondary school courses now include legal studies at all levels and accept that they provide a valuable road to a wider understanding of society and culture. They would help paralegals, but not all paralegals will opt for these courses. There may be no need for formal prerequisites. Both written and spoken English are fundamental in the operation of the law. Language skills should be the main requirement for formal training of paralegals. The remainder depends very much on what the students might want.

Who can provide it?

Again, the answer depends on the background of the paralegals and what they are to do: some may need to have tertiary qualifications in some other area. For them, tertiary studies at the post-graduate diploma stage would be appropriate. For other paralegals, whose work will be of a more traditionally clerical kind, tertiary studies are probably not indicated. For fieldworkers drawn from, and working with particular minority groups, tertiary studies are not necessary. The TAFE system may be able to provide some courses, but in some jurisdictions, at least, TAFE is suffering from acute shortages of resources. In-house training is also a possibility, especially as government law offices and larger law firms are now employment educational specialists to prepare and coordinate training and continuing legal education.

Training of paralegal professionals will almost certainly need to be mainly on a part-time and cooperative basis; study will have to be through evening or distance teaching, possibly combined with intensive sessions at the relevant institution or in selected local centres. Co-operative and distance education is not a cheap alternative. It may not necessarily be the ideal solution, but offers some educational advantages. Paralegals will mostly be unable to afford full-time study, or will undertake it at the request of their employers.

One difficulty that has faced the health care professions is the lack of mobility between the various branches. It is unusual, say, for a physiotherapist to become a doctor, or a nurse to become a social worker. It is even more unusual for a surgeon to become a ward attendant. There is certainly no encouragement of such movement. A nurse studying to be a social worker is unlikely to receive any academic credit for either practical or academic work completed as part of nursing training. This leads to frustration, and a relatively high turnover. In the legal profession, paralegal work has traditionally been an avenue of upward professional mobility. Avenues for professional advancement and development should be available to paralegal workers who have demonstrated intellectual ability, and capacity in other respects to do legal work, provided that the additional studies they are required to undertake are of a sufficiently broad nature to give them the breadth of perspective which is so important in providing proper professional services.

A problem facing legal education at all levels is the lack of adequate teaching staff. Teaching law at any level requires a broad perspective and most teaching positions require a law degree, and often a higher degree in law. Secondary teachers of legal studies must complete some tertiary studies in law, and this is probably also necessary for anyone attempting to teach paralegals. At all levels of legal education, practical experience of a relevant kind is highly desirable; as paralegals, at least at first, will need a decidedly practical kind of training, some, at least, of the teachers will need to be experienced legal or paralegal professionals.

Who pays?

These days governments espouse the philosophy of 'user pays'. But which user? The employer, or the client? If the public sector is to provide the courses, through the TAFE or tertiary sectors, can the need for training of paralegal professionasl deserve priority over other social needs? If the model of co-operative education is adopted, should it be funded by a levy on potential employers? Would such a levy be a disincentive for those employers to employ paralegal professionals at all? Those who want to employ trained paralegals should pay; but these costs will in some way be passed on the ultimate users of legal services in the long run.

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Kathy Laster*

Infanticide and feminist cri

'Strong' or 'weak' women?

The callous matter-of-fact way in which Lady Macbeth reveals her readiness to commit infanticide is, in Shakespeare's play, testimony of her strength and ambition. The early part of the play portrays a competent and capable woman. Yet, traditionally, mothers who kill their babies have been pitied rather than admired. In both folk-lore and the law itself, competent and capable women do not commit this offence: conversely, when it occurs there must be some obvious 'weakness' in the mother to account for it.

The existence of this 'female-only' (gender-specific) offence continues to pose significant problems for criminology and for feminist criminology in particular. On the one hand, there are those who would argue that in a male-centred world, any piece of legislation which gives some advantage (however small) to women in the criminal justice system, is worthwhile preserving. On the other hand, others have expressed serious doubts about the political and social consequences of retaining the offence, which continues to focus attention on some alleged specific vulnerabilities of female offenders.

Since the 1920s most Australian jurisdictions have followed the English example and recognised infanticide as a distinct crime. The elements of the crime are the killing of a child most often aged less than twelve months, by its mother, while the balance of her mind is disturbed, due to the effect of giving birth or lactation. Infanticide is both a defence to a charge and an offence: mothers may be charged with murder and plead infanticide as a partial defence, reducing their crime to manslaughter, or they may be charged with infanticide as an offence in its own right.

The numbers of mothers who kill their babies are not large, probably no more than one or two each year in any single jurisdiction with only some of these being proceeded against by the Crown. In Victoria, for example, five women were responsible for the death of their babies between 1981 and 1987. In one case the Director of Public Prosecutions entered a nolle prosequi, in another case the woman pleaded not guilty to murder and was acquitted and in the remaining three cases the women pleaded guilty to infanticide. New South Wales figures for the incidence of the crime are somewhat higher.

Despite the relatively minor incidence of the crime it has been the subject of extensive legislative revision and law reform activity in a number of Australian and overseas jurisdictions. Almost universally there has been a recognition that this gender-specific crime presents many evidentiary and jurisprudential problems. Both the Law Reform Commission of Canada and the UK Butler Committee Inquiry into Abnormal Offenders recommended its abolition with the crime being subsumed under a general defence of diminished responsibility.

Although feminist theorists are divided as to whether infanticide should be abolished (and in those Australian jurisdictions which have it, it has been retained) they are all far from happy with the terms in which the specific offence is currently framed. In its current form the crime assumes a biological explanation for female offending. Mothers, it implies, are at the mercy of their hormones after giving birth and are therefore not fully responsible for their actions. This simplistic causal relationship can rarely be sustained. At best, only 10 per cent of mothers who kill their babies can be said to be suffering from post-natal psychosis. Typically these are the crimes where mothers have delusions and the scenario is particularly sad, often involving the murder of a number of children and attempted suicide by the mother. A related group involves neo-naticide: the mother denies her pregnancy and the birth of the child comes as a complete surprise. The body of the baby is frequently found in or near a toilet with the mother continuing to deny any knowledge of this episode of her life.

For this small group of women who can be shown to have a genuine psychiatric disturbance, the current provisions for insanity or an extension of

I have given suck, and know
How tender 'tis to love the babe
I would, while it was smiling in
Have plucked my nipple from
And dashed the brains out, had
Have done to this.

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minology

that milks me:
my face,
his boneless gums,
I so sworn as you

the defence of diminished responsibility would probably be more appropriate than infanticide. In the remaining cases, it does women a disservice to conceive of their behaviour in medical terms. Such inappropriate biological explanations have traditionally been the basis for denying women's right to equal participation in the social and political life of the community, for example, the alleged physical and emotional weakness of women was used for a long time to exclude them from professions such as medicine.

Nevertheless, some feminists have been keen to preserve special legislative provisions which ameliorate the harshness of the label of 'murderess' and the severe penalties which this may entail. A special crime of infanticide, they argue, allows due recognition to be given to the problems of poverty, lack of social support and the isolation of women in their role as mothers. The issues are clearly illustrated in the very recent Victorian case of Sharon Stone who killed her eight month old son and twenty-two month old daughter in 1989.

Stone lived in the country, married at seventeen and at twenty-two was the mother of three children, all born within the space of twenty-seven months. Her husband had left her after the birth of their third child. The baby had been diagnosed as a diabetic and the inexperienced mother had to perform daily blood tests and look after, at times, a very sick child. She suffocated the baby, voluntarily giving herself up to the police. She allegedly told the police that she feared she might hurt her other children but her call for help seems to have been ignored. Three weeks later she suffocated the older child after learning that it, too, was probably a diabetic. The mother's own childhood had been chaotic and dominated by violence.

Yet, however appealing, the social explanations for infanticide like the biological, characterise women as victims who are not entirely responsible for their actions. It would be hazardous to allow social determinism to gain currency in the place of discredited biological determinism. For one thing, this kind of reasoning distorts the complexity of motives for offending which characterise the variety of women's experiences. By focussing on the more pathetic offenders who are caught, the analysis sidesteps the recurring pattern of 'strong' women in other times and in other cultures who, for rational reasons, take it upon themselves to determine their own fertility and play an important role in their society's social organisation. It is important to remember that 'ordinary' women less than a hundred years ago, for a variety of reasons, regularly abandoned, neglected or killed their children themselves or through third parties such as midwives and baby farmers. It was merely the inept and vulnerable (for example unmarried servant girls) who were caught.

Given the problems of trying to provide automatic defences within the legislative provision, is the solution to create an offence which is gender-specific but which is silent as to cause? In the 1950s the Canadians tried this approach in a separate provision which recognised as infanticide the killing by a mother of her newly-born child even where her mind is not disturbed as a result of childbirth. There are two political dangers in this type of approach. Firstly, it creates a status offence of 'motherhood' which implicitly asserts the frailty of women once they become mothers. There might be some point in this if it led to greater community support for the difficult job of mothering. As it stands however, this type of approach reinforces for the community the image of the good mother who 'copes' and the inadequate mother who is, at best, to be pitied.

Secondly, mothers who do not fit the stereotypes may receive harsher treatment. Lindy Chamberlain was probably damned at her trial because she had no 'excuses'. She was a seemingly happily married, and apparently experienced, mother who was not toiling in the kitchen with her children but rather on 'holiday' at Ayers Rock. More importantly, she did not throw herself on the mercy of the community as a grieving mother who had temporarily lost her balance. Instead, she projected the image of the 'strong' Lady Macbeth. She remained calm, emotionless and articulate throughout the proceedings. Her appearance did not fit into preconceived notions of a tired mother overborne by the responsibilities of her children. Despite her subsequent advanced state of pregnancy, she was well-dressed and groomed. Her seemingly fantastic story

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Lady Macbeth, strong and capable stereotype. A National Library of Australia photograph of Lewis Casson and Dame Sybil Thorndyke as the Macbeths, from a 1932 Sydney Mail, reproduced with permission.

Lindy Chamberlain, calm . . . articulate.

Photo Age

Peter Berman*

The NSW view of committals

The proposals discussed in this paper were among many changes to criminal procedure contained in the The Criminal Procedure (Committal Proceedings) Amendment Bill 1990 and the Miscellaneous Acts (Committal Proceedings) Amendment Bill 1990. Both Bills were defeated in the NSW Legislative Council on 13 June 1990.

The Criminal Procedure (Committal Proceedings) Amendment Bill represented the culmination of a project that began in the Criminal Law Review Division in the early part of last year. At that time, the Division began an assessment of the role of committal proceedings in the prosecution process and began examining firstly whether any changes were needed and secondly what those changes should be.

It was decided that, rather than proceed directly to legislation, a discussion paper should be issued which would set out a number of preferred options. It was recognised that any substantial change to the prosecution process was a matter in which the input of lawyers and the general community would be helpful in evaluating the need for and determining the nature of, any changes.

The Division examined the role of committal proceedings in the light of authority and the experience of those working in the Division. The Criminal Law Review Division has always been staffed by lawyers who come into the Division from positions where they were practising law. The Director of the Division at the time was a Public Defender and I was asked to provide some input as a Crown Prosecutor. All staff work in the Division for a maximum of about two years, after which there is a possibility of losing touch. Although the major part of the Discussion Paper was prepared by the Criminal Law Review Division, it would be quite wrong for me not to mention the input that the Attorney-General himself had in the preparation of the Discussion Paper.

At around the same time the Discussion Paper was released, a report from a firm of consultants who were examining the criminal justice system was also released. That report recommended the complete abolition of committal proceedings. This proposal was completely rejected by the Attorney-General and his department. I have no doubt that the abolition of committal proceedings would result in more trials and longer trials. An early examination of witnesses is fundamental to any fair and efficient criminal justice system.

In the months that followed the release of the Discussion Paper, the preferred option was considered afresh in the light of the many responses which had been received. Additionally, the NSW Court of Appeal handed down an important decision concerning a magistrate's decision to commit for trial which required a reappraisal of the rationale for the proposed changes.

I would now like to outline the scheme finally settled on. After an accused is arrested or summonsed for an offence which may only be dealt with on indictment and bail determined in the usual way, all statements of witnesses taken by police will be forwarded to the Director of Public Prosecutions who will firstly decide whether the proceedings should continue and if so, the appropriate charge.

Some matters which can be dealt with summarily will also be included in the scheme. They will not be dealt with on indictment unless the Director of Public Prosecutions, or in appropriate cases, the defendant does not consent to summary jurisdiction. This is a change from the present system where the question of jurisdiction is in the hands of the magistrate. I will explain the need for this change later.

After jurisdiction and the appropriate charge are determined, the prosecution evidence will be disclosed to the defence within a period set by the magistrate when the matter first comes before the court. The prosecution will also have to disclose to the defence the names of witnesses it intends to call to be examined at the pre-committal hearing.

The defence will inform the prosecution of those witnesses it wishes to cross-examine, the prosecution will consider whether to consent to cross-examination of those witnesses, if there is any dispute as to whether a witness can be cross-examined.

Prosecution witnesses may only be cross-examined without the consent of the prosecution if they fall into an appropriate category. Should there be a dispute as to whether a witness falls into a particular category and the prosecution does not consent to the cross-examination, then the magistrate will resolve the matter.

A pre-committal examination will then be held. This hearing has three purposes:

1. To more fully inform the prosecution and defence about the evidence;
2. to clarify the issues at any later trial; and
3. to enable further consideration to be given as to whether a person is to be committed for trial.

The magistrate will ensure that the rules of evidence are applied and that the proceedings are conducted fairly, but, because of the nature of the proceedings the court will only be able to exclude prosecution evidence at the request of the defendant. The defendant will have the right to give or call evidence.

Magistrates will be given power to prevent cross-examination which could unjustifiably harass or intimidate the witness.

After the conclusion of the pre-committal hearing the evidence will be considered and the Director of Public Prosecutions will make a decision as to whether the matter should proceed to trial. A bill will be found, if appropriate, at this stage. Once a bill has been found the Director of Public Prosecutions will advise the local court. This will operate as a

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committal for trial and the local court will then transfer jurisdiction in the matter to the higher court. A bill must be found, if practicable, within thirty days of the completion of the pre-committal hearing although often it will be found as soon as the pre-committal hearing is completed. From the moment of transfer, the higher court will have jurisdiction in the matter and the trial will take place in the usual way.

If the Director of Public Prosecutions decides not to find a bill after a person has been charged with an offence, the legislation will specifically require that reasons for this decision must be given on request.

Where the Director of Public Prosecutions decides not to find a bill, an order from the Director of Public Prosecutions will release a defendant in custody immediately without the need for the intervention of a court. This will ensure that people are not kept in custody after a decision has been made that they will not be put on trial.

I will now discuss the two most important changes which will be brought about by the legislation.

Perhaps the most important aspect of the new scheme is that a Magistrate will no longer decide whether or not to commit a person to trial. That decision will now be made by the Director of Public Prosecutions when a bill of indictment is found. It is this aspect that has received most criticism since the public announcement of the proposal.

These criticisms proceed along the lines that it is inappropriate for a party to criminal proceedings, in this case the Crown, to decide whether a person should be put on trial.

What these criticisms fail to address is the correct role of the Director of Public Prosecutions. The Director of Public Prosecutions, together with the Crown Prosecutors, has been making the decision as to whether a person should go to trial since the *Director of Public Prosecutions Act* came into operation on 13 July 1987. Before then, where there was a no bill application, a similar decision was made by the Attorney-General of the day. This has been the case since soon after the colony of New South Wales was established.

At present, simply because a magistrate has committed a person for trial, does not mean that the person will stand his or her trial. Before a case can proceed to trial after committal, a Crown Prosecutor must consider the matter and, if appropriate, find a bill of indictment. The Crown Prosecutor does not have to find a bill simply because the person was committed for trial. He or she can recommend to the Director of Public Prosecutions that no bill be found. Similarly, even after a bill has been found, a Crown Prosecutor can recommend that there be no further proceedings although the final decision will be that of the Director of Public Prosecutions.

It must be remembered also that the charge for which a bill is found by a Crown Prosecutor is often different to the charge on which a person was committed for trial.

Similarly, just because a person has not been committed for trial by a magistrate, does not mean the person will not stand his or her trial. The Director of Public Prosecutions has the power to file an ex-officio indictment, as does the Attorney-General of the day. We have seen a recent example of this in Victoria where an ex-officio indictment was filed before the completion of committal proceedings.

So whether a person is committed for trial or not by a magistrate, the Director of Public Prosecutions has the power to 'overrule' the magistrate's decision. Thus criticisms of the proposal which suggest that the Director of Public Prosecutions, as a party to proceedings, should not have the power to put someone on his or her trial, fail to recognise that the Director of Public Prosecutions has had this power since the creation of the office.

This power to terminate criminal proceedings even where the person has been committed for trial is vested in the Director of Public Prosecutions as a natural consequence of that person being given the responsibility to prosecute. Prosecutions in New South Wales are brought in the name of the Director of Public Prosecutions on behalf of the Crown.

Of course the Director of Public Prosecutions is reponsible to Parliament for the exercise of those powers (he must file an Annual Report which is subject to debate in the Parliament) and the Attorney-General retains the power to file ex-officio indictments or no bill a matter despite the Director of Public Prosecution's decision. This will not change under the new scheme.

It is interesting to note that the Law Society of New South Wales issued a press release containing this statement: 'the matter of greatest concern is the proposal to have the prosecutor, a Government employee, decide whether or not an accused person goes to trial'. As the *Director of Public Prosecutions Act* makes clear, the Director is an independent statutory appointee and is no more a 'Government employee' than Magistrates are under the *Local Courts Act*. The press release also fails to recognise that the Director of Public Prosecutions already decides 'whether or not a person goes to trial'.

One result of the removal of the need for a magistrate to make a decision will be that it will no longer be necessary for the same magistrate to hear the cross-examination of all the witnesses. This will allow improvements to the listing arrangements in the Local Court.

The second important aspect of the new scheme concerns the restrictions on cross-examination of prosecution witnesses.

The draft bill gives the defendant the right to cross-examine witnesses who fall into the following categories.

(a) a witness who gives evidence as to the identification of the defendant may be cross-examined concerning that identification;

(b) a witness who is alleged to have been an accomplice of the defendant or has received an indemnity from prosecution may be cross-examined in respect of any matter;

(c) a witness who gives evidence of an opinion based on scientific or medical examination may be cross-examined on that opinion and the methods used to reach that opinion;

(d) a witness who is examined in chief by the prosecution may be cross-examined in respect of any matter;

(e) a witness whose cross-examination is likely to adversely affect the assessment of the witness' reliability or likely to adduce further material to support a defence may be cross-examined in respect of reliability or the further material; *and*

(f) a witness to whose cross-examination the prosecution consents may be cross-examined about the matters to which the consent relates.

A comparison of what might be called the general category proposed in the Discussion Paper, with the general category in the bill, will reveal just how much the right of cross-examination was widened. No longer will there need to be special or exceptional circumstances before cross-examination is allowed.

Of course, I recognise that the categories of witnesses who may be cross-examined are now quite wide, however as I have argued before, this is necessary to ensure that the efficiency gains which will be brought by the scheme are not swept away by having longer trials and more trials.

You may then ask: 'if the categories are so wide why bother having categories at all?'. Well one reason, and an important reason, is that this will require defence counsel and solicitors to at least give some thought to exactly why a witness is required for cross-examination.

A second reason to limit the circumstances in which a witness may be cross-examined is that this will prevent the wide-ranging 'fishing expeditions' which are too common under present committals. Under the new scheme we should see pre-committal proceedings being conducted on reasonably clearly defined issues. The restrictions will mean that fewer witnesses will be called for cross-examination, and for those that are, the cross-examination itself will be shorter.

These two factors, the reduction in the number of witnesses cross-examined and the narrowing of issues, should lead to significant reductions in Local Court time.

The restrictions on cross-examination are such that these savings will be achieved without any subsequent increase in the length of any actual trial.

Having outlined the nature of the scheme, may I turn to an explanation of the benefits which can be expected from its implementation.

The Discussion Paper noted that the Local Court appeared to be an inefficient filter in taking out from the prosecution system those matters which should not go to trial.

Firstly, magistrates are still committing for trial in many cases where the Director of Public Prosecutions, in effect, decides that the person should not have been committed for trial in the first place. Secondly, even where the Director of Public Prosecutions agrees that the magistrate's decision to commit for trial was exercised properly, the Director of Public Prosecutions may not proceed to trial for reasons which the magistrate was not able to take into account. It would be far better if these matters were terminated at the beginning of the prosecution process rather than after the person has been committed for trial.

Backlogs

As you are no doubt aware, New South Wales has a significant backlog of criminal cases awaiting hearing in the Supreme and District Courts. Individuals spend an average of nine months in custody between committal and trial in the District Court. Many of these people will be later acquitted. It is by no means an overstatement to say that this is a shameful situation.

A clear factor contributing to these problems is that too many cases are going to trial because too many are being committed for trial in the first place. The changes to committal proceedings to be introduced in New South Wales will significantly alleviate this problem.

The bottleneck in the system at present is in the higher courts but no one could deny that Local Courts are extremely busy places.

The new scheme of pre-trial committals will result in a saving of Local Court time. Pre-committal hearings will be completed in less time than is currently taken for committal proceedings. This will lead to a small, but significant improvement in the time which elapses between arrest and trial, however this is by no means the primary objective of the changes.

The new pre-committal scheme is not the only step which is being taken to reduce the number of matters going to trial unnecessarily. In New South Wales magistrates have the jurisdiction to deal with many indictable matters summarily with the maximum term of imprisonment, in general terms, being two years.

Yet many magistrates are committing for trial when the defendant requests summary jurisdiction, even where there is no likelihood that a penalty even approaching two years in prison would be appropriate.

Common assault in New South Wales may be dealt with on indictment or summarily at the magistrate's discretion. In either case the maximum penalty is the same, two years imprisonment, yet we consistently see magistrates committing for trial rather than dealing with the matter themselves—even where the defendant indicates a wish to be dealt with summarily.

As a result of these findings, the Bill to go before Parliament provides that the decision as to jurisdiction will be made by the Director of Public Prosecutions with the consent of the defendant where appropriate. This will further reduce the number of committals to the higher courts and should allow the higher courts to reduce the enormous backlog of cases awaiting hearing.

There are other reforms contained in the Bill which I have not had time to describe in detail today. One of the most important, which I referred to earlier, is the introduction of compulsory disclosure by the prosecution of both the prosecution case and material which may be helpful to the defence. The scheme regarding committals could only really operate successfully in conjunction with comprehensive disclosure by the prosecution.

No doubt the New South Wales scheme will be attacked on two fronts. There will be those who maintain that the scheme goes too far. Others will put forward the view that the scheme does not go far enough. The scheme is, I believe, a novel approach which attempts to maintain the fundamental advantages committals have to both defence and prosecution, while doing away with the inefficiencies.

INFANTICIDE AND FEMINIST CRIMINOLOGY

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about a dingo having taken her baby was seen to be evidence of her dissembling to hide her own guilt.

Lindy Chamberlain has now been released from prison, pardoned, and had her conviction quashed, but her treatment at her trial was significant. She had been charged with murder because the offence of infanticide was not available under Northern Territory law. If it had been, however, her situation might have been even worse. If her defence counsel had tried to prove that 'the balance of her mind was disturbed' the onus would have been on the prosecution to prove that she acted 'rationally'. The 'Lady Macbeth' qualities which she exhibited would have been made directly relevant to the issues on trial thereby legitimising discussion of popular prejudices. Nor would she necessarily have fared any better with an infanticide provision which would have allowed her to be convicted even where the balance of her mind was not disturbed. At least pleading 'not guilty' to a charge of murder gave her a fair fighting chance of an acquittal. The alternative legislative formulation would have left her totally defenceless with the same prejudices being put validly in issue. Contrary to the arguments of some feminists, a specific offence of infanticide may expose some women more to public bias in the operation of the criminal justice system.

A specific offence of infanticide also changes the nature of feminist discourse on patriarchy. In the nineteenth century many women were saved from the noose through the vigorous campaigns of early feminists. Championing the case of individual women charged with killing their children provided the opportunity for the women's movement to point out the oppression of women by men and their vulnerability to male sexual violence and exploitation. Since the introduction of a separate crime of infanticide the penalties have been much lower and the advocacy more muted. The current formulation of a gender-specific crime forces feminists inappropriately to focus attention entirely on the mother and the mother-child relationship instead of the broader issues of women's inequality.

It is timely to remember the historical rationale for the introduction of a separate crime of infanticide. Throughout the nineteenth century, judges and juries became increasingly reluctant to convict mothers who killed their children of murder, however conclusive the evidence against them. Infanticide legislation was introduced, not to assist the offenders but to make sure that the rule of law was not compromised by the refusal of judges and juries to convict. The legislation was, in fact, a way of ensuring that the offenders took more responsibility for their crimes, not less.

It is, of course, impossible to know whether all women who kill their children would be dealt with more or less leniently under a specific crime of infanticide. Feminists, however, need to be wary of assuming that a specific law of infanticide will always help individual women or the cause of women in general. Advocacy of a specific offence may well reinforce unacceptable stereotypes of women as 'mad' or 'weak'. It may be convenient for Shakespeare to let Lady Macbeth redeem her callousness by going mad, but for mothers who kill their babies this characterisation may be too great a price to pay for special consideration in the criminal justice system.

Neglected to death

This article was adapted by Mr Temby from his Sixteenth John Barry Memorial Lecture

Deaths in custody are distressing, not least to those who run the systems. There are two relevant systems in any place. One is government, and the other comprises the prisons and lock-ups in a given jurisdiction. From the former we have seen much wringing of hands, the setting up of various inquiries, but generally not much real action. Those responsible for the latter have protested that everything possible is being done, given limited resources and the number of people who must be detained.

'It is wonderful to observe how an impending Court hearing sharpens the mind of people such as this.'

Ian Temby, QC

It should be stressed that the topic addressed is not that of black deaths in custody. Many believe that white prisoners are not at risk. The facts give the lie to that. A recently published study by Dr Hurley of Queensland relates to the forty-four male prisoners who died in a fifteen year period to 1987 in Brisbane Prisons. Twenty deaths were the result of suicide, twenty-two deaths were of natural causes, one was accidental and one resulted from a homicidal attack. Thus suicide was a leading cause of death. The rate was 266 suicides per 100 000 prisoners per year, about fifteen times the suicide rate in the general male population in Australia over the period 1973 to 1981. There were three instances of clustering of the dates of suicides.

Only one of those who died was an Aborigine. The common impressions that blacks make up most of those who die in custody, that only they kill themselves, and that the copy-cat syndrome is unique to them, are clearly wrong. The figures show that from January 1980 to the end of 1988, 462 deaths in prison and police custody occurred throughout Australia, of which ninety-four, about 20 per cent, were of Aboriginal people.

An equally important reason for pursuing the larger topic is that the smaller is being tackled by a Royal Commission. Certain suggestions for change have already been made by that body, in its interim report of December 1988. Many of the suggestions made are worthy of implementation. The approach taken here is different: to urge that there are means available, by use of the law and its processes, which are apt to achieve necessary systemic change, in such manner and detail as may from time to time be appropriate. The law can and should be used as an instrument to compel change and improvement in a system for which lawyers ought to recognise a special responsibility, as they are chief operators of the system which fills the prisons.

It is clear that an apprehending constable has a duty to exercise reasonable care for the safety of his prisoner during a period of detention. The High Court said so in *Howard v Jarvis* (1958) 98 CLR; see also *Dixon v Western Australia & Lees* (1974) WAR 64. In the former it was said that the constable 'had deprived Jarvis of his personal liberty, and assumed control of his person. In arresting and detaining Jarvis he was no doubt acting lawfully and properly and in the due execution of his duty, but he was depriving Jarvis of his liberty, and he was assuming control for the time being of his person, and it necessarily followed . . . that he came under a duty to exercise reasonable care for the safety of his person during the detention.'

How well does the legal rule work in practice? Consider the case of Stephen Wardle, a white youth who was picked up by police after having ingested doloxene and alcohol. He was taken to the East Perth lock-up, where his appearance was described as both 'drugged and drunk'. Various tablets were taken from him, but not recorded in the property book, and apparently not mentioned to the incoming shift of police officers at the lock-up. Unsuccessful attempts to wake him were made at 2.00 am and 4.00 am, and he was found dead at about 5.00 am.

The inquest into Wardle's death, conducted by the Perth Coroner, was very thorough. The finding was that death was due to the toxic affect of drugs and alcohol, and that it arose from non-dependent use of drugs aggravated

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'. . . what is said by the Coroner will almost always be seen as mealy-mouthed.'

by lack of care. Lengthy reasons for the finding were delivered. None of the seventeen custodial police officers on the night in question gave evidence at the inquest. Each refused on legal advice, so the Coroner only had their statements to work from. He was trenchantly critical of those refusals. The reasons contained no findings against any individual, and only passing criticism of the lock-up system as it operated on the night in question.

As it seems to me, Wardle died because of a failure on the part of the proper authorities to set up and enforce a satisfactory system for his safe custody. That is close to a classic species of negligence: *Hamilton v Nuroof* (1956) 96 CLR 19. Surely it would have been infinitely preferable had the inquest into his death been able to look at that issue. Either the system was faulty in failing to ensure that medical attention is called for prisoners in stuporous state, and that they are watched constantly, or frequently and regularly, until their condition is assessed by experts. Or it may be that the system was perfect, and it failed on the night in question. Either way there was negligence and no useful purpose is served by preventing a Coroner from stating his views as to that question.

But the Coroner could not say any of this. In Western Australia (and also in Queensland and South Australia) Coroners are expressly precluded from making a finding which suggests civil liability may repose in an individual. In all States the range of verdicts and findings customarily made is fairly narrow, perhaps even artifically so. Typically the statutory obligation is to make a finding as to 'the manner and cause of death'. The standard English work (Jarvis on Coroners) makes clear that the verdict of lack of care must refrain from stating that death was aggravated by the acts or omissions of any particular person.

Accordingly, throughout Australia, the role played by Coroners is more restricted than it could usefully be. This situation is wasteful of resources, is apt to produce disappointed expectations, and ought to be rectified. An allied problem is that in most parts of Australia, Coroners lack the powers and administrative backing to do their job properly. There ought to be moves towards the Victorian position, which in this latter respect approaches close to the ideal.

The present situation is bound to produce feelings of frustration on the part of grieving relatives of a person who has died in questionable circumstances. They see the law convene a hearing into the circumstances of death. At the end of the day, even if the evidence has emerged in a manner distinctly unfavourable to one or more individuals, what is said by the Coroner will almost always be seen as mealy-mouthed. It is small consolation to the family to be told that the Coroner's role is tightly circumscribed by statute or tradition or both, and that if they want anything done about the death then another hearing before a court of appropriate jurisdiction will be necessary.

That is not to say that most or all deaths in custody involve criminal misconduct or incompetence. It is necessary to acknowledge the facts. One is that lock-ups and gaols are dangerous places, and apt sometimes to prove fatal. Many who enter them are sick, most are unhappy, and quite a few are both. Some will want to do damage to themselves, and others will not much care whether they live or die. In addition, places of custody are dangerous because of the nature of many inhabitants.

Secondly, not every death is avoidable, as Wardle's surely was. It may well be the case that the average gaol inmate is somewhat safer inside than out in the community. But when the State locks somebody up it assumes very special responsibilities, and not enough is presently being done to discharge them.

Putting the matter shortly, the function of the modern Coroner should be revised so as to become that of *inquiring into and reporting upon deaths*. There should be no restrictions as to how far the Coroner can go in that inquiry, or what he can say at the end of it. What I propose could be described as a *poor man's Royal Commission*. It would lead to a sharply reduced likelihood that at the end of an inquest there would be an outcry for a judicial inquiry.

Legislative provisions are of fundamental importance. To the extent they preclude a desirable course of action being followed, they must be changed. However, mere legal change will rarely suffice to achieve all desirable reform objectives. Administrative change is almost always required.

In each Australian jurisdiction there should be a State or Territorial Coroner:

- ☐ who is entitled to inquire into and report upon deaths
- ☐ who has overall executive responsibility for the investigation of deaths in the State or Territory concerned
- ☐ who is entitled to requisition assistance from elsewhere, in particular police who work under the command of the Coroner
- ☐ and who is backed by appropriate medical, pathological and forensic services which can be made available in a timely manner.

The next reform urged is that the dependents of a deceased be granted legal aid readily, if not as a matter of course, for their representation at inquests into death. The most satisfactory inquiries are those at which the contending parties are able to put their cases properly. This change in approach, if coupled with the major reform already outlined, is likely to lead to the consequence that damages claims are either abandoned or settled quite quickly after completion of the inquest. There would therefore be substantial savings to legal aid authorities who would not have to grant aid for contested civil claims by dependents as often as at present.

A rough analogy may be drawn with contempt by means of inflammatory statements against accused persons, particularly in cases of alleged homicide. This has become an increasingly prevalent practice in Australia over recent years. Statements of that sort make a fair trial difficult if not impossible. Governments in most places have seemed disinclined to bring contempt proceedings, presumably because they do not want to offend the media outlets towards which they look for support, or at least benevolent neutrality, particularly at election time.

Accordingly accused persons should themselves move the Court to have cases of contempt dealt with. Their answer may be that they cannot afford it, or the harm is done and cannot be redressed, or both those things. The legal aid authorities could easily improve the position by granting aid in a handful of these cases, and seeing contemners dealt with in a condign manner. So to act would be to adopt a strategic approach: not just to benefit the particular individual, but to help many accused persons who might suffer future harm at the hands of undisciplined reporters and editors.

The benefits that flow from such a systemic approach are obvious. Because those responsible would be made accountable in a timely and direct manner, they would have every incentive to prevent avoidable deaths. That would happen at every level—the individuals in charge of given cells and their inmates, their supervisors, and those in charge of the prisons and police systems. It is wonderful to observe how an impending Court hearing sharpens the mind of people such as this. The key is to enable Coroners to identify the particular individuals who have failed in their duty, and specify just how they have done so.

Doubtless in many cases they would go on to make suggestions for system changes themselves, but the key notion must be that of individual accountability. Within institutions it is individuals who get things done. They can be encouraged so to do by rewards, or by threat of consequence. The former is preferable if only because more pleasant, but the latter can be made to work.

LIVES UNLIVED

Youth suicide in Australia

Suicide among young Australians has been gradually increasing over the past twenty years. One in seven deaths of males aged 15 to 19 years is now caused by suicide. In 1966 the corresponding figure was only one in twenty. In 1988 there was one teenage suicide every forty-six hours. An estimated 9000 years of life are lost every year due to teenage suicides. In economic terms adolescent suicides cost millions of dollars every year to the Australian economy. The loss, pain and grief suffered by the family and the community is even far greater and more profound than the economic loss.

Youth suicide trends in Australia

The analysis of suicide trends shows that among 15 to 19 year old boys the suicide rate has increased from six per 100 000 population in 1966 to twenty-one in 1988. The suicide rate among adolescent girls in the same period has increased from four to five per 100 000 population. Why are young people in Australia who have everything to live for resorting increasingly to suicide? There are several reasons. Some of the increase in the youth suicide rate is due to the sophistication of data collection. Suicides are determined by coronial inquests. Evidence suggests that in recent years Australian coroners have categorised more unexpected deaths as suicide than before. In 1972, for example, 19.2 per cent of all unexpected deaths in Australia were classified as suicides. In 1981 the proportion had increased to 22 per cent. There has also been a tendency on the part of the coroners to categorise fewer female unexpected deaths as suicide.

This change in coronial classification was not uniformly applicable to all Australian states and territories. The New South Wales coroners in fact went against the national trend and classified fewer unexpected deaths in 1981 as suicide than in 1972. The Australian Capital Territory registered the most dramatic change and compared with 12.7 per cent of unexpected deaths in 1972, 24.4 per cent of such deaths were classified as suicide in 1981. The Northern Territory coroners were least likely to classify an unexpected death as suicide.

These patterns if applied to adolescent suicides would suggest that at least some increase in the suicide rate is a statistical artefact. Due to increasing social structural changes young persons these days participate more visibly in the public domain and consequently it is more difficult for the family to conceal their suicide than it was twenty or thirty years ago.

Whatever way we may view the problem the fact still remains that youth suicides were either historically higher but were hidden away as a result of coronial classification practices or that they have been increasing gradually over the past three decades. My own work leads me to conclude that there has been a gradual increase in youth suicide. This then leads me again to the question I have previously raised, why are young Australians killing themselves in increasing numbers? There are several sociological reasons which bear on the question and appear to have significantly influenced the increase in adolescent suicide. These are: the high youth unemployment rate; changes in the Australian family; increasing drug use and abuse and an increasing disjunction between 'theoretical freedom' and experiential autonomy.

Unemployment factor

The period of increasing youth suicide strongly correlates with a high youth unemployment rate. Between 1970 and 1986, the unemployment rate increased about six fold for 15 to 19 year olds. The overall suicide rate for 15 to 19 year olds in the same period increased by about 50 per cent. The increase was primarily concentrated among the young men. The suicide rate for young women declined slightly in the same period.

A significant feature of youth unemployment was that whereas the average unemployment period in 1970 for young males was 3.9 weeks, in 1986 it had increased to 30.6 weeks. The corresponding period for young women in the same time increased from 6.4 to 29.0 weeks. Unemployment in general and prolonged unemployment in particular is associated with low self-esteem and with emotional, economic and psychological insecurity. Because of the social roles which are emphasised in male socialisation processes, low self-esteem and continuous insecurity exposes them to a high degree of stress which requires skilled management. Those who cannot cope with it become more susceptible to self-destructive behaviour. A number of studies in Australia and overseas have confirmed the association between suicide and unemployment.

Unemployment appears to have different effects on men and women. Notwithstanding the high unemployment rates and increasing length in the period of unemployment between 1970 and 1986, the suicide rate of adolescent women did not increase as did that of adolescent men. One possible explanation is the different socialisation patterns of women and men. Women are socialised into domestic roles which enable them to find meaningful activities in the domestic domain which reduces the sense of loss, loss of status, loss of self-esteem and loss of social contacts which is experienced by the unemployed, particularly men who are predominantly socialised into instrumental social roles.

Another possible reason may be that since most frequently men use guns and women use poison to suicide, the chances of women surviving serious suicide attempts are now greater than men because of advances in medical technology. Again, it may still be possible for the family to 'conceal' female suicide more frequently than male suicide.

An interesting difference in the way young men and women cope with the insecurity of unemployment can be

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gauged from their marriage pattern. In 1978 only 0.4 per cent of all unemployed 14 to 19 year old males were married. In 1986 the proportion had increased to 1.9 per cent. The percentage of 15 to 19 year old married women who were unemployed in the same period declined from 5.8 to 4.4 per cent. This trend supports the hypothesis that social insecurity compels men to seek security through early marriage which further compounds the problem by creating a greater degree of status conflict which increases propensity to suicidal behaviour.

The family organisation

There is now considerable clinical evidence which points to a close link between suicidal behaviour and parent–child relationships. According to recent research findings, background of suicidal youngsters repeatedly involves parental figures who were frustrating, rejecting and unkind. The parents seem to want the child's presence, but without emotional involvement. They want him or her to fulfil parental expectations, although as parents they have given the child little support and incentive to do so. The young person may accept parental expectations in a mechanical manner without deriving much pleasure or satisfaction from fulfilling them. At the same time, they do not feel free to act in ways that would separate them from their parents. Adolescents in such circumstances may make few emotional demands but become instead withdrawn, depressed, quietly occupied with death and suicide.

The changes in the Australian family and its organisation and structure may have significantly influenced the youth suicide rates in Australia. The size of the Australian family has declined by 15 per cent between 1976 and 1981 from 3.53 to 3.1 persons. A family type consisting of wife, husband and dependent children accounts for little over one-quarter of the Australian families. The fastest growing family type over the past 20 years was the single parent family. In 1981 there were a quarter of a million single parent families and their numbers are expected to grow in the future.

A substantial proportion of Australian children now spend part of their childhood living with one of their parents. In 1981, 13 per cent of children less than 15 years of age and 11 per cent of children aged 15 to 19 years lived in single parent households. As these figures only relate to one point in time the actual number of children who have spent or will spend part of their childhood in a single-parent family situation is likely to be significantly higher.

There has been a simultaneous increase in couples living in de facto relationships, and in the divorce rate. In 1961, there were 2.8 divorces per 1000 married women and in 1981 the rate was 12.7. These trends clearly suggest that the Australian family is undergoing a significant change in its organisation, composition and structure. These changes highlight the new emerging patterns of social organisation. How these changes affect the patterns of social behaviour is not yet totally clear. But as an indication of the implication of these changes for suicidal behaviour we can refer to a recent American study which shows that in the United States a one per cent increase in divorce is associated with an 0.54 per cent increase in the suicide rate.

In Australia a dramatic change has also occurred not only in social demography of the family but also in the qualitative attributes of the population involved in or likely to be involved in parenting. Women and men are now marrying later than before and there is now a longer gap between the time of marriage and the birth of the first child. This is primarily due to the increasing educational attainment of men and women. For men born in 1915–24, 43.5 per cent had post school qualifications; for men born in 1945–49, 57 per cent had post school qualifications. Among women born in 1915–24, only 21 per cent had post school qualifications whereas the women born between 1945–49, 38 per cent had post school qualifications.

In other words, young adolescents today are living with parents who are more educated than ever before. They are also living in families and households in which both parents are likely to be working more frequently than before. These qualitative changes in social, educational and economic status together with the fact that families now have fewer children than before, have created circumstances of more intensive emotional, economic and social investments in children. Parents under these circumstances generally expect more from their children in terms of academic achievements and success. Those who find it difficult to reach the academic expectations of their parents may experience a sense of failure and depression which under certain circumstances may have serious implications for their social-psychological well-being. Those who are unable to make the grade are also those who need more parental and social support. The clinical studies of suicidal young persons have found that they usually have a profound need to seek someone who can change their past frustrations of life. American psychiatrist Hendin has suggested that if at the heart of young suicide one invariably learns of profound difficulties in the parent–child relationship and if we are seeing unhappy families, absent parents and unwanted children increasing in numbers, a case can be made for the pessimistic prediction that the suicide rate among youth will continue to rise.

Suicide and other forms of violence

The marked increase in suicide among the young has been accompanied by a rise in the other serious problems such as homicide, drug abuse, alcohol abuse, delinquency and crime—all of which are a barometer of social stress. Suicide methods over time have also become more violent. In 1966, 32 per cent of males and 6 per cent of females used guns and other violent methods of suicide. These figures had increased to 38 per cent and 13 per cent respectively in 1981. They are also exposed to more violence through the print and electronic media. According to a recent American study, under certain conditions celebrity suicide stories influence violent, suicidal behaviour and increase imitative suicides. For example, the suicide of Freddie Prinze who, at age 22, had risen from a humble Puerto Rican family to become the star of the popular television series 'Chico and the Man' was significantly associated with a rise in youth suicide in the United States. While fictional violence usually has no imitative effect on actual violence, the accounts of real violence however are found to be associated with real world aggression.

Substance abuse is also a significant factor in youth suicide. In the United States increase in youth suicides in the 1970s and 1980s closely parallel the increase in use and substance abuse among young persons and is now regarded by the American researchers as the single most common denominator of those at high risk. One can argue that those children with the greatest access to drugs will come from relatively well to do families. The youth suicide rates for various suburbs of Melbourne show that between 1970 and 1980 the affluent suburbs had the highest suicide rate for 15 to 19 year old males and the second highest for the females in the corresponding age group. The inner suburbs had the highest female rates and second highest for males.

The citizenship rights for the young and experiential autonomy

The civil, economic, welfare and legal rights are being gradually extended to adolescents by the State. The extension of these rights does not automatically lead to the actual experience of them. The young have the formal rights but the autonomy to exercise them is mediated by parental and societal approval and in some instances such approval may not be granted either by parents and/or society.
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Criminology courses in NSW

When I was invited to reproduce for New South Wales what was done so ably by Peter Ling for Victoria (*Criminology Australia* September/October 1989), that is to overview higher education offerings in criminology and criminal justice, I expected it would be plain sailing. Not so. What with the scramble to upgrade and diversify courses in the area, and the added confusion caused through institutional mergers, I now find it difficult to guarantee that what follows is an accurate or complete guide to the area. Even if it were, I would suspect that its utility would be short lived. Despite the constraints which oppress curriculum planning in this country, the schemes for development in criminal justice courses seem indefatigable.

In order to make my task a manageable one I have imposed certain constraints on its scope. The resultant discussion will deal with these courses available at present in NSW universities, which are either primarily focused on criminology and criminal justice, or those wherein one might discover a significant commitment to such fields of study. I have mentioned future developments only selectively, where they seem to represent some significant addition to the shopping list.

Growth of teaching in criminology

Recently Gordon Hawkins observed of the origins of criminology teaching in NSW that while finding shelter in law schools, criminology was viewed by most members of the legal profession as a 'dilettante and useless pursuit rather than a serious subject of study' (Hawkins, G., (1990) 'Present at the Creation: The Inception and Development of the Institute of Criminology', in *Current Issues in Criminal Justice*, Vol. 2, No. 1). The social scientists who were then the Institute of Criminology at Sydney University Law School, commenced teaching Post Graduate Diploma, and Masters Courses in Criminology, in 1965. Currently the Institute offers a Diploma in Criminology, and units which combine to form a Master of Law Degree. In 1991 a Masters in Criminology program will be available to qualified graduates from any appropriate degree program.

Up until the mid-1970s the only other courses in criminology, or the sociology of deviance, were those included in the LLBs at the University of NSW and the University of Sydney, or sociology, history and psychology schools within other degree programs.

The push towards an upgrading of professional training for police and prison officers saw the establishment of an Associate Diploma in Justice Administration at Mitchell College of Advanced Education in 1975. This course was originally part of the Department of Accountancy and Law, but was transferred to the School of Social Sciences and Welfare Studies in 1983.

Newcastle College of Advanced Education commenced an Associate Diploma in Police Studies a short time later, and the Macarthur Institute of Advanced Education took its first intake for an Associate Diploma in Community Studies: Police and Corrections in 1983.

The Mitchell course was based on external studies, and attracted police, correctional services officers, and other related justice personnel from throughout NSW, and other Australian states as far flung as Tasmania and the Northern Territory. The Newcastle and Macarthur courses were part-time and drew substantially on a local catchment.

In 1985, Mitchell CAE gained permission from the Higher Education Board to offer a Post-graduate Diploma in Sentencing Studies. To date no intake of students for this course has been made.

Criminology in the law schools

There is no doubt that an important tertiary provider of criminology and criminal justice courses in NSW is the 'law school'. Macquarie University (full-time and external), University of Technology (full-time and part-time), University of NSW (full-time and part-time) and the University of Sydney (full-time), each offer a version of study in the areas of criminology, criminal justice and/or criminal law at LLB level. The Departments of Legal Studies at Newcastle and Wollongong Universities are offering similar degree level courses.

The University of Sydney takes around thirty police, correctional services officers, magistrates, lawyers and other justice professionals into its Post Graduate Diploma in Criminology each year. This is a part-time course and has benefited from a major curriculum restructuring in 1989. The course consists of six compulsory and two elective semester units and normally is completed in two years (four hours per week).

The Universities of Sydney and NSW present a variety of criminal justice and criminology units in their LLM programs. The scope of these offerings is broad, and covers such topics as crime prevention, sentencing and punishment, juvenile justice, criminal justice process, crime control, contemporary crime issues etc. Obviously these Masters programs are limited to law graduates. However, Sydney University also intends to offer a Masters in Criminology in 1991. The study format for these Masters Degrees is part-time course work, in a seminar environment. Both courses adopt a significant component of intermittent assessment.

The advance from liberal studies

By far the most significant tertiary provider of criminal justice related courses in NSW is Charles Sturt University (CSU). At its Mitchell Campus, the criminal justice courses have developed into a wide progression of educational opportunity. The core still remains as the Associate Diploma in Criminal Justice. This is an undergraduate course of sixteen units, normally undertaken by justice professionals in the external studies mode, and requires four years to complete. Built onto this course is the

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Bachelor of Arts (Criminal Justice). This degree comprises twenty four units taking six years to complete, and again is primarily taken by external students. Many of the units are common to both courses so that students may transfer between them with relative ease.

A Masters in Criminology will be offered by CSU Mitchell in 1992 by external studies. It will be a two-year course comprising 50 per cent thesis and 50 per cent course work.

CSU Riverina runs an Associate Diploma of Social Science (Policing Studies), and a Bachelor of Social Science (Policing Studies) with a common first two years. Unlike the Mitchell courses these obviously are designed to attract a student body from serving police officers in NSW and other States. The mode of study is external and has similar unit progression structures to their Mitchell counterparts.

Both the Mitchell and Riverina programs have emerged from a social science and humanities base. They reflect interdisciplinary interests in psychology, sociology, welfare studies, management and organisations, public administration, liberal studies, and law.

Mitchell has an average intake of more than sixty in the Associate Diploma and twenty in the degree. Riverina planned for an intake of thirty (EFTS) into their program and have no trouble in filling their quota of sixty students.

The School of Community and Welfare Studies, University of Western Sydney (Milperra Campus) continues to offer an Associate Diploma in Criminal Justice for police and correctional services officers. The course runs part-time for an average of twenty students per year. This course is being wound-down, and there will be no intake next year. It is proposed to include a criminal justice major within the Bachelor of Social Science program, for a similar number of students, to be offered by alternative mode.

The University of Newcastle offers an Associate Diploma in Police Studies. This part-time, four-year course is taught by the School of Administration and Technology, and can cater for forty students who attend either the Newcastle or Ourimba Campuses of the University. At present Newcastle is in the planning stage for a degree in police studies. Therefore the future relationship between the Associate Diploma, and any degree which may emerge, is not yet settled.

The Department of Sociology at the University of New England is providing a Masters program (M.LITT) in Sociology (Studies in Criminal Justice). The first year is by course work and the accord is through directed thesis. The Degree is designated as external studies with a residential component.

Conclusion

As was the case at the inception of tertiary criminology instruction in NSW, the major market group remains law students and lawyers who seek instruction in a law school environment. This is not however to suggest that the courses themselves, and their teachers are inextricably wed to a legal tradition. It is as faulty an assumption as is that which

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The standing of the Australian Institute of Criminology is reflected by the number of senior staff who have been sought for major appointments within the criminal justice system. Angela Grant, Book Editor of the Institute, here outlines two such appointments.

Crime prevention in Telecom

In his new role with Telecom as Head of their new Crime Prevention Unit, Dennis Challinger has been asked to investigate, among many things, public telephone attacks and offences relating to motor vehicles.

Mr Challinger was with the Australian Institute of Criminology for nearly four years and resigned the post of Assistant Director (Information and Training) to join Telecom. Earlier, he had been a Senior Lecturer in Criminology at the University of Melbourne. Mr Challinger holds a Bachelor of Science degree, and has a Master of Arts in Criminology and Master of Philosophy in Criminology.

Telecom is one of Australia's largest national organisations, with a staff of over 85 000. The new Crime Prevention Unit is housed within the Telecom Protective Services Directorate and is responsible for various matters relating to security, including developing expertise in fraud prevention, and delivering crime prevention training. Situational crime prevention will be the basis of the Unit's approach. In adopting a pro-active strategy which reduces the opportunity for crime to occur, Telecom aims to reduce its vulnerability to crime. The Unit could well become a model for security programs for many other large organisations.

There are four major topics which Mr Challinger has been asked to investigate at Telecom:

Public telephone attacks

Such attacks have been the most public of Telecom's crime problems for some time and are usually referred to as vandalism, as the damage done to public telephones renders them inoperative. However, the damage is often caused through other motives. In particular, because payphones (as they are now called) hold cash, they are often targeted by thieves who cause damage during the course of theft. Further, damage can also result from attempts to gain free access to the telephone network. Preventive approaches to combat these crimes include the introduction of debitcards for payphones and upgrading electronic and physical equipment in payphones. Both of these approaches (and others) are under way, and will be monitored.

Fraud control plan

Mr Challinger organised an Institute Conference in 1988 on fraud against government: he is now responsible for developing Telecom's fraud control plan. Telecommunications frauds constitute a major issue. These frauds relate to abuses of the telecommunications network, which have been major problems overseas (especially in the United States with its many telephone companies).

Offences relating to motor vehicles

These offences are of particular concern to Telecom, which has a fleet of 30 000 motor vehicles. Although many of Telecom's vehicles are garaged in secure sites, the fleet provides a real opportunity for crime, especially if factors such as misuse of fuel cards and breach of take-home privileges are considered. Furthermore, those privileges have been broadened since Telecom's government-body status has been removed. That change also led to private registration of all Telecom vehicles which were previously Z-plated. Mr Challinger comments that the incidence of theft of Telecom vehicles has escalated since removal of their Z-registration plates, which may have acted as a deterrent in the past.

Crime experiences of overseas telecommunications companies

The differences between crimes in the telecommunications industry in various countries of the world provides the focus for the last area of Mr Challinger's current research. Notwithstanding the difficulties of comparing international crime statistics, a comparison of the crime experiences of overseas telecommunications companies is being done. While cultural differences will explain some variation of victimisation rates, the action taken by individual telephone companies to protect their assets and prevent offending may be very useful for other companies to note.

Apart from these four formal studies, Mr Challinger has become involved in some of the day-to-day activities of Telecom's Protective Services Directorate with its staff of 240, comprising investigators, security consultants and support staff.

would present sociology as the only appropriate base for criminology.

Whatever one's view about the state of criminology in law schools, this relationship is fast being challenged by the criminal justice courses which have emerged as a response to the vocational needs of justice professionals.

Peter Ling identified the traditional distinctions between university and institute motivations for the teaching of criminal justice. He invited speculation on what might be the effect of recent mergers on such distinctions.

I would ask, in addition, that criminal justice educators and students alike should endeavour to assess their efforts outside disciplinary and institutional rivalry and other such froth which surrounds this emergent field of tertiary study. As we experience the adolescence of criminology and criminal justice instruction in Australia, it seems appropriate to set realistic aspirations for its development in the light of the perhaps inappropriate secularisation and unrealistic expectations of the past.

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The absence of experiential autonomy on the one hand and the presence and promotion of civil rights on the other, may create a social disjunction which both creates as well as heightens the intergenerational conflict, one extreme consequence of which is suicide.

Conversely, it is plausible that the extension of legal, welfare and other rights to adolescents may have resulted in their exercising such rights which in turn have affected their suicide rates adversely. In other words, it may be that adolescents are experiencing their rights but are having difficulties in coping with the repercussions.

Taken together these factors may constitute one possible explanation why suicide among the young and especially the adolescents, has increased in recent years in Australia.

Every year about 9000 years of life are lost through youth suicides which cost the Australian economy over one hundred million dollars a year. It is not beyond our collective abilities and capabilities to institute a suicide prevention program which can reduce this loss of unlived lives of young Australians by at least 20 per cent. To do so we need to recognise the magnitude of the problem and be willing to invest resources to develop suicide prevention programs and train people who can implement them. We need to integrate suicide prevention activities better into our existing programs which focus on a whole range of self-destructive or problem behaviours among our youth such as drug abuse, interpersonal violence, school drop-out, runaway and homeless youth. We need to inform and educate the public, the media, the entertainment industry and health services about our current knowledge in diagnosis, treatment and prevention of suicide among youth. Public education should not focus only on youth suicide but should also address the issue of removing the stigma associated with alcohol, drug abuse and mental health treatment in order to enable young persons facing these problems to seek treatment freely.

Queensland Criminal Justice Commission—Research

Dr Satyanshu Mukherjee, Director of the Research and Co-ordination Division of the new Criminal Justice Commission in Queensland and formerly Principal Criminologist with the Australian Institute of Criminology, realises that the tasks facing the Division are numerous, but has already started work on a number of projects.

An important recommendation of the Commission of Inquiry (Fitzgerald Commission) in Queensland was the establishment of a Criminal Justice Commission, and the *Criminal Justice Act* (Queensland) became fully operational on 22 April 1990. The new Criminal Justice Commission consists of a Chairman, Sir Max Bingham, QC, and four members. In addition to its advisory role and continuing the investigations commenced by the Fitzgerald Commission, the Criminal Justice Commission will investigate and take measures to combat organised and major crime; investigate and determine disciplinary charges in certain circumstances relating to complaints of official misconduct which are referred to the body; and inform the Legislative Assembly on these activities.

The Commission presently has five organisational units: the Official Misconduct Division; the Misconduct Tribunals; the Witness Protection Division; the Research and Co-ordination Division; and the Intelligence Division.

The many functions of the Research and Co-ordination Division include research into problems experienced in the administration of criminal justice, as well as research into law reform and the processes of enforcement of the criminal law; co-ordination of the activities of the Commission and other related agencies in the State concerned with criminal justice; and review of the effectiveness of programs and methods of the Police Department.

Dr Mukherjee has wide experience both within Australia and overseas compiling and analysing crime statistics, studying crime trends and in working with the police. The new Research and Co-ordination Division will operate with the help of a small group of lawyers and social scientists. When fully functional, the Division will have no more than a dozen researchers.

Dr Mukherjee notes that it is neither possible nor desirable to attempt immediately to address every problem facing the State's legal and criminal justice systems. However, in deciding on areas of priority for research, the Division considered the following:

- ☐ the findings and recommendations of the Fitzgerald Commission;
- ☐ the provisions of the *Criminal Justice Act 1989–90*;
- ☐ debates in the Parliament;
- ☐ public hearings of the Parliamentary Criminal Justice Committee; and
- ☐ discussions with some members of the Criminal Justice Commission and academics.

Accordingly, a list of issues to be dealt with in the next 12 months were identified. The Division has begun work and Dr Mukherjee has advised of the following projects which are under way:

Prostitution and SP bookmaking

These two issues and their links with organised crime were in part responsible for the setting up of the Fitzgerald Inquiry. Prostitution and SP bookmaking will be researched as thoroughly as possible.

Homosexual law reform

Among one of the immediate concerns in the area of law reform is the issue of homosexual acts. Research will involve:

- ☐ the examination of social, moral and ethical issues concerning homosexuality;
- ☐ the AIDS threat;
- ☐ a review of expert and public opinion on the subject;
- ☐ a review of legislation in other Australian jurisdictions and in selected countries;
- ☐ the first report on this topic will be in the form of an information paper.

The state of crime and justice in Queensland

The lack of a co-ordinated criminal justice information system makes it difficult to describe and project the nature, pattern and level of criminality in the State. Also citizens do not appear to have a clear understanding of the justice system and its operation. Dr Mukherjee states that this

research will offer a factual and descriptive picture of crime and the operation of the criminal justice system.

Community policing and crime prevention

On the basis of statistical data, this project will describe and assess the crime prevention programs in various States. It will also examine the community policing thrust and attempt to develop and define the concept. Simultaneously, two other activities will proceed: a survey of community attitudes and, if possible, an evaluation of new crime prevention strategies in Queensland. This research project will be an ongoing activity.

Police education and training

Any tertiary course needs to link the range of training programs in police academies, from pre-service to inservice, with a degree or diploma course. The aim of this task is to assist tertiary institutions in developing a course of study which prepares police personnel to face the demands of modern policing and at the same time equip them with training in management. Dr Mukherjee advises that the Division will assist the Police Education Advisory Council so that it can make considered judgment on the most appropriate program.

Development of an integrated criminal justice data base

This long-term and ongoing project will be developed and conducted in association with the various criminal justice agencies in Queensland and the Government Statistician's office. At least three States—New South Wales, South Australia and Western Australia—currently have special offices to produce criminal justice statistics, and one is being considered for Victoria. Dr Mukherjee notes that none of these have yet been able to produce the type of data base that would facilitate systematic response. A substantial amount of preparatory work will be necessary before an integrated data base is established.

Surveys on criminal victimisation

As part of the task to develop an integrated criminal justice data base, it is planned to initiate on a regular basis, a crime victims survey in Queensland.

Although the community policing and crime prevention project, and the surveys on criminal victimisation, will be continuing projects, Dr Mukherjee advises that major reports on these topics will be prepared in the next 12 months. Furthermore, there are numerous other issues to be dealt with. Indeed, the task facing the Criminal Justice Commission is formidable, and Dr Mukherjee's research team has major work ahead.

New publications

Publisher: Australian Institute of Criminology

GPO Box 2944, Canberra, ACT 2601

Crime Prevention series:
Geason, Susan and Wilson, Paul R. 1990.
Preventing Car Theft and Crime in Car Parks
ISBN 0 642 14939 9. $10.00.

Car theft and the incidence of crime in car parks is increasing. It is estimated that in Australia a car is stolen every six minutes. Further, large public car parks pose other threats: poor lighting and lack of surveillance create an environment which lends itself to criminal activity. This booklet combines a situational approach to the prevention of car crime with longer-term educational strategies. Matters considered include encouraging better security habits, car design solutions, and environmental design strategies.

The first in a new series:
Conference Proceedings No. 1
Vernon, Julia (ed). 1990.
Alcohol and Crime
ISBN 0 642 14961 5. $15.00.

Should the lawful age for consumption of alcohol be increased to 20 years? Should there be a zero blood alcohol limit for all drivers? Is alcohol really a major cause of domestic violence? These questions and many other important issues concerning the use of alcohol were discussed at the Australian Institute of Criminology Conference, Alcohol and Crime.

This Conference Proceedings is a major contribution to the debate concerning the relationship between alcohol use and criminal behaviour. The papers from this Conference discuss the links between alcohol use and crime; drink driving; policing problems; under-age drinking; alcohol and domestic violence; Aboriginal drinking; corrective programs and legislative issues.

CINCH on CD-Rom

CINCH, the Australian Criminology Database will soon be available on CD-ROM. CINCH is already available online, through the National Library's OZLINE service, and is also available in print form. Now CINCH is available with 9 other Australian databases on AUSTROM: Australian Social Science and Education Information on CD-ROM. The other databases include APAIS, FAMILY and AEI (Australian Education Index).

CD-ROM (compact disc-read only memory) enables a large amount of information (up to 550 megabytes of digital data) to be stored on a single disc. Any CD-ROM disc requires an IBM-compatible PC and a CD-ROM disc drive.

Any person using AUSTROM, which will retail for approximately A$1000, will have ready access to ten major Australian bibliographic and reference databases. For further information, please contact John Myrtle, Librarian, J.V. Barry Library, Australian Institute of Criminology, GPO Box 2944, Canberra, ACT 2601; ph: (06) 274 0264.

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

No. 23, Walker, J., Wilson, P., Chappell, D. and Weatherburn, D. June 1990.
A Comparison of Crime in Australia and other Countries.
0 642 15435 X.

Publisher: Butterworths Ltd

271–273 Lane Cove Road, North Ryde, NSW 2113

Bailey, Peter
Human Rights: Australia in an International Context.
$55.00. (paperback)

In this book Peter Bailey reviews in detail the appropriate provisions of the Australian Constitution, describes the debate over a Bill of Rights, and outlines the emergence of major items of domestic legislation dealing with race and sex discrimination and affirmative action. The status of certain other rights recognised in international instruments are also reviewed by the author, who was Deputy Chairman and full-time executive officer of Australia's first Human Rights Commission from 1981 to 1986.

Publisher: Penguin Books

Ringwood, Victoria.

Bedford, Sybille
The Best We Can Do.
ISBN 0-14-011557-9. $13.99 (paperback).

The Best We Can Do is a detailed account of a highly-publicised murder trial in England in the 1950s, when capital punishment had not yet been abolished. Dr Adams stood trial at the Old Bailey in 1957 after administering quantities of heroin and morphine to an elderly patient whose will had recently been altered in his favour. This book describes the proceedings in the courtroom and how conflicting expert evidence finally led to the acquittal of Dr Adams.

Publisher: The Law Book Company Ltd

44-50 Waterloo Road, North Ryde, NSW 2113

Dewdney, Micheline and Charlton, Ruth (eds). 1990.
Australian Dispute Resolution Journal
4 parts per annum
ISSN 1034-3059. $75.00.

The Australian Dispute Resolution Journal is a quarterly journal devoted to the publication of articles which advance the theory, analysis and practice of dispute resolution in Australia, New Zealand and overseas. Articles cover the wide range of processes applied and the legal, social and economic factors relating to the current and potential use of dispute resolution. Where possible, illustrations are included by way of actual case reports.

Forbes, Dr John. 1990.
Disciplinary Tribunals
ISBN 0455 109 731. 193 pp. $39.50. (hardcover)

In this book, Dr Forbes draws together and analyses the law relating to disciplinary tribunals, whether constituted by public law or private agreement. His analysis looks at all aspects of jurisdiction, the hearing and the remedies available. Contents include: 'Jurisdiction over Statutory Tribunals', 'Disciplinary Action and Restraint of Trade', 'Does Natural Justice imply a Right to Counsel?' and 'The Twin Pillar: Freedom from Bias'.

Publisher: La Trobe University Press

La Trobe University, Bundoora, Vic. 3083

Law in Context.
A socio-legal journal (two issues per annum).
Subscription (inc. postage):
individual—$22.00; institutional—$36.50; special student rate—$20.00.

Volume 7(2) 1989 contains articles by Jeremy Webber (Faculty of Law, McGill University at Montreal), John Passant (Faculty of Law, Australian National University) and others, and includes review articles and book reviews.

Publisher: National Centre for Socio-Legal Studies

La Trobe University, Bundoora, Vic. 3083

The Politics of Empowerment in Australia
An original collection of critical essays on issues concerning social justice in Australia.
$12.50 (inc. postage).

This special issue of Social Justice includes papers on 'Women and Gender Justice' by Lois Bryson, 'Prisons' by David Brown, 'Health and Safety Laws' by Kit Carson and Cathy Henenberg, and several others.

Forthcoming conferences, seminars and courses

Australian Institute of Criminology

The Police and the Community Post-Fitzgerald
23-25 October 1990, Brisbane

DNA Profiling in Court
27-28 October 1990
10-11 November 1990
Canberra Legal Symposium Series

HIV/AIDS and Prisons
19-21 November 1990, Melbourne

Over-representation of Aborigines in the Criminal Justice System
March 1991, Alice Springs

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

Conference Section
The Australian Institute of Criminology
GPO Box 2944, Canberra ACT 2601.
Ph: (06) 274 0224

Australian Institute of Judicial Administration Incorporated

AIJA Annual Conference
18-19 August 1990, Melbourne

The Annual Conference of the Australian Institute of Judicial Administration is to be held on Saturday and Sunday, 18 and 19 August 1990. The Conference will be held in Melbourne at The Graduate School of Management, 200 Leicester Street, Carlton South.

Details of the program available from the AIJA office at 103-105 Barry Street, Carlton South (Tel: (03) 347 6815).

Law and Society Conference

Annual Law and Society Conference
7-10 December 1990, Griffith University (Nathan, Queensland)

For further information please contact:

Mr Myles McGregor-Lowndes
Senior Lecturer, School of Accountancy
Faculty of Business
Queensland University of Technology
GPO Box 2434, Brisbane, Queensland 4001.

or Mr Rob McQueen
Division of Commerce and Administration
Griffith University
Nathan, Queensland 4111.

Overseas

Office of International Criminal Justice
Fifth Annual International Symposium on Criminal Justice Issues
16-20 July 1990, Barcelona, Spain

The focus of this Conference will be on the international aspects of organised crime and illicit drugs. An internationally recognised panel of experts, drawn from around the world, will examine the diverse issues surrounding the complex policies and operational matters concerning investigation and law enforcement in the areas of illicit drugs and organised crime.

Advance registration fee is	£206
On-site registration fee is	£235
6 nights at the Hotel Majestic is	£419

For further information contact:

Denis Ranger
Office of International Criminal Justice, Europe
Ph: 0734-314250

or OICJ—Europe
Ph: 0734-314250

or OICJ—US
Ph: (312) 996-8420.

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

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'.

Of special interest is the Research Workshop on Alternatives to Imprisonment to be held on 31 August, which will be organised by UNICRI (United Nations Interregional Crime and Justice Research Institute). The workshop will provide a forum for the exchange of experiences among policy makers, administrators and researchers aimed at a more informed evaluation of the functions, requisites for implementation and the achievement of goals and expectations of the criminal justice systems and community at large.

For further information please contact:

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

Indonesian Society of Criminology in conjunction with the Australian Institute of Criminology and The Netherlands Council for Co-operation with Indonesia in Legal Matters

International Trends in Crime: East meets West

First Annual Conference of the Indonesian Society of Criminology

10–13 December 1990, Putri Bali Hotel, Nusa Dua, Bali, Indonesia

The speakers at this major conference in the Asia-Pacific region will include leading criminologists from Indonesia, Australia, Japan, Europe and the United States. Topics covered will include:

- ☐ Victims and Compensation in East and West;
- ☐ Legal Consciousness in Asia;
- ☐ Corruption and Corporate Crimes;
- ☐ A Comparison of Narcotics Drugs Policies;
- ☐ Police/Citizen Relationships

Registration fee: $US200 if received before 30 September 1990 or $US250 after 30 September 1990.

As the Conference will be held during peak season in Bali, intending registrants should register and make all bookings immediately.

For further information contact:

Conference Section
Australian Institute of Criminology
GPO Box 2944
Canberra ACT 2601, Australia
Ph: (06) 274 0224. Fax: (06) 274 0225

or Indonesian Society of Criminology
Mr Mardjono Reksodiputro
Institute of Criminology
University of Indonesia
Salemba Raya No. 4
Jakarta 10403, Indonesia
Ph: 021 330292

News

Attention researchers of crime and criminal justice issues!

The Australian Institute of Criminology and the Queensland Criminal Justice Commission are jointly compiling a directory of researchers working in the area of crime and criminal justice. The purpose of this initiative is to find out *who* is doing *what* and *where*. The reason for doing this is to provide a resource for the crime and criminal justice community, by bringing together this information into one, comprehensive, readily accessible database. We are now in the process of locating these reseachers and would like to ensure we reach all who should be included. If we have not yet reached you, we would like to. Please call Heidi James, at the Institute—ph: (06) 274 0241.

Overseas visitors to Australian University Law Faculties

Visitors to the University of Queensland include Professor M. Kremlin from Michigan (25 July–15 September 1990); and Professor R.R. Pennington from Birmingham, UK (July–August 1990).

Visitors to the University of Western Australia include Professor P. Birks from All Souls College, Oxford (5–31 August 1990), and Professor A. Hutchinson from Toronto (16 July–17 August 1990).

Women in Prison and Juvenile Justice—a seminar

The Australian Institute of Criminology's Occasional Seminar No. 4 was given by Ms Francine Pope on 22 May 1990. Ms Pope, who spoke on 'Women in Prison and Juvenile Justice', has worked in the Commissioner's Office at the Department of Youth Services, Massachusetts, and as a Probation Officer at Boston Juvenile Court. She has specialised in the development of treatment programs for young women and women with lengthy prison sentences.

Intelligence Analysts Course

The Intelligence Systems Division of ICL Australia Pty Ltd has been established to assist organisations in adopting a proactive, rather than reactive approach towards organised crime. One of its services is to provide intelligence training, and in June and July 1990, the Division conducted one-week Intelligence Analysts Courses in various states. The course contents included: the intelligence process; information appraisal; risk and treat assessment; and practical exercises.

New teaching method for Sydney University Law School

The Law Foundation of New South Wales has granted $24 000 to Professor Alan Tyree and Senior Lecturer Mrs Shirley Rawson of Sydney University to adapt a well-known modular teaching method to the study of law. The Keller Plan system of personalised instruction allows students to study alone at their own pace, and then to be tested on a section of the course they are following before moving on to the next level. This is the first time in Australia that the Keller system will be used for a law course. It is acknowledged that not every law course can or should be taught in this way, and maybe only certain parts of course will be adapted to this form. It is hoped that eventually the results of the research project will help reduce the current strain on the School's resources.

Director for PNG Foundation

The Foundation for Law, Order and Justice is a non-government body established to work with national and provincial law and order agencies to improve Papua New Guinea's law and order situation.

It is seeking to appoint a Director to manage its Port Moresby based office of ten staff and assist in the design and implementation of a national law and order program.

The Director will be expected to have considerable experience in administration and program development, preferably in a law and order related field. He or she will have developed interpersonal skills and be able to communicate effectively at the highest level of government and private enterprise. A high degree of motivation and a strong personal commitment to reducing the level of crime in PNG is required.

An attractive salary package will be offered, including accommodation and a car.

Those interested in applying for the position are asked to write to the following address before 15 August 1990. All applications will be treated with strict confidentiality.

The Chief executive
Foundation for Law, Order and Justice
PO Box 4205 BOROKO
Papua New Guinea