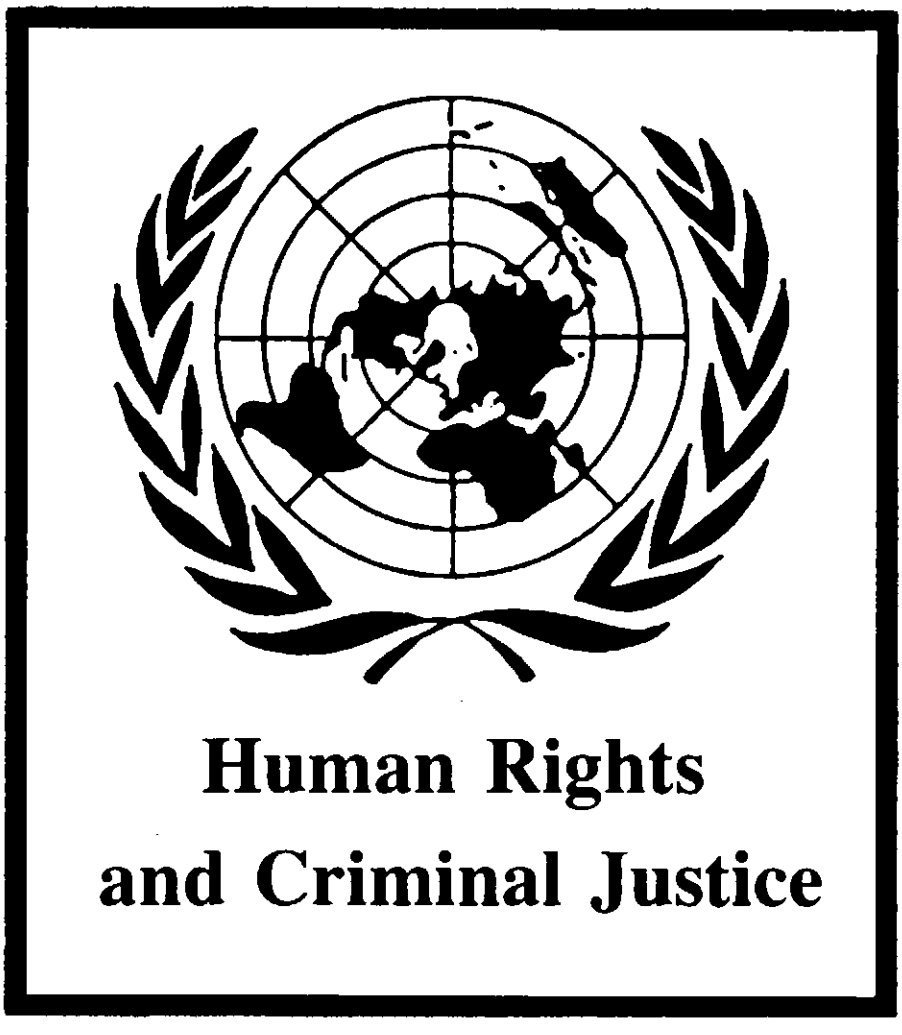
reporter



Human Rights and Criminal Justice

AUSTRALIAN INSTITUTE OF CRIMINOLOGY QUARTERLY
VOLUME 3 NUMBER 3 MARCH 1982

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(Publications continued inside back page)

COVER PHOTOGRAPH: The Sixth U.N. Human Rights Training Course on 'Human Rights Guarantees in the Administration of Criminal Justice' was held at the A.I.C. from 30 November to 18 December 1981. See feature on Page 7.

How 'getting tough' can mean less punishment

'It is unwise to be tough if you can not keep it up. It is even less wise to be tough if the effect is to decrease rather than increase security', said Mr William Clifford, Director of the Australian Institute of Criminology.

In an address on 14 January to the Western Australian Branch of the Australian Crime Prevention Council on the 'Use, Abuse and Costs of Imprisonment', Mr Clifford urged Australia to be sparing about the use of prisons, retaining them only for the small numbers of criminals who must be segregated.

Mr Clifford said that in the United States, under the impetus of a movement to 'cut out molly-coddling', there had been an increase in the use of long prison sentences to cure the crime problem. But, he said that overcrowded prisons had compelled some states to release prisoners early by special court orders.

'The result is that dangerous offenders are back on the streets sooner than they should be because the taxpayers cannot produce the extra money which corrections need', he said.

Mr Clifford said that to provide 4,000 more places in the prisons, the public in New York State had been asked to support a $US 500 million bond issue under the slogan 'Catch 'em, convict 'em, can 'em'.

'It is clear that the people cannot produce enough cans and that the courts will not tolerate prisoners being squeezed in like sardines.'

'So in a gesture of despair, prisoners are just simply released', he said.

'As the courts push the offenders in one door, to satisfy the police and the public, they have to let them out of another door, to satisfy correctional authorities.'

Mr Clifford said that although there was not yet any serious problem of overcrowding in prisons in Australia, there were pressures in some quarters for more and longer sentences of imprisonment.

He warned that with a prisoner costing more than $A 14,000 a year on the average, both security and economic good sense dictated that Australia should not be led into crisis by demands for simplified punitive remedies.

'The experience of America and the U.K. should surely provide substantial food for thought for anyone in Australia who believes that the simple answer to our crime problem is longer sentences.'

'Everyone hates serious crime but it does not go away simply by waving a big stick – or by just locking people up', he said.

Mr Clifford said that simple punitive solutions were more effective in satisfying feelings of outrage than in preventing something happening again.

'Imprisonment is not the only way to deal with crime. There are alternatives such as fines, probation and community service orders which have already been proved equally effective in some areas.'

'Obviously when we have done all we can, the fact that we have abandoned recourse to the death penalty and corporal punishment will leave us with a need for prisons for those criminals who have to be segregated', he said.

reporter

Prepared and published by the Australian Institute of Criminology, 10-18 Colbee Court, Phillip, A.C.T., 2606. Printed by Union Offset, Canberra, A.C.T.

ISSN 0157–7921

O-I-C, Publications: Jack Sandry
Editor: Barry Looms
Typesetting and Layout: Christine Grant

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DIRECTOR'S DIGEST

The last issue of the *Reporter* featured remarks which I had made to banking personnel on the role of higher financing in facilitating some forms of corporate crime and contributing to the disparities in our society from which so much crime seemed to flow.[1] Of course, I had also dealt in the talk with the dangerous increases in armed bank robberies and with new forms of embezzlement and computer crime; but, at this time of high interest rates and difficulties for low-income borrowers, it was my observations about prevailing banking policies which attracted the most interest and invoked critical as well as favourable comment.

Yet it must be obvious that, if we have policies which result in funds concentrating in the hands of those who have and becoming less available to those who have not, the disparities will grow. And it is the disparities which engender discontent. Crime is not due to poverty or affluence as such but to the temptations flowing from dissatisfaction. Internationally this tendency for the rich to get richer still and the poor poorer has given to the North/South debate – the acute problem of providing funds for development needed by the poorest countries who cannot qualify for it commercially.

At the May-June 1978 meetings of the Interim Committee of the Joint World Bank-International Monetary Fund Development Committee, the Group of 24, through the Government of Mexico, proposed a 'long-term recycling fund' of $US 15 billion for the purchase of capital goods by developing nations. One criticism of this was that it did not ensure that the help would go to the poorest countries who needed it the most. In other words, the need was recognised for ways of reducing the uneven effect of ordinary commercial policies for all, without reference to special circumstances.

During the 1977 annual joint meeting of the IMF and the World Bank, Professor X. Zolotas, Governor of the Bank of Greece, suggested the creation of an insurance agency to provide guarantees for private-bank funding to developing countries. And at least one transnational bank had already set up a Development Fund in 1970 to which it transfers 1 per cent of its after-tax profits; these funds are then allocated to developing countries to support projects with desirable economic or social rewards that would not otherwise attract finance governed solely by commercial criteria.

All these are attempts to find solutions to the over-concentration of wealth and to make finance available where it is most needed. My suggestion is that, whether by the banks' accepting social responsibility or by joint bank-government schemes, something similar to these international schemes would be appropriate at the national level. This is not to disparage the fact that it has already been attempted by the governmental control of interest rates and the various subsidies, guarantees and the low interest home loans for low income earners: but the evidence suggests that the situation has changed dramatically to the detriment of the ordinary salary earner – and that more ingenuity is needed; because, as it is, we seem to be getting more disparity rather than less – with income tax not always working in the direction intended.

In fact, it is significant that funds which escape the tax collectors find ready use in high-interest-earning trust funds or in the purchase of property itself. This movement of money into property drives up the prices so that the deserving are excluded twice over. Those who earn and pay tax cannot find funds or buy property outright – and they cannot afford to borrow money either. There are, by contrast, few problems for the quick-witted who earn under the counter and know how to launder their money: and in various ways the present official and commercial policies facilitate illegalities. Alongside the overt economy there is the underground economy where payments are in cash, undetectable and, if they happen to include the proceeds of gambling, vice or drugs, then the ramifications are immense: legitimate business is penetrated by what may seem to be quite ordinary bank loans to people who can obviously afford them: and those who most need credit for maintaining reasonable living standards but cannot meet the same criteria are forced to obtain it at the highest rates.

The criteria for lending money is strict. Yet it is sometimes revealing when major trading companies collapse to find that extensions of credit have been made to them without all the concern for securities and collateral that would be expected in the case of a small personal loan. A good deal depends upon the ability of experienced managers to assess reliability. This is understandable but suggests a degree of flexibility which might apply at the humbler levels. The deferral of high repayments for the first year or two is one way out chosen by some building societies and government or employer guarantees for reliable borrowers would help to relieve their present plight.

However, there is a much greater need for a closer scrutiny of operations at the upper levels. Lenders are obviously needed to finance investments in industry, commerce and agriculture: but this brings us back to the ancient symbiotic relationship between economics and crime – a relationship which has been a theme of these Digests for the past seven years.

1. This talk has since been published in full in *The Bankers' Magazine of Australia*, Vol. 96, No. 1, February 1982. pp. 31-2.

Psychologists in court and corrections

Forensic psychologists gathered at the Australian Institute of Criminology from 26-28 January 1982 to discuss a wide range of subjects relating to their role in the criminal justice system.

Of the 28 psychologists attending, 13 were directly connected with corrections, three with teaching institutions, seven with welfare or community health services, two were consultants and the remaining were attached to the N.S.W. Ombudsman's office, the Family Court of Australia and the Australian Institute of Criminology.

This wide cross section permitted a variety of subjects to be discussed fully, with each speaker examining an area of major importance and placing it before the others to get the benefit of comment from psychologists outside his or her immediate field but still with an interest in the criminal justice system.

Dr R.D. Francis, Senior Lecturer in Psychology, Department of Applied Psychology, Caulfield Institute of Technology, put forward guidelines for the psychologist called upon to prepare a report for referral to a barrister or to be presented in a court of law. Dr Francis said that the essential attribute of a psychological report was that it should contain a set of results that pertained to an individual and that these findings were usually of the analytic kind.

When required for referral to a barrister or a court of law, the report had to be a tailored and focussed account that addressed particular and relevant issues.

'It is not for the psychologist to insist on saying everything (he) knows but rather to be guided by the court for information which the court wishes to canvass. Of course, the psychologist may wish to make points that he or she thinks relevant and may persuade the court of their relevance; but the judge or magistrate will decide upon their admissibility.'

Dr D.M. Thomson, Senior Lecturer in Psychology, Department of Psychology, Monash University, took the experimental psychologist into the court room.

Dr Thomson looked at the role of the experimental psychologist and asked 'Are experimental psychologists expert witnesses? And, if so, why have they not been used more fully in the courts?'

From the answers to these two questions Dr Thomson went on to suggest changes to court procedure that were supported by recent findings of psychology and to illustrate what additional important contributions could be made by the psychologist.

Dr Thomson said that while psychologists did have the formal training and experience to be considered expert witnesses, they were little used because the underlying feeling was that 'since psychology is the study of human behaviour and everyone, including judge and jury, is a student of behaviour, there is nothing the psychologist can contribute!'

By quoting from his own research, Dr Thomson then showed how common sense – that judgement of the ordinary people in behaviour matters – could

Mr I. Joblin

be shown by experimental psychology to be astray. For this reason, among others, Dr Thomson argued that courts could well make more use of experimental psychologists.

Dr Thomson said that the evidence given during the course of a trial was given more weight than statements made at a time nearer to when the events had taken place. By referring to experimental studies, Dr Thomson showed that the effluxion of time both caused the memory to fade and caused recall of events to be distorted.

'Experimental evidence about identification showed how unreliable current identification procedures were', Dr Thomson said. He therefore recommended that:

(a) Identification procedures be modified to ensure as far as possible the participants in the identification lineup were wearing clothing similar to that worn by the offender, the lineup occurred in the same background, and the participants were required to act in the manner that the offender did, as far as was practicable.

(b) An authority, independent of the police force, should conduct the identification parade. This authority should not be aware of the offence the apprehended person is suspected of, nor the strength of the evidence against him. A photograph or videotape of the conduct of the parade should be made, and copies of the photos or videotapes together with a description of all witnesses' responses should be made available to prosecutor and defence. Such a procedure would ensure impartiality and justice to the accused will not only be done but will be seen to be done.

Dr Thomson said that many of the assumptions underlying court procedures either remained untested or had already been shown to be quite erroneous. He said, 'The experimental psychologist can make an important contribution to the administration of justice in the community by informing law reform bodies, members of the legal profession, politicians and the public at large of relevant findings and by researching areas yet unexplored. One way of improving the present judicial system is to subject the 'common sense' assumptions to close scrutiny. Many of these assumptions may well turn out to be common nonsense.'

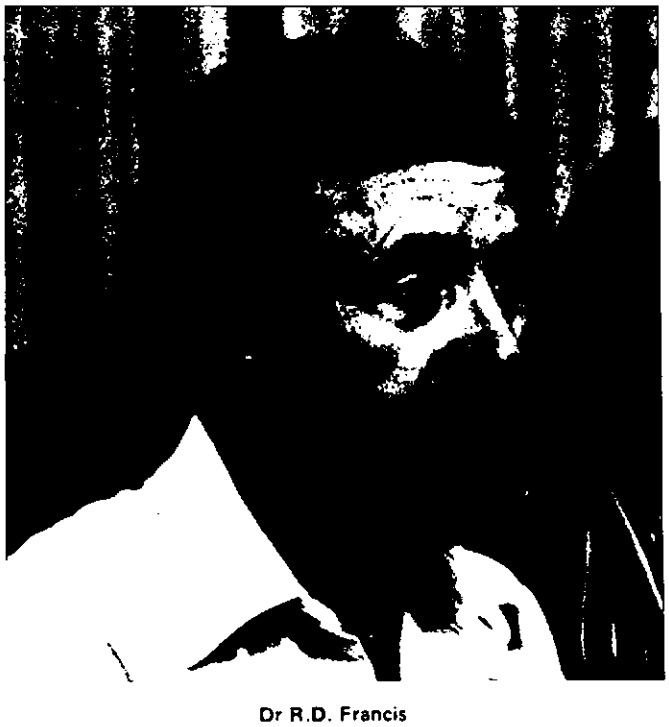
From his experiences in the Northern Territory, consultant psychologist, Mr Ian Joblin lamented the lack of any facilities to assist the mentally ill in that state.

Mr Joblin went on to say that this was almost certainly one cause of the high Aboriginal imprisonment rate mentioned by the Director of the Australian Institute of Criminology, Mr Clifford, in the 1981 John Barry Memorial Lecture.

Mr Clifford had suggested that there were four possible reasons for the high imprisonment rate of Aboriginals:

1. Aboriginal people were more criminal in nature.
2. The system was biased against Aboriginals.
3. Aboriginals had social problems which brought them into more conflict with the law.
4. Aboriginal and white law were in conflict.

Dismissing the first, Mr Joblin said that the second, third and fourth were well worth examining. Personally he felt that the last two were particularly real.



Dr R.D. Francis

Mr D.M. Thomson

Mr Joblin proposed two further reasons for the high rate of imprisonment of Aboriginals in the Northern Territory.

The first, he said, was the lack of facilities available for the criminally disturbed individual prone to recidivism. Those people who had committed crimes, who had a long history of offences and who had distinct psychological abnormalities, in his opinion, were prone to reoffending, especially as no assistance was available for them.

The second reason Mr Joblin put forward was the complete conflict between tribal and white law and customs and the apparent lack of consideration for this point given by the courts and authorities in general.

Working in forensic psychology with Aboriginals had the usual problems of working with the white population plus many others, Mr Joblin argued.

Psychological tests had been developed for people of European descent, in the main, and there were just no similar supporting tests for use with Aboriginals.

'We are hampered by a complete lack of norms for assessing any intellectual abilities. We have problems with lack of diagnostic facilities, lack of previous research, a paucity of colleagues to compare notes with', said Mr Joblin.

'We have problems with the language, a lack of skilled interpreters, a lack of understanding of the precise meaning of words. How can we ask an Aboriginal, for example, if he sees things that aren't there.'

Mr Joblin concluded by supporting a research proposal for investigation of links between viral infections, resulting brain syndromes and bizarre criminal behaviour by Aboriginals in the Northern Territory.

Dr Grant Wardlaw, Research Criminologist with the Australian Institute of Criminology, asked if there were a place for the psychologist in hostage negotiation. Many authorities had called for the inclusion of a psychologist in negotiating teams, but rarely had there been any detailed justification for the inclusion, nor any precise role laid out.

Distinguishing those areas where a psychologist's training may be of use, Dr Wardlaw said that it was as a team member, but not a negotiator, that the psychologist would be able to help.

The psychologist rarely had the field experience which was essential in hostage situations, nor was he really in a position to guide decisions as to dangerousness of a given confrontation. If used in a negotiating role, there was the danger of him being revealed as a psychologist with a consequent reflection on the sanity of the hostage-taker.

Dr Grant Wardlaw

However, having a psychologist on the negotiating team could be of benefit. Most police forces had adopted the tactic of employing negotiating teams consisting of a primary negotiator, secondary negotiator, negotiation team leader, and a consultant. The primary negotiator conducted all or most of the negotiations with the hostage-taker.

The secondary negotiator logged the incidents, threats, or arrangements made with the hostage-taker, recorded the negotiations and acted as a back-up negotiator if the primary one got tired or was otherwise unable to continue. The negotiation team leader organised the team, assigned the roles, supervised the activities of the members, and acted as liaison between the team and rest of the force.

'If the consultant member of the team were a psychologist', Dr Wardlaw said, 'he or she would need to train with the team and gain experience of other hostage situations. With experience he could then be helpful in handling particular interactions with the hostage-taker.'

Dr Wardlaw said that probably the single most important role would be to monitor the behaviour of other team members, particularly the primary negotiator, and assess their reactions to the stressful situation. In such a role, the psychologist was able to offer emotional support to the negotiator, make suggestions on how to deal with stress and if necessary, alert the team leader to undesirable impacts of stress on the negotiator's behaviour. The psychologist could also be of great value in providing post-event support to the negotiator. A psychologist could also be of assistance in training negotiators, evaluating procedures and conducting research into the negotiation process.

In a prison setting, occupational stress can have effects far beyond the problems of the prison officers themselves. Dr R.E. Fitzgerald, a clinical psychologist with the Western Australian Department of Corrections, told the seminar of efforts to understand and minimise the detrimental results of occupational stress in prison officers.

Dr Fitzgerald set out to place the prison officer in perspective in relation to the nature of stress in the workplace and to explore what contribution correctional psychologists might be able to make to the prevention or alleviation of stress associated with being a prison officer.

He said there were three important reasons why psychologists should address this particular problem. The most obvious was that the personal lives of prison officers may be enhanced; secondly, there were important indirect benefits to prisoners in having a more unstressed group of custodial staff; and thirdly the acceptance of psychologists and other professional staff within the prison system would be enhanced by attending to the psychological needs of officers, in addition to those of inmates.

'Stress in corrections', said Dr Fitzgerald, 'arose from several sources, but possibly most importantly it arose from role ambiguity and role conflict stemming from lack of clear guidelines for job performance and inadequate communication of policies. It was important that all staff from senior administrators to base grade officers became aware of work-induced stress and took what steps they reasonably could to prevent or alleviate it. The adverse effects of work stressors on physical health, psychological functioning, social relationships and work performance were too great to be ignored', he said.

Dr Fitzgerald said the stress awareness and management program for prison officers conducted by psychologists of the Western Australian Department of Corrections was a step in this direction. This was run as a one-day workshop and revolved around discussions of four key issues:

(a) what is job stress?

(b) what are the sources of job stress?

(c) how can we recognise stress in ourselves and our subordinates? and

(d) what can we do to deal with job stress?

The five stages of the workshop were summarised by Dr Fitzgerald, (see next column).

Although no follow-up studies had been conducted into whether or not the officers had benefitted from the course, most reported that they had found the day interesting and stimulating.

Dr Fitzgerald: 'Although popularity and good reviews do not equate with efficacy, it nevertheless is quite clear to us that we have tapped into an important and. . . largely neglected need of prison officers.'

Others who gave papers at the seminar but for reasons of space are not featured in this issue were:

Mr P. Mark and Ms Frances Smith, Family Court of Australia, *The Court Counsellor's Role in Conflict Resolution.*

Mr P. Dunlop, W.A. Department of Corrections, *Planning a New Corrective Establishment.*

Mr J. Pasmore, Queensland Department of Corrective Services, *Two Ways of Looking at Criminality.*

Mr M. Hart, Lecturer in Psychology and Justice Administration, State College of Victoria, Coburg, *The Psychologist's Role in Maintining Existing Functions and Purposes of Correctional Institutions, Or in Altering Them.*

Stage	*Topic Focus*	*Format*	*Process*	*Time*
1	Introduction to work stress	Large group	Lecture/ discussion	60 mins.
2	Sources of work stress in Corrections	Small groups followed by large group	Discussion/ sharing	90 mins.
3	Indications (symptoms) of work stress	Small groups followed by large group	Discussion/ sharing	90 mins.
4	Management of work stress in self and others	Small groups followed by large group	Discussion/ sharing/ role playing	90 mins.
5	Progressive relaxation	Large group	Leader-directed exercise	15 mins.

Research grants

The Criminology Research Council is seeking applications for research grants from individuals and organisations for projects likely to produce results of relevance for the prevention and control of crime throughout Australia.

Projects designed to evaluate currently effective measures are particularly invited.

Application forms are available from Registrars of all Australian Universities or from the Assistant Secretary, Australian Institute of Criminology, P.O. Box 28, WODEN, A.C.T. 2606

Dr R.E. Fitzgerald

Human rights and social defence

The need to balance human rights with equally strong obligations to suit conditions in Asian and Pacific countries was stressed at the opening session of the Sixth United Nations Human Rights Training Course on 'Human Rights Guarantees in the Administration of Criminal Justice' held at the Australian Institute of Criminology from 30 November to 18 December 1981.

The purpose of the course, the second of its kind to be held by the United Nations Division of Human Rights at the Institute, was to assist the participants and observers to understand the basic elements of human rights as they presented themselves in the process of administering the criminal law.

Judges, public prosecutors, police officials, professors of law and other jurists from 20 countries took part in the course which addressed three themes: Human Rights Guarantees for Minorities in Criminal Justice Systems; Human Rights Guarantees for Juveniles in Criminal Justice Systems; and Human Rights Guarantees for Standards of Ethics in Criminal Justice Systems.

Mr K.F. Nyamekye, Deputy-Director of the United Nations Division of Human Rights, and Mr William Clifford, Director of the A.I.C. were Co-Directors of the course assisted by Mr B. Pissarev, Chief of the Advisory Services of the U.N. Division of Human Rights, and Dr El Augi, Judge of the Supreme Court of Lebanon.

Opening the course, the Attorney-General Senator Peter Durack Q.C., drew attention to the enactment by the Australian Parliament of the Human Rights Commission Act, 1981, which came into effect during the course on Human Rights Day, 10 December.

He explained that the Act established a Human Rights Commission which he said would play a leading role in assisting in the identification of areas of human rights where action needed to be taken to improve matters.

Senator Durack went on to discuss other major reforms which had been introduced into the Criminal Justice System.

These included:

- the introduction of the Criminal Investigation Bill 1981, and
- legislation to amend the Crimes Act.

Senator Durack described the Criminal Investigation Bill as the single, most significant reform in Australian policing which would establish a proper balance between the country's need for effective law and the need to preserve and respect basic human rights.

He said that to his knowledge it was the first attempt at least in a common law country, to regulate the process of criminal investigation consistently with the International Covenant on Civil and Political Rights.

The Attorney-General said that amendments to the Crimes Act made worthwhile and humane reforms in the area of sentencing options.

'It has been my view for some time that the courts should have a wide range of sentencing options and that there was a need to stress upon them that they should regard imprisonment as a punishment of the last resort when sentencing federal offenders', he said.

The Bill provides that in relation to offences not punishable only by imprisonment, a court is not to pass a sentence of imprisonment unless, having considered all other available options such as community service orders, it is satisfied that no other sentence is appropriate.

Mr K.F. Nyamekye, Deputy Director of the U.N. Division of Human Rights representing the Secretary-General of the United Nations spoke on 'The Activities of the United Nations Division of Human Rights in Asia and the Pacific – Past and Future'.

In this, he reviewed all U.N. activities in this field and stressed the U.N. awareness of the regional problems.

Later, from a paper, 'The History of Standard Setting in the Field of Human Rights by the United Nations and its Future', Mr Nyamekye said that human rights were imperfectly understood and still inadequately implemented.

'After more than 30 years of public debate there has yet to emerge a central theme which would bring international concern with human rights into the mainstream of modern civilisation', he said.

Mr Nyamekye felt that a concern with human rights which was so preoccupied with the collectivity that it ignored the plight of the individual was a fraud.

On the other hand, collectivities had rights provided they did not submerge the individual.

'People all over the world must first show a concern for human rights before those rights could be protected', he said.

Addressing a concern that the U.N. did not need more sweeping declarations and resolutions but more effective action on issues already before it, Mr Nyamekye said that problems and obstacles which were as largely conceptual as judicial and political, had frequently been ignored.

'These problems cannot be resolved until international concern with human rights is transformed from an arresting metaphor into a systematic theory.'

'International concern with human rights has real meaning only if it is part of an active international concern with the fate and welfare of man in general', he said.

The Minister for Administrative Services, Mr Kevin Newman told the conference that task forces

were being formed to assist both Federal and State police forces to combine to fight the increasingly sophisticated criminals of today.

Mr Newman drew the attention of the participants to a recent issue of a charter to the Commissioner for the Australian Federal Police setting out what the Government expected of the A.F.P.

The charter specified that the A.F.P. would be required to develop the capacity to:

- operate expertly in task forces;
- support Royal Commissions and judicial enquiries by secondment;
- maintain and operate a first-class computer system; and
- promote on merit and recruit over a wide range of skills.

Mr Newman said that an effective police force with its members acting efficiently and within their powers provided by the law and supported by the Government and the community, would act as the most effective guarantee for the standard of policing in the criminal justice system.

'In particular, a balance needs to be struck between the measures necessary to protect the community and those measures which the community is willing to accept in order to be protected', he said.

Mechanisms which act as a control on the police include:

- the answerability to the courts;
- the disciplinary code and the imparital investigation of complaints;
- the accountability of the police organisation to the Government, the Parliament and the public; and
- the regulation of police powers and procedures by the Parliament in legislation.

'As far as Australia is concerned, I have no doubt that our current number of prisoners could be reduced by one half and this would not lead to any outbreak of serious crime.'

From a paper which examined monitoring the standards of human rights by prison rates, the Assistant Director (Research) of the Institute, Mr David Biles added: 'A reduction in the number of prisoners from 10,000 to 5,000 would not necessarily result in an upsurge of crime and disorder.'

Mr Biles said that after many years of intensive study and research into the relationship between crime rates and imprisonment rates he had arrived at the conclusion that there was no evidence to support the proposition that the high use of imprisonment resulted in lower levels of crime.

'Bearing this in mind and also bearing in mind the enormous costs of keeping people in prison, as well as the human misery that is caused by imprisonment, it seems reasonable to suggest that the human rights of people (even those who break the law) are best protected by keeping the use of imprisonemnt to an absolute minimum', he said.

'I would argue that wherever the imprisonment rate is found to be over 100 then we need to ask if there are special reasons why this is so.'

Furthermore he said that apart from short-term crises such as internal unrest or when there is widespread defiance of the law, if high imprisonment rates lasted over a long period one would be entitled to ask what was wrong with that criminal justice system or with that society.

In response to the suggestion by some that long prison terms imposed on serious offenders deterred others from committing similar offences, Mr Biles said that it had to be admitted that little was known about how deterrence worked.

'We do not know that long prison sentences have a greater deterrent effect than short ones; nor do we know whether fines or probation orders have a lesser deterrent effect than sentences of imprisonment', he said.

Mr Biles concluded that not more than one case in 100 where an imprisonable offence actually took place was the offender actually sentenced to a period in prison.

Therefore he said that it was naive to argue that to double the prison rate by sending two out of every 100 offenders to prison was going to have a significantly greater deterrent effect because that still meant 98 out of every 100 serious offenders would either not be caught or otherwise not be sent to prison.

'Looked at in this way, I believe that the deterrence argument for the extensive use of imprisonment starts to look rather thin.'

In a police view of the three themes, the Deputy Commissioner of the Australian Federal Police, Mr J.C. Johnson began his address by stating that probably no Government institution was more often the target of public criticism and resentment than the police.

He said that law enforcement versus personal freedom or civil rights was a conflict that had bedevilled police-community relations in Australia since convict times.

Mr Johnson said that it was extremely difficult to arrive at a balance between a host of competing rights and objectives.

'On the one hand, there are those who see the police as struggling against increasing crime, shackled by laws and procedures which favour criminals.'

'On the other hand, there are those who believe that the cards are stacked against suspects and defendants, that the individual has insufficient legal protection against police power and that the safeguards against abuse and oppression are inadequate', he said.

On police powers, Mr Johnson said that officers were curbed by an impartial system of checks and balances calculated to ensure that they did not act unreasonably or oppressively with impunity.

'The police have no special immunity from the law they enforce. They have no power to punish. They merely have the powers given to them by the public to prosecute those who break the law, and even then our power is subject to judicial review.'

Mr Johnson went on to say that despite the fact that police were servants of the public there was a disturbing increase in accusations of police infringement of personal liberties.

Such charges were employed with equal facility and lack of definition by anarchists and authoritarians alike.

Mr Johnson said that while never-ending debates on the subject of civil rights were continued in all quarters of society, criminals continued to spread their influence to every corner of all levels of society.

'There is no longer any justification for thinking that Australia has escaped the grip of the kind of crime which pollutes advanced Western societies', he said.

Speaking at length on organised crime, Mr Johnson said that only in recently introduced legislation had the police gained the power to tap telephones and then only in the cases of persons who were reasonably suspected of being involved in the importation of narcotics.

'It was significant that this power was withheld for cases such as murder and kidnapping.'

Mr Johnson concluded, 'If the role of the police is to be defined in order to provide elusive guarantees to all of society of human rights, then the conflict between those pressing for law and order at any cost, and those that demand more permissiveness must be resolved.'

The rights of women in the criminal justice system were questioned by Mrs Helen Larcombe S.M.

Her address looked at the topic from two viewpoints: firstly, women as criminals/deviants, and secondly, women as victims of crime.

Mrs Larcombe told participants that the most common offences for which women were brought before the courts were offences against the person, offences against property, forgery, (especially Bankcard forgery), uttering and other currency offences, offences against good order such as drink-driving and drug offences and shop-lifting.

Statistics in Australia show that offences against property by women have increased but they do not substantiate the assertion that women were committing more violent crimes.

They do not support the argument that this increase is related to the Womens' Liberation Movement, the increased involvement of women in the market place, and the economic situation.

On women in prison, Mrs Larcombe said that complaints by prisoners were dealt with at hearings conducted by the Visiting Judge and that as far as she could see they endeavoured to be fair.

Considering the position of women detained in the prison system, she said that there should be no discrimination against women in the penal law and that there should be provision for the particular needs of women in all parole, probation, welfare and vocational training, and rehabilitative services.

'Efforts should be made to at least make women equivalent to men in these respects', she said.

On mental illness, Mrs Larcombe said that the same problems faced the woman released from a mental hospital as the woman released from a gaol: on becoming institutionalised they failed to cope with the outside world.

She queried whether a judicial enquiry was the proper arena for determining mental illness. But even when accepting this, she wondered whether the enquiry could not be dealt with by a person trained in the law sitting with a person trained in social work/psychiatry so that human rights could be protected and the dignity and worth of the human person be maintained.

The paper then dealt with the problems of women as victims of crime including rape and domestic violence.

In summary, Mrs Larcombe said that despite the progress and reforms which had been made, the question of whether the rights of women in the Criminal Justice System were guaranteed must be answered in the negative.

The Assistant Director (Training) of the A.I.C., Mr Colin Bevan told participants that prison was a futile means of preventing or controlling criminal behaviour and had limited usefulness as a protector of the community in the long-term.

'They are also a destructive, corruption-prone method of punishment', he said.

'I look forward to the day when the centuries devoted to the use of prisons will be looked back upon by historians as a momentary mental aberration on the part of man like transportation and the village stocks.'

Discussing standard setting for correctional institutions, Mr Bevan said that society must concern itself with standards of treatment in the face of ominous signs of an increasing tendency to rely on prisons.

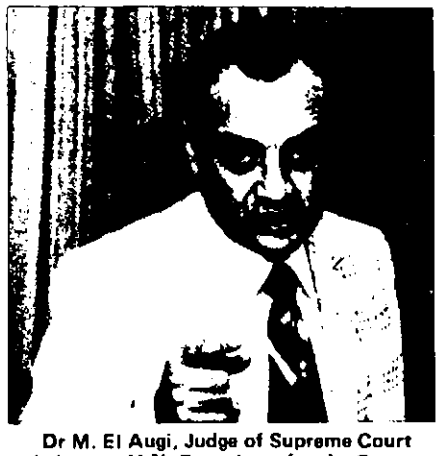
He drew attention to recently published research by the Assistant Director (Research) of the Institute, Mr David Biles who stated that there was no support for the proposition that high rates of imprisonment led to lower crime rates and that attention ought to be directed to thinking of less costly, less destructive responses to crime.

'Since it seems impossible to uncover demonstrable evidence that prisons perform functions for which they were invented, those who use imprisonment bear an

Minister for Administrative Services the Honourable K.E. Newman

Senator, the Honourable P.D. Durack, Q.C., Attorney-General of Australia

Mr B. Pissarev, Chief Advisory Services and Publications Section, Division of Human Rights, United Nations



Dr M. El Augi, Judge of Supreme Court Lebanon: U.N. Consultant for the Course

Senator Margaret Reid

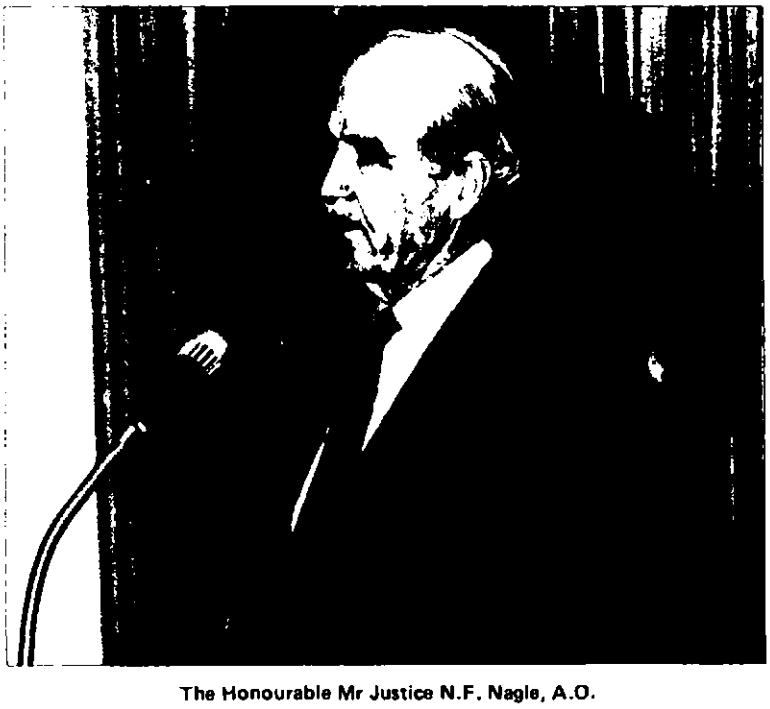
'How do you balance the hu
against the human rights of hi
society generally?'

This in a nutshell was the co
Rights Course entitled, 'Humar
tration of Criminal Justice' held
ology from 30 November to 18

'There is a point at which an
restricting the absoluteness of in

'But too often this concern
excuse for repression and an

'So where should the lines b
social defence?'



The Honourable Mr Justice N.F. Nagle, A.O.

Pictured from left to right: Mr W. Clifford, Director, Australian Institute of Criminology, The Honourable Mr Justice L.K. Murphy, and Mr B. Nicholson, District Judge, New Zealand

Mr K.F. Nyamekye, Deputy Director, Division of Human Rights, United Nations; and Mr E.S.S. Palmer, Chief of Advisory Services, Division of Human Rights, United Nations

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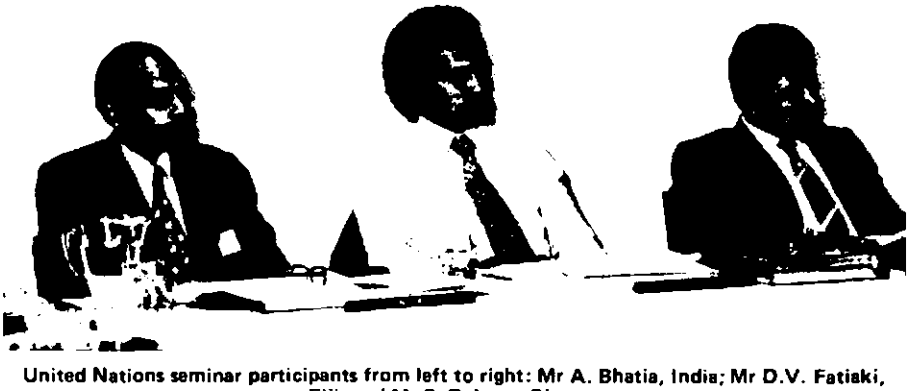
W. Clifford

From left: Dr J. Seymour, Senior Criminologist (Legal), A.I.C. and the Honourable Mr Justice Kirby, Chairman of the Australian Law Reform Commission

Senator N.T. Bonner



United Nations seminar participants from left to right: Mr A. Bhatia, India; Mr D.V. Fatiaki, Fiji; and Mr S. Tobgye, Bhutan

even greater responsibility to ensure that prisons meet acceptable standards as places in which to cage human beings', he said.

Mr Bevan said that research had indicated that there were ominous signs of an increasing tendency to rely on imprisonment rather than other options.

'If prisons do not work, and if the best-intentioned moves to reform them do not work, and if it is not yet time to phase them out, it behoves society to concern itself with standards of treatment imposed on those whose behaviour is beyond our reasonable control', he added.

Mr Bevan criticised deficiencies in the Minimum Standard Rules for Prisons which he said had remained basically unchanged since their adoption by the U.N. in 1955.

He said that they did not state who should be in prison, but dealt only with such matters as food, hygiene and medical and religious requirements.

Conscious of these deficiencies, the A.I.C. had released in 1978, a publication entitled *Minimum Standard Guidelines for Australian Prisons,* which was publicly criticised by the majority of Australian prison administrators as being too academic and unrealistic and by prisoners and radical criminologists as not going far enough.

On the social aspects of imprisonment Mr Bevan condemned the isolation of the inmates from those persons in their lives who were most important to them and emphasised the lack of appreciation of the burden imposed on innocent persons such as wives and girlfriends by the forcible removal of the emotional partner.

Mr Bevan was dismayed that a suggestion that there be established in Australia some form of accreditation body to regularly assess prisons died before taking root.

'Attention to standards of prison management is an on-going need and someone must maintain the courage to continuously pursue it', he concluded.

Senior Criminologist (Legal) with the Institute and a former member of the Australian Law Reform Commission, Dr John Seymour presented a paper, 'Law Reform for the Protection of Juveniles' which examined the various forms of protection which the law could give both to children who had committed offences and children in need of care.

Dr Seymour summarised for the course a report by the Australian Law Reform Commission on Child Welfare and agreed that a system of distinctive procedures for dealing with young offenders and children in trouble should be retained. It concluded that the system should be marked by a balance between legal considerations and considerations relevant to children's welfare.

He said that the Commission held the view that this balance should be sought not only in procedures for young offenders but also in procedures for children in need of care.

Dr Seymour said that the Commission's proposals reflected the view that young offenders ought to be given special protection in relation to the police, the court and welfare procedures and that such protections should be practical and realistic and should not unduly impede law enforcement.

The basic protections relate to the following:

- interviewing;
- use of the power of arrest;
- fingerprinting and photographing;
- detention in custody; and
- exercise of the discretion to prosecute.

After discussing these special protections in detail, Dr Seymour concluded his address by outlining Court procedures and measures available to the Courts once an offence had been established and briefly looked at some of the legal aspects of the problem of children in need of care.

Speaking on 'The Special Position of Indigenous Peoples', Senator Neville Bonner reminded participants that after 33 years since the adoption by the United Nations General Assembly of the Declaration of Human Rights, minority groups in many parts of the world were still struggling in the face of oppression or public apathy.

He said that although Parliament was not the only forum for opposition to oppression and abuses of minority groups, it probably represented the best hope for protection.

'It is the duty of every member of a Parliament to disregard political or any other constraints which would prevent them from taking a stand in the case of serious contraventions of the rights of any minority', he said.

The Senator then went on to explain the special position of Aborigines.

He said that Aborigines were merely tolerated within the community and that he saw Government's role as being ever watchful against any tendencies to drift away from the commitment in support of humanitarian principles and the protection of minorities.

Senator Bonner said that the Australian legal system had rarely protected or promoted the rights of Aborigines.

'In fact it is alien to the tribal Aborigine and has been used almost exclusively to protect the rights of the majority in society', he said.

Senator Bonner said that because they had been socially and economically disadvantaged Aborigines lacked the resources to deal with the legal system on equal terms with the white community.

He said that the main area of conflict was, and still is, land rights.

'Deprived of their culture, their rights and their freedom by colonists at the turn of the century, tribal Aborigines unable to maintain their links with the land, and to fulfil their spiritual and ritual obligations to it, became demoralised, detribalised and degraded',

he said.

Senator Bonner said that after the Aboriginal population had dropped from more than 300,000 to below 100,000 by the end of the 19th century, a new hope began in 1967 when a referendum resulted in a massive vote in favour of two changes to the Australian Constitution.

One, repealing Section 127 of the Constitution, allowed Aborigines to be included in the census. The second, altering the words of Section 51(16), empowered the Commonwealth to make laws for the good of Aborigines.

The next major step was the establishment in 1972 of the Department of Aboriginal Affairs which became responsible for the development of national Aboriginal policies in consultation with the Aboriginal race.

Children committing crimes are being dealt with in the Continental and Anglo-Saxon systems increasingly in an 'unofficial' or social manner, rather than in an 'official' or legalistic manner, Dr Mustafa El Augi told the course.

Dr El Augi, a U.N. Consultant and a Professor of Criminal Law, Criminology and Criminal Justice Administration at the University of Lebanon, said that the judicial aspects of juvenile proceedings were losing their legalistic features which left space for the implementation of individual approaches to the delinquent.

Social workers, sociologists and psychiatrists are now sitting with the judge on the Bench providing the court with personal information on the delinquent gathered through social investigation.

In view of this trend to socialise the Criminal Justice System, Dr El Augi discussed to what extent was it wise, safe and fair to deal formally or informally with juveniles who violated the law of the country. He pointed out that several basic issues had to be dealt with while taking into consideration the right of society to interfere in the private life of the citizen, and the citizens' rights to be immune from intervention in his private life and freedom.

Dr El Augi said that while social action was becoming more and more consolidated in the criminal justice system and was welcomed in some quarters, it had been met with reluctance by traditionalists who refused to see the police and the courts as anything but a state machinery set up to secure peace and order and to prosecute and punish offenders.

He said that traditionalists saw this socialisation of the system as a sign of weakness and laxity which led to more deviance and less obedience and respect of law.

'The justice machinery lost in their eyes its efficiency and by the same way its deterrent role', he said.

'On the other hand, the socialisation of the criminal justice system has created a series of legislative and technical problems and has brought about a reconsideration of the judicial status of the juvenile court resulting in a shift towards converting it into a family court or even a committee caring for the children which had been implemented in the Scandinavian countries', he said.

The Director of the A.I.C., Mr William Clifford said that certain minority groups in the world were automatically disadvantaged by criminal justice systems.

He suspected that the problem was not so much a question of blatant discrimination but a bias within the established mechanisms of most criminal justice systems.

From a paper 'Safeguarding the Rights of Minorities in the Criminal Justice Systems', Mr Clifford said, 'In our modern criminal justice system it is the poor, the disabled or the economically disadvantaged who seem to find their way into the criminal justice systems while other people at certain levels of society appear to be either privileged or else extraordinarily law abiding.'

'It is as if the legal administration had identifiable segments of the population from which to recruit its clients', he said.

However he warned that care must be taken not to oversimplify the problem in terms of outright and deliberate discrimination even though the evidence across the world for criminal justice systems being biased was too strong to be dismissed.

'The point is that in all systems an accommodation has to be made both by the majority and minority groups. There has to be a balance of interests.'

Mr Clifford said that the introduction of more specific legislation designed to leave no room for discretion and thus eliminate discrimination was an impossibility because legislators could not foresee all the situations for which they were drafting law.

He said that it was through the administration of the law that discretion crept in particularly via prosecutors and investigators, but regarded it as nonsense in any modern country to think that all laws could be enforced without discrimination.

'On the one hand no country could be able to afford the numbers of police, prosecutors, or courts that would be required, and the correctional system would be filled to overflowing.'

'On the other hand if all the laws were applied, the libraries of statutes we have now would ensure that most people would be unable to move. The regime would be oppressive to an extreme if the police simply decided to prosecute all and every offence now being committed.'

Mr Clifford said that the system would be brought into disrepute if it were extended to the point where every aspect of behaviour was regulated by existing laws.

At the same time he said that steps had to be taken to avoid discretion deteriorating into dis-

crimination. Discussing discrimination and law enforcement, Mr Clifford said that police were not impervious to the rank and status of those with whom they had to deal but they felt relatively safe from challenge when they dealt with those who were in no position to make trouble.

'Faced with a choice of prosecuting a wealthy person able to afford good lawyers and a vigorous defence – and one who will easily plead guilty, or who is unlikely to seek representation, there are some officers who may be forgiven for charging the latter', he said.

Mr Clifford explained that evidence was usually more easily obtained for a minor or conventional offence than it was for the kinds of crimes committed by the powerful, wealthy or influential.

He said that discrimination in the application of the law and the uneven extent to which the criminal justice systems weighed upon the different sections of a society was demonstrated by the numbers of people held in prisons belonging to the different groups in the population.

'In Australia the Aborigines generally account for about 30 to 40 per cent of prison populations in those states where most Aborigines live.'

'Take into account that Aborigines are only just over one per cent of the total population and you will see that it is not easy to account for the disproportions. This can be explained only by Aboriginals being more criminal as a race than other Australians or as a bias against Aborigines in the system', he said.

Mr Clifford concluded by saying that in Australia and other countries, it was clear that poor and economically disadvantaged groups in the community were more likely to be brought before the courts for offences that quite a lot of other people were committing.

'This is because there is a defect in the operation of most criminal justice systems which favours some and disadvantages others.'

By way of an introduction to his address on 'Human Rights and the Mentally Disabled in the Criminal Justice System', Research Officer with the Institute Mr Ivan Potas stated that Western Criminology had developed from a criminal law based on the Judeo-Chirstian ethic.

He explained that by the middle ages little distinction was made between sin and crime, and between madness and badness.

The criminally or socially deviant were sometimes labelled witches and the methods used upon non-conformists were often directed at the evil spirit within the person rather than at the person.

'Unfortunately it was invariably the person who suffered and by the 18th and early 19th centuries, punishment, repressive and barbaric had developed arbitrarily.'

'Reformers such as Beccaria and Bentham strove to reform the system by advocating a humanitarian and rational approach under which punishment would be certain and swift and its severity strictly limited.'

'These were the fathers of the Classical School of Criminology who viewed crime as being based on the free will of the actor', he said.

Mr Potas said that under this system all men and women were considered equal and punishment it was thought, would function to deter those who were tempted to commit crime.

He explained that the Positivist School of Criminology which developed after the Classical School questioned the concept of free will. Henceforth under the new insights of the Positivists crime prevention would focus not on the offence, but on the offender.

'It introduced the notion of the born criminal and considered that treatment rather than punishment was the key to crime control', he said.

Mr Potas said that contemporary criminal justice systems had adopted what was broadly described as a neo-classical approach which took into account a person's idiosyncracies.

The differences tended to be reflected in the sentencing policies rather than in the determination of guilt. He added that although free will and determinism were conflicting concepts they were nevertheless applied in our system of criminal justice.

'The modification of the free will doctrine is reflected in the fact that children and the legally insane are not regarded as being responsible for their actions. The most obvious influence of the Positivist School is in the area of sentencing where factors personal to the offender including his or her mental health are taken into account', he said.

Examining further the problem of the mentally disordered offender, Mr Potas explained that at common law, a person who committed a prohibited harm did not attract liability to punishment unless that person could also be regarded as having been morally blameworthy for the act.

He said that despite this, persons found unfit to plead or unfit otherwise to stand trial, or who had been acquitted on the ground that they were insane at the time that the offence was committed, often attracted custodial dispositions which were indistinguishable from those who, in the ordinary course of events were found guilty and convicted of some of the most serious offences known to the criminal law.

'That is, they may find themselves detained for an unspecified period of time in circumstances that might readily be compared with a sentence of life imprisonment. Few would argue that persons who are acquitted on the

Cont. on Page 16

Bill provokes divided response

A public meeting held in Melbourne in February, organised jointly by the Australian Institute of Criminology and the Law Council of Australia, to discuss the Criminal Investigation Bill 1981, found both supporters and opponents of the bill to be outspoken in their viewpoints.

Mr A.C.C. Menzies, Justice Division, Commonwealth Attorney-General's Department, in introducing the Bill to the meeting, told of its history and said:

'By all means tell us now what parts of the Bill you object to and what improvements you seek. However, may I suggest that at the end of the day you do not expect a Bill that conforms in each and every respect with your own thinking. If you, as I do, see merit in a Bill regulating the process of criminal investigation and want to see such a Bill come into force, not in some far distant future, but now, may I suggest that you look beyond matters of detail and give your support to a Bill that will in substance achieve the desired result.'

Of the various speakers for and against, *Reporter* has selected the Honourable Mr Justice Kirby, Chairman of the Australian Law Reform Commission and Chief Inspector Kel Glare, head of the prosecution division of the Victoria Police.

Speaking generally about the Bill, the Honourable Justice Kirby, Chairman of the Australian Law Reform Commission said, 'Criminal investigation law reform is a matter upon which strong passions are engendered.'

'They are inherent, in one sense, in what the justices of the High Court have described as the competing requirements of public policy that are at stake.'

'This competition is between the need to support our law enforcement officers, not to frustrate them with foolish or unnecessary rules and procedures, and to uphold them when they are honest, and encourage them in the effort to bring to justice those who offend against society's rules.'

'On the other hand, there is the desire to ensure that law enforcement officers themselves obey the law, act fairly and within the system of accusatorial justice we have inherited from Britain, are conscious of the rights and liberties of people, including suspects, and do not themselves damage respect for the law by disobedience to its letter or indifference to its spirit.'

Addressing one of the most reforming features of the Bill, Justice Kirby said that allegations of oral submissions and confessions to police, subsequently denied by the accused, presented the need for sound recording to lay at rest disputes about allegedly fabricated confessional statements or damaging remarks.

'My regret about the approach of the 1981 Bill, is that the requirement of sound recording is confined to the small class of indictable offences and then only some of them.'

'Most Australian Federal Police operations will fall outside the legal requirement of sound recording.'

'It is high time that the basic rights and duties of Australians in dealing with the police should be collected and stated in a law enacted by the Australian Parliament.'

'The Bill contains few requirements on the police which a good policeman does not already abide by', Justice Kirby concluded.

Criminals are on the rampage and policemen are merely fighting a losing rearguard action to prevent the community being overrun

From left to right: Senator Gareth Evans, Labor Party spokesman on legal matters; Mr A.C.C. Menzies, O.B.E., Justice Division, Attorney-General's Department, Canberra; and the Honourable Mr Justice M.D. Kirby, Chairman, Australian Law Reform Commission

by crime, according to a senior police officer.

The head of the prosecution division of the Victoria Police, Chief Inspector Kel Glare, said that police were unable to cope with the alarming increase in serious offences.

He said that the clearance rate by police had also failed to keep pace with the crime rate.

Speaking at a public seminar in Melbourne in February, organised jointly by the Australian Institute of Criminology and the Law Council of Australia to discuss the implication of the Criminal Investigation Bill 1981, Inspector Glare said, 'Taken as a whole, the Bill provides almost unfettered scope for criminal to continue their rampage against society with impunity.'

'It fails to either recognise or address the problem of crime, let alone come to grips with it.'

Inspector Glare hit out at what he saw as the biases and prejudices of the Australian Law Reform Commission.

He described clause 7 of the Bill, which places policemen under a duty to obey the law, as 'highly insulting' to policemen.

He said that police accepted that they were bound by the law, but that they were not second class citizens – nor would they accept being treated as such.

'If legislators honestly believe their police are not to be trusted then let them be courageous enough to stand up and say so.'

'The vast majority of police obey the law the vast majority of the time', he said.

Inspector Glare said that the biases and prejudices of the Law Reform Commission again became clearly evident in the area of admissions and confessions.

He said that while police had no objections to the use of tape-recordings as evidence where practicable, they objected to the procedures outlines in the Bill which labelled police as untrustworthy and dishonest.

'To deny the validity of confessions as a tool in combatting crime is tantamount to giving criminals an open season for their depredations.'

'The choice is clear – either ban police from giving evidence at all, or accept the inherent good sense of courts to decide the truthfulness of a police witness as it decides the truthfulness of any other witness', he said.

Inspector Glare said that because of the complex, discriminatory, and confused nature of the Bill, police would be under an enormous temptation not to bother about trying to catch criminals because of the risk of criticism or even criminal sanctions.

He said that the Bill might render the police ineffective whereby law enforcement would pass to private armies not subject to any effective controls.

'Vigilante groups will form and the United States experience is a direct pointer to the certainty of this when law enforcement fails', he warned.

The seminar was presided over by the Solicitor-General Sir Maurice Byers, C.B.E., Q.C., and Mr D.G. Mackay, President of the Law Council of Australia.

Other speakers were: the Honourable N.A. Brown, Q.C., M.P., Minister for Employment and Youth Affairs; Mr Malcolm Ramage, President of the Australian Council of Civil Liberties; Mr Trevor Nyman, Solicitor, Sydney; and Mr C.H. Francis Q.C., Melbourne.

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ground of insanity are appropriate vehicles for punishment.'

'But unfortunately in many Australian jurisdictions at least, Governor's pleasure prisoners (as they are often called), have been known to serve many years in penal institutions, some never being admitted to mental hospitals', Mr Potas said.

'On the other hand, prison may be no worse than some mental institutions where millions of dollars are spent on drugs, some of which have serious and painful side effects such as producing skin irritations, irreversible damage to eyes and loss of muscular control.'

'Certainly the over prescription of drugs whether for good intentions or otherwise constitutes a serious violation of human rights.'

'Who amongst us can really be satisfied that drugs are used for the good of the patient and not for the convenience of the treating agency? Similar arguments can be levelled in cases where surgical intervention and electro-convulsive therapy are used as a means of changing behaviour.'

'There are many organisations concerned with the civil liberties of mentally disordered persons in each Australian jurisdiction and these serve to highlight abuses if, and when they come to light.'

'Little can be achieved if freedom of speech, and more particularly access to the news media are to be restricted. It is the fear of bad publicity that does much to reduce or discourage abuse.'

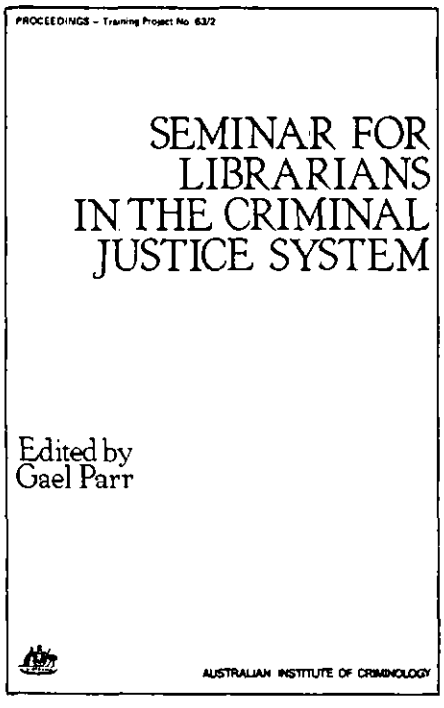
'Historically, prisons and psychiatric institutions have been, and to a large extent still remain, places where the rights of inmates can be ignored without repercussions. The decision to hold a person in an institution against his or her will involves ethical as well as medical judgement', Mr Potas said.

Mr Potas concluded by saying that he did not advocate the increased use of mental hospitals, nor the increased use of prisons.

'Ultimately however, what is needed are better systems of caring for people in the community.'

'One line of attack could be the greater use of half-way houses or the re-introduction of the concept of an asylum which does not purport to treat, but where treatment is available if the patient or detainee so requests', he said.

New publications



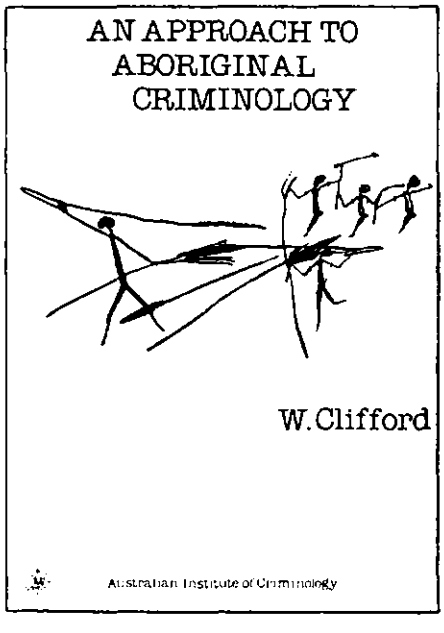
Seminar for Librarians in the Criminal Justice System is a report of the proceedings of the third seminar for librarians in the Criminal Justice System held at the University of New South Wales in February last year. The 30 participants at the seminar, which was convened by Mary Gosling, the Librarian at the Australian Institute of Criminology, discussed the role of the Institute's J.V. Barry Memorial Library, and the future of the criminal justice library system. Aborigines and the law, Family Information Centre, Institute of Family Studies, and some issues in the provision of library services to Australian prisoners, were also discussed.

In his opening address to the seminar, on the topic of 'The Development of Information in Criminology', the Director of the A.I.C., Mr William Clifford stressed the importance for libraries across Australia to give greater distribution to information about Australia.

He said that some criminological publications had not found their way to public libraries in Australia, even though the subjects were of great public interest.

He told participants that the availability to the public of more specialised work would result in a better understanding of crime and the development of a more effective public policy to deal with the problem. The two-day seminar passed six resolutions.

Copies of the publication which was edited by Gael Parr of the A.I.C. are available from the Publications Section of the Institute at $2.50 per copy, plus postage.



An Approach to Aboriginal Criminology contains accurate and up-to-date tables of Australian prison trends compiled at the A.I.C. and emphasises the extent to which Australia's criminal justice systems are overburdened with arrested and convicted Aboriginals.

The tables indicate that against Australia's rough proportion of 60 per 100,000 persons imprisoned for the population as a whole, the Aboriginal proportion was 726.5 per 100,000 at the last Census.

The author of the book, the Director of the Institute Mr William Clifford, amplified these figures with data from several states. He said that by any standard these were incredible rates of imprisonment and that just to quote them was to question their justification.

He said that the figures suggested either that Aborigines were the most criminal race in the world, or that there was something wrong with a system which used imprisonment so readily.

The book was published by the Institute in January 1982, following the J.V. Barry Memorial Lecture on 'Aboriginal Criminology' delivered by Mr Clifford at Melbourne University last September. During his lecture Mr Clifford criticised the law, and particularly the manner of its enforcement saying that it was a gross injustice to the Aboriginal people in its present form, and that without any doubt a measure of public discrimination in the past had accounted for so many Aboriginals crowding the courts and the prisons.

Mr Clifford believes that Australia, in publishing its over misuse of imprisonment could lead a new sweep of the human rights movement at the same time as it sought to put its own house in order.

Copies of *An Approach to Aboriginal Criminology* are available from the Publications Section of the Institute, free of charge.

BOOK REVIEWS

CRIMINAL AND CIVIL INVESTIGATION HANDBOOK

By Joseph J. Grau (ed.) assisted by Ben Jacobson.
McGraw-Hill Book Company, 1981
Various pagings, – $61.75
Reviewer: BRUCE SWANTON, Senior Research Officer, Australian Institute of Criminology

This is a large book and its price reflects its size. It is designed as the 'compleat' investigator's manual, with each contribution submitted by someone possessing expertise in the field.

A particularly interesting feature of the book is the editor's attempt to place public and private investigation needs within a common framework. There is, of course, an obvious functional overlap between investigating, for example, a robbery and the operation of a nursing home. The degree of commonality of techniques employed in investigating them is rather less evident.

Criminal and Civil Investigation Handbook, being an American publication, is geared to American conditions. The gulf between police and other investigators in the United States being far less than it is in Australia, this book will possess considerably greater appeal and utility in America. As the laws, information sources and institutions discussed are exclusively American, Australian readers will find some sections, such as that discussing government and genealogical records of little use. There are, however, compensating sections in which operations and procedures are discussed, many of which operations and procedures are discussed, many of which enjoy equal applicability in Australia.

In terms of personal appeal, *Criminal and Civil Investigation Handbook* will have little to offer Australian state police detectives. Private inquiry agents, federal investigators and others of that type, on the other hand, will find something of value to them. Certainly, all private security companies and large in-house security departments will need to purchase a copy despite its lack of wide relevance in this country.

Even recognising this is a handbook of investigations rather than investigation management, the limited coverage of investigation in the retail sector, for example, is surprising. The lack of reference to the status, role and standing generally of investigators is also an area unfortunately omitted. Some discussion of such matters is highly desirable within the security community generally. The editor has single-mindedly confined materials to his central theme, though, and such omission is not a substantial ground for criticism.

A list of part headings provides some idea of the ground covered in this volume:

- introduction to investigation
- legal considerations
- public police at the crime scene
- gathering information
- operational and non-operational police units
- business-oriented crimes
- insurance investigation
- selected areas of investigation.

Clearly, this is not a book for the specialist investigator. It will have some appeal to generalist investigators, more especially in the private sector. Certainly, it comprises a useful reference source in the investigation field and every security company and police departmental library should have a copy. Instructors/educators in the investigations field will also profit from the material offered.

Criminal and Civil Investigation Handbook is attractively bound and well produced generally, having an extensive index.

INSTITUTIONAL TREATMENT OF THE OFFENDER

By Dwight C. Jarvis
McGraw-Hill, New York, 1978
338 Pages – $24.25
Reviewer: DAVID BILES, Assistant Director (Research), Australian Institute of Criminology

This omnibus textbook designed primarily for college or university students is typical of many that are produced in the United States. In 15 somewhat turgid chapters, each concluding with a summary and a series of review questions, an attempt is made to cover every conceivable aspect of correctional principles and practices.

Adopting a broadly sociological approach, and using many examples from his home State of North Carolina, the author takes his readers through a brief history of corrections and descriptions of prison inmates, staff and organisational structures to a detailed review of the various approaches to treatment and concludes with a study of new trends, including the place of research and the impact of Federal government initiatives.

Much of the descriptive material is dull and repetitive and some of it is just plain wrong. He misuses the terms mean and median, for example, and does not seem to understand the difference between the Supreme Court decisions in *Miranda* and *Gault*. In many areas, however, the material is valuable and worthy of study by those involved in correctional work.

Probably the most interesting chapters are those dealing with corrections research and evaluation of the Federal impact on corrections. For the Australian reader these chapters are more likely to be seen as provocative than most of the others. Also, staff training officers may find some value in comparing their courses with those offered in North Carolina and which are presented in rather too much detail for the average reader.

American textbooks obviously have their place but they always leave this reviewer with a decidedly uncomfortable feeling. One can only pity the poor students who struggle through this book in the false belief that they will learn all that there is to learn about the subject. In truth, they will only begin to scratch the surface.

STATISTICS

Australian prison trends

By David Biles – Assistant Director (Research)

During the period November 1981 to January 1982 the number of prisoners in all jurisdictions except New South Wales has shown a tendency towards decrease. The number of prisoners in all States and Territories for January 1982 with changes since October 1981 are shown in Table 1.

Table 1 – Daily Average Australian Prison Populations January 1982 with Changes since October 1981

	Males	*Females*	*Total*	*Changes since October 1981*
N.S.W.	3,384	135	3,519	+ 56
VIC.	1,624	54	1,678	– 53
QLD.	1,617	42	1,659	– 57
S.A.	775	21	796	– 29
W.A.	1,260	60	1,320	– 33
TAS.	214	6	220	– 57
N.T.	280	11	291*	– 8
A.C.T.	44	1	45**	– 3
AUST.	9,198	330	9,528	– 184

* 6 prisoners in this total were serving sentences in S.A. prisons.

** 39 prisoners (including 1 female) in this total were serving sentences in N.S.W. prisons.

Table 2 shows the imprisonment rates (daily average prisoners per 100,000 population), for January 1982. The national rate of 63.7 compares with 65.2 found in October 1981.

Table 2 – Sentenced Prisoners Received, Daily Average Prison Populations and Imprisonment Rates by Jurisdiction – January 1982

	Sentenced Prisoners Received	*Prisoners*	*General Pop.* '000*	*Imprisonment Rates*
N.S.W.	532**	3,519	5,258	66.9
VIC.	224	1,678	3,951	42.5
QLD.	230	1,659	2,334	71.1
S.A.	253	796	1,310	60.8
W.A.	262	1,320	1,301	101.5
TAS.	25	220	429	51.3
N.T.	120	291	133	218.8
A.C.T.	–	45	236	19.1
AUST.	1,646	9,528	14,952	63.7

* Estimated Population as at 31 December 1981 (subject to revision.

** Comprising 320 Fine Defaulters and 212 Sentenced Prisoners.

Table 3 – Total Prisoners and Remandees as at 1 January 1982 – Federal Prisoners as at 19 March 1982

	Total Prisoners	*Prisoners on Remand*	*Percentage of Remandees*	*Remandees per '000 of Gen. Pop.*	*Federal Prisoners*
N.S.W.	3,517	545	15.5	10.4	142
VIC.	1,659	121	7.3	3.1	35
QLD.	1,655	110	6.6	4.7	25
S.A.	786	131	16.7	10.0	13
W.A.	1,324	95	7.2	7.3	32
TAS.	221	8	3.6	1.9	1
N.T.	269	40	14.9	30.1	12
A.C.T.	43	5	11.6	2.1	–
AUST.	9,474	1,055	11.1	7.1	260

Asian and Pacific series

Compiled by David Biles

Correctional administrators in the countries listed below have supplied the basic information which is incorporated in the following table. The footnotes contain a number of explanations that should be borne in mind when making comparisons between countries. For countries marked * the data refer to 1 July 1981; for countries marked ** the data refer to 1 October 1981.

Table 1 – Total Prisoners as at 1 January 1982

	Males	*Females*	*Total*	*Populations ('000)*	*Rate*[1]
Australia[2]	9,340	339	9,679	14,952	64.7
Canada[3]	9,949	112	10,061	24,105	(41.7)
Fiji	828	18	846	631	134.1
Hong Kong	5,114	146	5,260	5,207	101.0
*Indonesia	37,850	832	38,682	130,000	29.8
Japan	50,805	1,862	52,667	117,057	45.0
Macau	256	3	259	400	64.8
Malaysia	11,625	275	11,900	13,400	88.8
New Zealand	2,381	87	2,468	3,135	78.7
Papua New Guinea	3,891	205	4,096	3,601	113.7
**Philippines	14,685	210	14,895	50,000	29.8
Singapore	2,436	58	2,494	2,410	103.5
**Sri Lanka	10,373	355	10,728	14,750	72.7
Thailand	69,945	3,476	73,421	47,000	156.2
*Tonga	89	1	90	99	90.9
Western Samoa	157	4	161	156	103.2

1 Per 100,000 of population.

2 Australian statistics in this table are based on the daily average number of prisoners for the month of December 1981.

3 Federal prisoners only.

Probation and parole

Compiled by Ivan Potas, Senior Research Officer

The following table provides the number and rates of adult persons on probation and parole as at 1 December 1981:

Table 1

	General Pop.[1] *'000*	*Probation*[2] *Number*	*Rates*[4]	*Parole*[3] *Number*	*Rates*[4]
N.S.W.	5,258	9,091[5]	172.9	2,204[6]	41.9
VIC.	3,951	2,826	71.5	967	24.5
QLD.	2,334	2,785	119.3	342	14.7
S.A.	1,310	2,382	181.8	206[7]	15.7
W.A.	1,301	1,559[8]	119.8	601[9]	46.2
TAS.	429	1,472[10]	343.1	59	13.8
N.T.	133	218[11]	163.9	77[12]	57.9
A.C.T.	236	159	67.4	55	23.3
AUST.	14,952	20,492	137.1	4,511	30.2

1 Estimated population as at 31 December 1981 (subject to revision).

2 Only those under actual supervision are included in these data.

3 Unless otherwise stated, licensees are counted as parolees if supervised. An attempt has been made at excluding from the data non-criminals, such as Governor's pleasure detainees (or their equivalent), but this has not always been possible.

4 Rates are calculated per 100,000 of the general population.

5 Includes 372 persons released from the juvenile juris-

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diction, an unknown percentage of whom would not have attained adult status.

6 Includes 128 licence holders.

7 South Australia also advises that a further 164 persons were supervised in prison, and a further 47 persons received voluntary supervision by the Parole Service in the community.

8 In Western Australia there was a total of 163 persons subject to Community Service Orders. Of this total 133 are included in the probation statistics because they were also placed on probation. Note therefore that only 30 were subject to Community Service Orders without probation.

9 In Western Australia at the relevent date, it is advised that there was a total of 675 pre-parolees.

10 In Tasmania 157 prisoners released from prison and then placed on probation are included in the data. However, 110 juveniles also subject to supervision by the Probation Service are excluded.

11 In the Northern Territory the probation figures include 2 persons who were also subject to Community Service Orders.

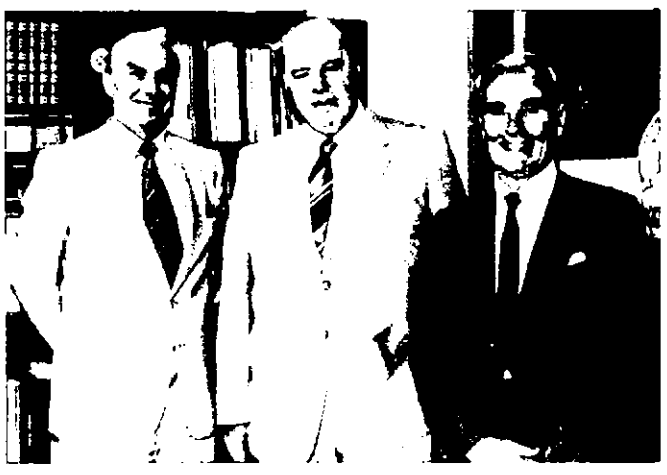
12 In the Northern Territory no licensees are included in the parole data, and at the relevant date there were 7 such persons under supervision by the parole service.

Happenings

SIR CYRIL PHILIPS VISITS INSTITUTE

The Institute was honoured on 19 February by a visit from Sir Cyril Philips. Sir Cyril, the Chairman of the Police Complaints Board in the U.K., was also Chairman of the U.K. Royal Commission into Criminal Investigation which made far-reaching recommendations in respect of prosecutions.

Sir Cyril Philips, accompanied by Sir Colin Woods, Commissioner of the Australian Federal Police, toured the Institute and discussed problems of mutual interest with the Director. Sir Cyril was particularly impressed with the federal-interstate link provided by the Institute, the applications of which in the area of criminal justice he had been able to appreciate during his visits to the states.



Pictured during an inspection tour of the Institute from left: Sir Colin Woods, Commissioner, Australian Federal Police; Mr W. Clifford, and Sir Cyril Phillips, Chairman of the U.K. Police Complaints Board

VISITORS FROM UNAFEI

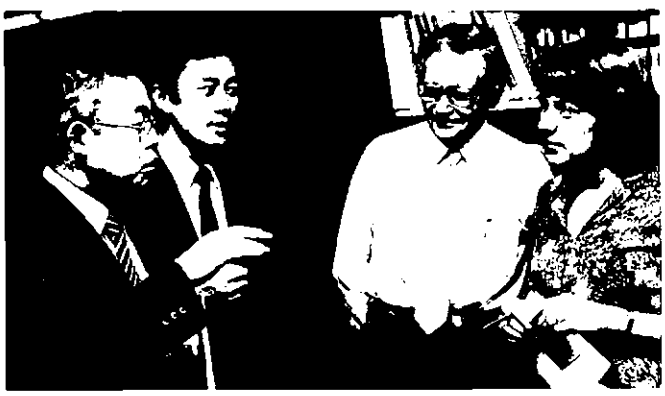
On 8 January, the Institute was visited by two Japanese professors from the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders.

They were Professor MAKAZU IKEDA, Professor (Public Prosecutor), Chief Training Division, and Professor TOICHI FUJIWARA.

During their seven day tour of Canberra and Queanbeyan, the visitors met with the Chief Magistrate for the A.C.T., Mr C. Hermes C.M., and the Honourable Mr Justice X. Connor, and observed the Magistrates, the Supreme, and the High Courts in session.

They were also introduced to the Crown Prosecutor, Mr J. McCrory and undertook an inspection tour of the Remand Centre at Belconnen in Canberra.

Before returning to Sydney, Professors Ikeda and Fujiwara visited the Queanbeyan Court House and inspected the Legal Branch Training facilities of the Australian Federal Police.



Left to right: Professor Makazu Ikeda, Professor Toichi Fujiwara, and Institute staff members Mr Alex Watt and Mrs Mary Gosling

ABORIGINES AND CRIMINAL JUSTICE

The Australian Institute of Criminology is developing a data centre focussing on all aspects of 'Aborigines and criminal justice'.

It is intended to collect and collate relevant data and disseminate them in a series of publications. Publication formats have not yet been finalised but, it is thought they will be three in number. Materials, onging research and tabulated data could well provide their respective emphases.

The publications will be produced as aids to Aborigine welfare and advancement organisations, administrators and, criminal justice practitioners.

Readers either having a need for or able to provide such information, for example, advising of ongoing research projects, Aboriginal community crime prevention programs, public/private agency initiatives designed to reduce crime or other forms of anti-social behaviour, legal, reforms, etc., are asked to contact Bruce Swanton at the Institute. He will arrange to have you placed on the appropriate mailing list and/or file and disseminate contributed information.

PUBLICATIONS

PROCEEDINGS OF TRAINING PROJECTS

Seminar for Librarians in the Criminal Justice System – $2.00 (70c)

The Conflict of Security and Rehabilitation in the 1970s – $1.70 (70c)

Crime Prevention and the Community – Whose Responsibility? – $1.80 (70c)

The Magistrates' Court 1976: What Progress? – $2.50 ($1.20)

Penal Philosophies and Practice in the 1970s – $2.65 ($1.20)

Planning and Policy for Crime Control Personnel – $2.45 ($1.20)

The Police Role in Juvenile Delinquency – $2.10 (70c)

Legal and Law Related Education in Australia – $2.00 ($1.20)

Children's Rights and Justice for Juveniles – $2.00 (70c)

Armed Robbery in Australia: Research, Information and Preventive Considerations – $3.60 ($3.60)

David Biles (Editor)
Review of Australian Criminological Research – $2.75 ($1.20)

Maureen Kingshott (Editor)
Alcohol and Crime – $3.60 ($1.20)

Jocelynne A. Scutt (Editor)
Violence in the Family – $3.00 ($3.60)
Rape Law Reform – $4.00 ($3.60)

C.R. Bevan and A.J. Watt
Probation – Current Positions and New Directions – $3.60 ($1.20)

John Walker
The Use of Computers in the Criminal Justice System – $2.50 ($1.20)

Gael Parr (Editor)
Seminar for Librarians in the Criminal Justice System – $2.50 ($1.20)

REPORTS ON TRAINING PROJECTS
(No Charge)

C.R. Bevan
Progress in Crime Prevention in Papua New Guinea

David Biles
Crime Prevention in Developing Areas

Philippa Chapman
Youth and Social Control

William Clifford
Western Australian Government Symposium on Criminal Justice Policy
An Approach to Aboriginal Criminology
Evaluation in the Criminal Justice Services

Mary Daunton-Fear
Women as Pariticpants in the Criminal Justice System

Col. G. Draper
Crime and Delinquency in Urban Areas

Mark Filan
Police Training in Australia

M.A. Kingshott
Juvenile Residential Care
Alternatives to Imprisonment

John Newton
The Magistrates' Court: 1975 and Beyond

John P. Noble
Women as Victims of Crime

Denbigh Richards
Crime Prevention: Planning and Paritipation in Geelong

Bruce Swanton
Criminal Justice Research Methodology

Arthur Veno
The Psychologist in Criminal Justice: An Australian Perspective

OTHER PUBLICATIONS

David Biles (Guest Editor)
Journal of Drug Issues, Vol. 7 No. 4, Fall 1977, Drug Issues: An Australian Perspective – $5.00 ($1.20)

David Biles
The Size of the Crime Problem in Australia – No Charge
The Size of the Crime Problem in Australia (2nd edition) – No Charge
Criminal Justice Research in California – $2.00 ($1.20)

W. Clifford
How to Combat Hijacking – No Charge

W. Clifford and L.T. Wilkins
Bail: Issues and Prospects – $2.20 (70c)

reporter