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PREFACE

THE EXTENT TO WHICH IT IS APPROPRIATE IN A DEMOCRATIC SOCIETY FOR the individual elements of a criminal justice system to be planned, coordinated or integrated is a vexed question. On the one hand it can be argued that the operations of police, prosecutions, courts and corrections must each be independent of each other in order to protect the human rights and freedoms of individual citizens. If the independence of the elements is not maintained it is possible that the very foundations of our justice systems can be threatened. The perception can develop that the police, for example, have the power to determine the guilt as well as the punishment of the people that they accuse of breaking the law. Such a perception, even if held by only a small minority of the community, would clearly be a matter of grave concern.

On the other hand, the operation of criminal justice agencies in a totally uncoordinated manner cannot be tolerated. The imperatives of efficiency and cost effectiveness demand that consideration be given to the consequences of changes in one part of a criminal justice system on the other parts. It would be irresponsible in the extreme, for example, for a government to authorise a massive increase in police numbers without providing comparable increases to the resources available to prosecutors, the courts and correctional services. Similarly, any significant change in the sentencing policy of the courts is likely to have consequences for correctional practices, either custodial or non-custodial.

There is therefore a need for balance between the competing claims for independence of the elements of criminal justice systems and for the coordination of those elements. In recent years in Australia the balance has tended to favour greater efforts being made towards coordination, and in order to explore these issues in some detail the Australian Institute of Criminology organised a three-day conference under the title "Criminal Justice Planning and Coordination" in April 1993. This volume comprises edited papers selected from those presented at that conference.

In the planning of the conference the Institute anticipated a relatively small number of participants as the topic was not thought to have wide appeal. As it happened, over 100 people registered for the conference. They came from all Australian States and Territories as well as from New Zealand and Papua New Guinea. The participants were mainly senior representatives of police forces, courts and correctional services together with planners, researchers and academics.

The reason for the high level of interest in the conference was the fact that a number of Australian jurisdictions were considering quite radical changes to their criminal justice administrations at the time. Specifically, the States of

Western Australia, South Australia and Victoria were at that time actively considering the creation of departments of justice which would bring all, or most, of the elements of their criminal justice systems into a single administrative unit. Other jurisdictions were also considering establishing closer links between the elements without necessarily amalgamating them.

The call for improved criminal justice planning and coordination is certainly not new. As pointed out by the keynote speaker at the conference, Professor John Hudzik from Michigan State University, it was exactly twenty-five years earlier that the Law Enforcement Assistance Administration (LEAA) was created in the United States to develop the notion of comprehensive criminal justice system planning. Even though the LEAA did not survive as an independent entity, its pioneering efforts at criminal justice planning and coordination serve as a model for other agencies, both in the United States and elsewhere. Other papers in the volume explore issues such as strategic planning, criminal justice statistics, resource allocation, and various aspects of crime prevention, law enforcement and alternative approaches to dealing with offenders.

One of the many people who encouraged the Institute to organise this conference was Laurie Glanfield, Director-General of the Attorney-General's Department of New South Wales. Mr Glanfield is also a member of the Board of Management of the Australian Institute of Criminology and is the Chair of the Criminology Research Council. He was one of the contributors to the conference and also assisted with the development of the conference program. The Institute was also strongly encouraged into this conference by the Commonwealth Grants Commission, whose representatives made a major contribution to the proceedings. The assistance and support from these and other sources is gratefully acknowledged.

David Biles

COMPREHENSIVE CRIMINAL JUSTICE PLANNING: SUCCESSES, FAILURES AND LESSONS FROM THE AMERICAN EXPERIENCE

John K. Hudzik

Context

THE AUSTRALIAN INSTITUTE OF CRIMINOLOGY'S CONFERENCE ON "Criminal Justice Coordination and Planning" was held twenty-five years after the birth of the Law Enforcement Assistance Administration (LEAA) in the United States. The LEAA began the American experiment with comprehensive criminal justice system planning. The impetus was largely intellectual and rational (that is, as the complexity and scope of crime grew, a more coordinated response was required). American interest today in comprehensive planning is prompted further by fiscal constraint. Although the drive for greater system efficiency is today a priority in the United States and Australia, both countries face the danger that severe budget constraint will force such overpowering attention to cost reduction that effectiveness may be the casualty.

The American experiment tested the boundaries of just how comprehensive (systemic, rational and objective) criminal justice planning and management could be made. As the term "comprehensive" may suggest, it was intended as an all inclusive concept with implications of high cost. The proposed scope was both its greatest value and its mortal flaw.

As Australia considers the value of *coordination planning* for its criminal justice system, there may be lessons from the earlier American experience worth recounting. This is suggested knowing that the two political systems, although federal, are not identical; that although crime is on the increase in Australia, the massive social disorder which was a major precipitant for

comprehensive planning in the United States is not a factor in Australia; that although both countries reserve important justice-system powers to states and localities, the Australian Federal Government exercises potentially greater influence through its more considerable power of the purse. And finally, that although dysfunctional fragmentation exists in both systems, the climate in Australia for comprehensive planning may be structurally less hostile. This is because although Australia and the United States are, geographically speaking, roughly the same size, Australia has far fewer, *and* far fewer independently behaving, justice system agencies.

The United States has 17,500 law enforcement agencies, fifty state departments of corrections, a federal department of corrections, and thousands of independently operating gaols. (One state, Michigan, for example, has eighty-three county gaols, each independent of one another and of the Michigan Department of Corrections and its prisons.) There are fifty state attorneys-general and each county (there are several thousand) has its own independent prosecutor and judges (all typically elected locally). Most counties also have independently functioning probation agencies. There is an extensive federal court system hearing both civil and criminal matters and each state has its own judicial system (typically with independently operating general-jurisdiction, limited-jurisdiction, and juvenile and family courts). It is not merely the number of agencies involved, but also their literal independence from one another that structures the inhospitable American environment for comprehensive planning.

Nevertheless, the fact that the American and Australian political systems are federal and democratic, and that both share similar political roots and values suggests the possibility of learning from one another's experiences in attempting to apply policy management tools such as comprehensive systems planning. So, too, the policy and operational freedoms of individual criminal justice agencies, whether American or Australian, are likely to be constrained by an effective introduction of comprehensive planning; therefore, such planning may evoke suspicion and perhaps hostility from operational agency leadership.

Antecedents to Comprehensive Planning in the United States

Australia and the United States are political systems that at least theoretically give states "sovereignty" over anti-crime activity. In practice, the primacy of states rights in the United States is abridged by powerful local control over justice services and agencies. Local control fits well with a view that decentralisation makes agencies "maximally responsive to heterogenous client demands", more likely to "innovate when local conditions demand", and more likely to improve overall system reliability through "duplication and overlap of functions and domains" (Aldrich 1978).

Distrust of centralisation is so pervasive an article of faith in the American psyche that little, if any, experimentation with comprehensive system planning would have occurred, or been tolerated, had it not been for massive social unrest and rising crime in the sixties and seventies *that forced* a revision in how agencies of the justice system saw themselves and interacted.

In 1965 a fragmented American criminal justice system was beset by problems of rapidly rising crime rates and massive social disorder. The Los Angeles riots of 1965 openly challenged myths of American egalitarianism. Later, the sometimes violent protests against the Vietnam War confirmed a level of social dispute that went far beyond race relations. The rise in violent crime, especially juvenile crime, which had begun in the l950s, signalled for many the breakdown of family and social structure.

The nation might conveniently have forgotten the Los Angeles riots of 1965 had it not been for the long hot summers of 1966, 1967 and 1968, and record increases in crime and urban disorder. The 1967 riots in Cleveland, New York and Detroit reinforced how fragile the domestic peace had become. I was living in East Lansing, Michigan the day that riots, burning, looting and urban guerilla warfare broke out in the streets of Detroit—a mere 117 km away. My usually rational white middle-class neighbours met in small groups to plan the defence of their homes against invading black Detroiters and the sure-to-riot blacks of Lansing. It was, to say the least, a time of irrational actions and reactions.

Safe streets through study and money

Riots were only the most visible manifestation of broader problems. Between 1960 and 1974 there was an increase of over 200 per cent in reported crime. Violent crime, adjusted for population changes, grew over 300 per cent in some categories.

President Johnson's response in 1965 was on two fronts. Firstly, he created a National Crime Commission to study and "deepen our understanding of the causes of crime and how our society should respond to the challenge of our present levels of crime". (The National Committee on Violence established in Australia in 1990 had a similar charter). Secondly, President Johnson engaged the standard American method for dealing with a problem, that is, throwing lots of money at it.

Behind establishing the Crime Commission was an unwillingness to accept readily the conservative view that crime was caused by moral decay and that its solution was to be found simply in rigorous enforcement. Behind establishing a small grants-in-aid program was the idea that improvements in law enforcement could be achieved through innovation. However, there was no master plan to guide innovations, nor any systematically conceived notion of what would qualify as innovation.

The Office of Law Enforcement Assistance (OLEA), established in 1965, was a modest beginning for what would become a massive federal grants-in-aid program for state and local law enforcement; but in it, there was no fundamental challenge to state's rights. In 1965, the International Association of Chiefs of Police passed a resolution against "any attempted encroachment by the federal government into state or local government in the law enforcement field" (ACIR 1977). The 1965 Act establishing the OLEA explicitly sought to forestall any such encroachment with language inserted to make crystal clear that:

> Nothing contained in the Act shall be construed to authorise any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the organisation, administration or personnel of any State or local police force or other law enforcement agency.

On 4 April 1968, Martin Luther King was assassinated and riots engulfed over 100 American cities; 39 people died, over 20,000 were arrested and property damage exceeded US$30 million. On 5 June 1968, Robert Kennedy was assassinated. On 19 June 1968, the Omnibus Crime Control and Safe Streets Act was signed into law by the President. The riots following King's assassination had touched Washington, DC, itself. Congressmen had seen "Washington burning".

Safe streets through big money and comprehensive planning

In 1968 the American Congress created the Law Enforcement Assistance Administration (LEAA), and assigned it the responsibility of improving criminal justice efficiency and effectiveness by administering federal anti-crime block grants. The block grants were to support programs which upgraded criminal justice professionals as well as encouraged state and local units of government to experiment with innovative technologies and practices. As a prerequisite to receiving federal dollars, states and localities had to establish state planning agencies which had representatives from all the principal types of criminal justice agencies. Mutual goal setting and coordination of programming among these agencies were two of the innovations sought. The institutionalisation of *comprehensive planning* and coordination among agencies was the hoped-for *innovation.*

Between 1968 and 1982 when LEAA ceased to exist, the federal government dumped over $8 billion into state and local criminal justice innovation; of this, $450 million was allocated to help institutionalise state and local planning agencies. Although states' rights were not directly threatened by this carrot-stick funding from the national government, it was clear that American justice had entered a new era of federal, state and local partnership. The "forced" establishment of cross-agency, comprehensive planning agencies increased the potential for centralisation.

Federalism and interorganisational relations as defining contexts

To understand why comprehensive system planning evolved as it did during the American experiment and why it came to have such a mixture of success and failure, one needs to understand that fundamental constitutional questions about federal vis-à-vis state and local crime-control powers were unresolved then (and remain unresolved to this day). The attempt to implement meaningful comprehensive planning, and its evolution, is embedded in the continuing tensions among levels of government that can be expected in any truly federal system. Accommodations must be made also among organisations having diverse interests and priorities.

The federal carrot-stick legislation of the sixties assumed, as more generally concluded by some inter-organisational theorists, that "indivisible problems require large-scale planned interaction of a magnitude not possible if social service organisations interact only to satisfy their own requirements" (Aldrich 1978). However, few American politicians were willing to challenge state sovereignty in police powers directly. Rather, a constitutionally palatable middle ground was needed. The traditional view of *dual federalism* was that the federal government had power only as expressly delegated in the Constitution; states had the rest (including police powers)—except for those reserved to the people themselves. The constitutional scholar, Edward Corwin (1937), supplemented this separation of power with a hybrid which he labelled *cooperative federalism.* Under it, national and state governments are viewed to be partners in solving certain problems, especially those that threaten public tranquillity.

The cooperative federalism envisioned under the 1968 LEAA legislation blended the superior revenue raising potential and reform-mindedness of the national government with the justice delivery systems of state and local governments. No one was willing to challenge state sovereignty directly. As long as states met the minimum requirements to maintain at least the facade of comprehensive planning by establishing a state planning agency, no further requirements would be imposed as a condition of receiving federal funds. Meaningful federal oversight was nonexistent. This guaranteed great unevenness in the degree to which comprehensive planning became institutionalised in the various states and, in many states, further guaranteed that the only practical meaning given comprehensive planning was "cooperation" in dividing up the booty—a little bit to everybody so that everyone kept quiet.

The Evolution of Comprehensive Planning

During the decade of the 1970s, the meaning of comprehensive planning underwent several modifications in an attempt both to define operationally a new concept and to deal pragmatically with the unresolved dilemma of who ultimately was in control. This searching was at base a complicated dance in which heretofore independently acting agencies came to recognise and to act on the importance of thinking interorganisationally rather than just intraorganisationally.

An annual plan and initial problems

Although the 1968 legislation mandated creation of the State Planning Agency (SPA) and "annual comprehensive plans", it seemed to define comprehensive planning as *simply* the construction of a plan for disbursing federal funds rather than as an ongoing process of inter-agency dialogue and coordination. Added to this was the problem that for the first three years, SPA boards were dominated by law-enforcement agencies (and hence, law enforcement-defined needs). This guaranteed the near exclusion of system-wide considerations.

The large LEAA grant programs overloaded the system's capacity to absorb innovation. The annual rush to produce a plan to distribute funds meant typically that short-run spending objectives were serviced rather than multi-year, longer-range objectives. To complicate matters, SPAs in the larger states and the LEAA offices in Washington divided themselves into semi-independent sub-bureaucracies that *competed* for funds for their respective constituencies.

Standards and goals: a step forward

By 1973, several amendments had been made to the original legislation in order to address the more serious problems. One change, begun in 1971 and 1972, required broader representation on SPA governing boards from corrections, courts, prosecutors, public defenders and other state and local government officials. This resulted in a wider distribution of funds.

The more significant initiative was LEAA's lavish funding of state-based (and a national counterpart) standards and goals commissions. These commissions would bring together all criminal justice system elements and important community interests, service agencies and general governmental entities for the purpose of a systemic and state-wide consideration of *long range* system objectives. These objectives included intermediate objectives such as strengthening and improving the criminal justice system itself as well as more outcome oriented ones such as reducing the incidence of crime and its effects.

Many of the standards and long-range, strategic goals promulgated twenty years ago are still cited by academics and practitioners as benchmarks toward which we continue to strive (for example, professional development and training of system personnel, enhancement of operational, agency-based planning, the integrated use of technology and information systems, planning and coordination infrastructures, system-wide outcome measurement).

Open systems planning

The 1973 amendments to the Safe Streets Act provided a definition of comprehensive planning that highlighted how agencies should see themselves *interacting* to produce system-level outcomes.

The term comprehensive planning means that the plan must be a total and integrated analysis of the problems regarding the law enforcement and criminal justice system within the state; goals, priorities, and standards must be established in the plan and the plan must address methods, organisation, and operation performance, physical and human resources necessary to accomplish crime prevention, identification, detection and apprehension of suspects; adjudication; custodial treatment of suspect and offenders and institutional and noninstitutional rehabilitative measures.

This definition provided a not too subtle reminder that the objective behind a criminal justice *system* was a set of outcomes directed toward dealing with crime rather than just system functioning.

Closing the loop with evaluation

Throughout its nearly fourteen-year history, LEAA was the subject of never-relenting criticism from just about every quarter. Localities were disgruntled over interference from state and national authorities. The public looked for end results (that is, reductions in crime) and found none. Charges of fraud and waste because of red tape and idiotic allocations abounded (for example, a town with a population about the size of Bega in Michigan's northern forests won a grant to purchase an armoured personnel carrier—in case there was a riot). Congress sought evaluation measures and results which were politically palatable, and found very few. The closest it came, it seems, was Attorney-General John Mitchell's testimony before Congress that LEAA was obviously successful because crime was increasing at a decreasing rate.

In the 1973 amendments to the Safe Streets Act, Congress mandated that every grant have an evaluation component. The Nixon administration demanded that measurable results be shown, with evaluation units established in every SPA for the purpose of doing so. The great unresolved issue had to do with evaluation criteria; specifically, what would define program success. On the one side were those who wanted an immediate impact on crime; for them, only programs of "proven success" in fighting crime should be funded under comprehensive plans. On the other side were allied those who believed that applying only such ultimate outcome measures was silly because so many factors were involved in determining crime levels. For them, the evaluation components of comprehensive planning had a varied meaning: greater diversity in acceptable evaluation criteria, greater willingness to accept qualified and mixed results, and a greater willingness to wait for results in the longer run.

One shared realisation by both sides was the importance attached to evaluating *systemic* effects of programming. Maximising sub-system efficiency at the expense of system outcomes would be considered problematic (for example, adopting sentencing guidelines requiring lengthier incarcerations without regard to correctional system capacity; or, pumping more resources into criminal apprehension programs without considering effects on court dockets or prisons).

Coordination

Pragmatic evolution in the concept "comprehensive" took place during the mid to late 1970s when the term "coordination" began to take its place. By then, many had come to believe that the knowledge base which would support truly comprehensive planning was neither available nor likely to be. Even though Statistical Analysis Units (SACS) were funded in each state as a means to collect system-wide cost and performance data, the data collected were inadequate to the task of supporting *comprehensive* planning and evaluation. Important data were flatly unavailable or too costly to collect.

Also, this was a time when criticism surfaced about the utility of systems logic applied to complex social phenomena and the use of centralised management models for running complex organisations and systems (Chin

1969; Wildavsky 1973; Hoos 1972, 1973). By the late 1980s these criticisms had gone through several transformations, including their connection to notions about the value of decentralised management models to quality control and productivity enhancement.

By the late 1970s, there came a renewed feeling, that truly comprehensive planning was not possible in a fragmented system. As expressed by one director of the LEAA National Institute, the more appropriate planning model was an incremental, process-oriented one which emphasised cross-agency dialogue on project specific bases (Ewing 1976). The influential Council of State Governments agreed when it noted that:

> Planning is not inherently more valuable because it is centralised . . . What is needed in order to deal with fragmented decision-making is a method of interfacing the decisions of separate agencies or units of government so that problems such as duplication of services, unequal funding, and discontinuities or conflicts in policies can be minimised (CSG 1976).

The new focus of comprehensive planning was to deal with the obvious dysfunctions that emanated from fragmentation rather than mount a comprehensive response to fragmentation per se. Instead of producing a highly detailed, data driven comprehensive plan that would be imposed on operational agencies throughout the system, a state planning agency might more appropriately convene and service coordinating groups composed of personnel from relevant operational agencies working on common problems or objectives. "Coordination" groups could be assembled to deal with specific problems, or be ongoing to deal permanently with common problems.

At least one consequence of this not too subtle change is that a large and complicated planning bureaucracy is less essential to "plan coordination" than if the objective is to "plan comprehensively".

The Tasks of Comprehensive Planning

In most states, a specialised state planning agency (SPA) was created under LEAA and charged with the specific responsibility for comprehensive planning tasks. Although the *concept* of comprehensive planning evolved as noted above to include annual plans, standards and goals, open systems modelling, and evaluation and interorganisational coordination, its *operational meaning* was defined by a set of specific tasks. Not all SPAs undertook the whole set, their choices being shaped by state priorities and by connections to the state's political apparatus. To no great surprise, it was found (Hudzik 1984, 1987) that the healthy SPAs (those with power and influence within their states) were involved in many more of the tasks than were the weak. The tasks can be divided into ten basic categories of activity.

Policy analysis: The unit of analysis is not an agency or agencies of a given type (for example, police); rather, analysis and planning focus on issues and problems (for example, drug abuse or children at risk) and on responses by criminal justice agencies *system wide*. The focus is on systemic contributions of

alternative policies and programs, and operational planning crosses the boundaries of individual organisations. Recommendations may include investment/disinvestment in certain objectives, programs *and* agencies, and consortia of agencies.

At the centre of comprehensive policy planning is consideration of:

- whether certain missions and functions are appropriate for government to perform (and if so, priorities for doing so);
- which agency(ies) should be assigned responsibility and at what level of effort; and
- what the appropriate methods and outcomes should be. The risk is that analysis becomes so expansive, involving so many variables and agencies, that disarray in thought results from too many actors and agendas being manipulated by analysts and decision makers.

Legislative analysis: Allied to policy analysis, this task can be *reactive* or *proactive.* On the reactive side assessments are made of the likely effects of proposed legislation on specific system agencies (for example, on police, courts, corrections) and on system outcomes (processing logjams and societal outcomes). On the proactive side analysis and planning focus on *developing* new legislation. Analysis may consider legislation having specific criminal justice content (for example, decriminalisation, police powers, mandatory sentencing), or legislation without criminal justice content *per se* (for example, deinstitutionalisation of the mentally incompetent, tax rollback proposals). In either case analysis informs decision makers of likely effects.

Budget analysis and planning: The focus of *analysis* tends to be on existing practices and how these can be improved as measured against system criteria (uncovering unwanted duplication of effort, inefficiencies of fragmentation, and improving return on investment).

Budget *planning* sets system-wide policy and program priorities first, either centrally or collegially, in order to provide an orienting mechanism for strategic allocations of resources (or reallocations) across agencies.[1] Operational agencies propose budgets which respond to these strategic initiatives. This top-down, policy-driven allocation process can be supplemented with bottom-up visions from operational agencies, as well as being matched to a decentralised approach to managing funds (that is, while macro-level allocation decisions are centralised, operational management decisions can be decentralised).

Data collection and analysis: The objective is to create a comprehensive data system that ensures the compatibility of data coming from various criminal

[1]. Collegial priority setting is a process whereby although the final decision regarding priorities, especially those influencing strategic allocations and objectives, are set by central authorities, the process involves meaningful consultation of affected agencies for their views and preferences.

justice agencies, and which provides the analytical capability for measuring the performance of both individual agencies and the system overall (for example, police arrests, response times, clearance rates, cost data, court system disposition times, inmate knowledge or skill gains from educational programming). Elimination of duplication in collection efforts and a reduction in costs and incompatibilities from fragmented data collection efforts are objectives.

System rates and flows and the individual contributions of agencies toward an enhancement or a degrading of *system* outputs is the focus of measurement, for example, offender-based transaction statistics where the unit of analysis is offenders (NAC 1973).

Training coordination: As some training needs cut across agency lines (for example, general-management training, executive development, first aid, methods of inter-agency cooperation, inter-agency team building), there is interest in shared use of resources and facilities. Also, system-level objectives may suggest resource allocation needs and priorities not recognisable from the level of individual agencies or components.

Technical assistance: The planning agency acts as a clearinghouse for information on innovative management or technical applications by sponsoring conferences and other information exchange fora or by funding demonstration projects or consultants to assist operating agencies. The criteria for assessing the value of the innovation is its subsequent impact on the performance of other agencies *and* the system overall.

Forecasting: One objective is to inform decision makers throughout the system of their need to prepare for changes in policies, programs, and environments (for example, the need for system responses to growing multi-culturalism such as having to deal with now-western views toward punishment, language barriers, diversity in prison diets).

Another objective is to consider the future context in which presently considered alternatives will be implemented (for example, the construction of new prisons today which will be operated in tomorrow's restrained fiscal environment; the planning of a new police records system that recognises the eventual electronic rather than paper transfer of records and forms to prosecutor, courts and correctional agencies).

Forecasting the *system-wide* consequences of policies is a fundamental and practical tool of comprehensive planning. For example, what will be the effect on the workloads of the prosecutor, public defender, court and correctional agencies of an increased mandatory minimum sentence for use of a firearm in the commission of a felony. One scenario might hypothesise less plea bargaining thereby increasing everyone's workload. Another might include predicting such increased workload *plus* countervailing behaviour by judges who either resist having their sentencing prerogatives constrained or who recognise that an already clogged correctional system cannot absorb longer average inmate stays. These judges may manipulate sentence time downward on the parent felony charge, if allowed, to accommodate longer sentences

associated with the felony firearm charge. In consequence, system workload increases without appreciable change in the intended outcomes.

Coordination through intercomponent communication: In many states under the American experience, regularising interorganisational communication became *the* comprehensive planning activity. It was perceived as less involved and expensive, and less threatening by operational managers. The success in system terms of these largely voluntary arrangements depends on the skilful leadership of a few influential system actors and on the perception of mutual benefit or gain (either in actual performance improvements or public relations value or both). Dialogues are most successful when they deal with specific problems (for example, cooperative planning to handle emergency calls and dispatch).

Evaluation: Comprehensive planning agencies may not simply collect evaluation data but also help to set criteria for performance that are cognisant of overall system and societal objectives. The process of setting complementary goals and evaluation criteria among the system agencies can be suitably negotiated (although not easily) under the auspices of an agency vested with comprehensive policy analysis and planning responsibilities.

Administering inter-agency programs: In some states, SPAS developed and supported in-house bureaucracies that administered programs requiring substantial inter-agency cooperation (for example, victim and witness assistance programs, career criminal programs). The assumption was that effective administration of these programs would be carried out best by an agency whose perspective and allegiance was to something broader than one of the traditional components (such as, police or courts or corrections).

Comprehensive planning survival and success

One can hypothesise that survival of a comprehensive planning agency ultimately depends on the nature of interorganisational relations between the planning agency and operational agencies. Two options existed under LEAA to shape interorganisational relations and the supporting network for comprehensive planning.

Power/resource dependence models: Under this approach system linkages and mutual adaptation are secured through the control of critical resources (Pfeffer & Salancik 1978). Organisations are rewarded for adopting desired behaviours (They who have the gold make the rules.). In the early days of LEAA, power-dependence or resource-dependence models dominated to form the interorganisational net. However, resource-dependence allocation models aimed in whole or in part at *effective* comprehensive planning cannot simply allocate funds by formula (for example, allocation of funds based on population head counts, crime weighted work load measures, differentials in cost of doing business from one location to another—such as in the Northern Territory compared to Victoria). Part or all of decisions to allocate resources from one state or locality to another must be shaped by assessments of how

well agencies reach system objectives.

The paradox in some instances is that where the over-riding system objective is efficiency (cost cutting), well behaving agencies get less. This is one reason why comprehensive planning directed principally or only toward reducing cost often fails. The lesson, it would seem, is that there must be a perception of mutual benefit—higher form of dependence.

Exchange models: Interorganisational theorists Levine and White (1961) define exchange approaches as those which emerge from a perception of complementary goals. A perception of mutual benefits through goal compatibility (Evan 1966), perceived importance of exchanging ideas and cooperation (Jacobs 1974; Aldrich 1976) and the influence of a focal organising entity (Thompson 1967) are the essential, and no longer new, ingredients to institutionalising the kind of interorganisational viewpoint essential to support comprehensive planning.

Following LEAA's demise, the surviving SPAs had adopted elements of both the power-dependence and exchange models. Direct access to central decision makers (for example, governor's) gave the perception of influencing policy (including resource flow). The performance of a variety of tasks (such as the ten listed earlier), had its appeal in offering agencies the prospect of better results and an easier life.

Questions for Australia

The LEAA experience teaches how complex, constantly evolving, and frustrating system-wide criminal justice planning can be—especially if several issues are not considered prior to its initiation.

What are the desired objectives of comprehensive planning?

Policy makers and the leadership of operational agencies must have discourse and some level of agreement about the intended results from comprehensive planning. This seems important for Australia because there is ample opportunity for the objectives of the Grants Commission, those of State Governments and those of operational criminal justice agencies not to be fully synchronous.

The American experience points out that the objectives for comprehensive planning are not immutable. Societal and political priorities change constantly, altering in turn what is expected from planning. This applies even to those objectives which, although apparently enduring, take on differing priorities in the overall public policy matrix over time. For example, in the late sixties and early seventies, public and political interest in controlling the cost of government was of interest, but not dominant. In the late eighties and early nineties, it is dominant. This suggests that planners should take the long view of how these many objectives interact over time.

One clear lesson from the LEAA experience is that massive injections of new funds and intense interest in comprehensive planning will have little

effect on general crime rates, certainly not in the short run. If crime reduction cannot be taken as the practical objective, what are the alternatives?

Efficiency and cost cutting? The drive to increase efficiency is suboptimising if carried too far because it reduces capacity to be effective. How should cost cutting be measured against effectiveness? What constitutes acceptable results when considering both factors?

Cutting costs means reducing someone's budget. Is the objective to reduce the cost of criminal justice overall, or is it to free resources to reallocate *within* criminal justice (and within operational agencies themselves)? The consequences for agencies and, hence, their incentives to participate are quite different under these two options. The drive only to capture resources creates disincentives for operational agencies to participate. Comprehensive planning agencies may need to devise shared reduction schemes (for example, reductions which return some savings to central government, while differentially restoring the remaining savings to criminal justice agencies based on likely system-level payoffs in doing so).

Improving performance? If so, by what criteria will this be measured:

- improvements in system and operational agency functioning (such as increased response time, improved apprehension rates, speedier trial, fewer citizen complaints);

- more effectively impacting certain end objectives (such as decreased social and human costs of drug usage)?

These are not mutually exclusive options. The question is whether both, or either, will be acceptable measures of improved performance.

Consolidation? One option is to reduce the number of agencies providing a particular type of service. Another is to realign organisational task sets, not only minimising duplication across agencies, but refocussing or "consolidating" a given agency's "product line". Another question is whether planning for consolidation should include non-core criminal justice agencies (for example, social services, mental health, education). For any of these options, how will natural anxiety over loss of independence and resulting resistance in operational agencies be anticipated and addressed?

System resource allocation and priority setting? Is this a process intended to be top down, from the federal to State, and from State to individual agency levels? Alternatively, are elements of "democratic" participation by the leadership of operational agencies intended to characterise the process?

What should be the scope of "comprehensive planning?"

The American experience, although somewhat unique because of excessive system fragmentation, would seem to recommend a limited set of objectives—at least initially. The limited view has substantive and procedural

dimensions. On the substantive side, efforts to coordinate are not undertaken comprehensively, but rather are issue or problem specific (for example, designing a coordinated multi-agency effort to deal with a growing domestic abuse problem). On the procedural side, coordination involves, for example, establishing liaison committees and cross-agency coordination groups to discuss common problems and to identify areas and procedures where cooperative programming could be helpful.

Westminster and Cabinet: The Westminster system of government can facilitate planning within jurisdictions more easily than the American system, especially liaison and coordination planning functions. A cabinet committee of police, attorney general, and corrections ministers might be formed for such a purpose. Support staff could be made available to this committee, its size and cost dependent on how comprehensive the planning and coordination enterprise was intended to be.

If the meaning of "comprehensiveness" is to extend through vertical layers of government, then there may be no choice but to use funding as the catalyst. And if the use of funds is not merely to be punitive (withholding funds from those not in compliance), then additional funds may be needed for those who participate. Those interested in using comprehensive planning to increase system efficiency will detect the perversion in this last option.

How much money?

It is not a question that comprehensive planning will cost; the issue is how much elected leaders and others are willing to allocate to make it happen. The answer depends obviously on which of the ten work functions listed earlier and which objectives are to be served under a comprehensive planning umbrella.

Focal Planning Agency: its location and partners?

Given the daily press of problems and issues, there is little natural inclination among operational agencies to think comprehensively on their own accord. Thus, a critical question becomes who or what will act as focal agent for comprehensive system-wide planning and who will be partners?

Options range from task forces to planning agencies charged specifically with adopting the broader view. Regardless of the option(s) chosen, the American experience suggests that the saliency and vitality of the focal agency will depend on its perceived access to power, its actual influence in the policy-shaping arena, and the credibility of its leadership with operational agency personnel. Power dependence and goal complementarity are important shapers of the position power of focal planning agencies. Experience suggests that operational agencies must be made *full partners* in the shaping of comprehensive plans, or they will offer powerful resistance to their implementation.

To have a chance at success, comprehensive planning must be a priority of top political decision makers, but the administrative location of the focal planning agency (in, for example, the Grants Commission, the Attorney-

General's office, or in an independent commission or a super justice ministry) will shape which objectives dominate. The prime missions and orientation of the parent organisational entity within which the comprehensive planning function is housed will shape the daily business and orientation of the planning. Therefore, decisions about location are crucial to existing outcomes.

Should Australia institute comprehensive criminal justice planning?

There is variety in the meaning and practice of comprehensive planning, and many implications for cost, agency independence and system efficiency and effectiveness. The question is not so much should Australia adopt comprehensive, system or coordination planning, but rather which features, how soon and for which objectives.

The absence of money (fiscal constraint) has prompted renewed Australian and American interest over prospects that coordination could reduce system costs. Although this is true, the original impetus for comprehensive planning in the United States—namely, that it could improve system effectiveness, if properly conceived—should not be disregarded as an objective in the rush to cut costs.

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STRATEGIC PLANNING FOR THE CRIMINAL JUSTICE SYSTEM

Laurie Glanfield

THE CRIMINAL JUSTICE SYSTEM IS A VITAL PART OF OUR DEMOCRATIC system of government. It is essential in order to ensure a peaceful and orderly functioning of our society. It is required to balance the protection of the community with the protection of the liberty and freedoms of individuals.

As critical as it is to our way of life, our criminal justice system has developed over the years without design and with little planning. The purpose of this conference is to discuss a broad range of initiatives being taken within the criminal justice system, the majority of which focus on improved planning and coordination. However, our interest in planning for the future of the system as a whole is still in its infancy.

Indeed as our adversarial system of criminal justice was inherited there was little opportunity to question the value and effectiveness of its structure and processes. There would be many who would argue today that the system has always been flawed, that it fails to deliver true justice and invariably is expensive and cumbersome in determining cases. On the other hand there are many who staunchly defend the system against such criticism, seeing it as requiring little in the way of innovative change.

As always, the truth, no doubt, lies somewhere in the middle. The justice system is subject to constant criticism. Many of its characteristics, such as the wearing of wigs and gowns, are seen to reflect a system which is outdated, shrouded in ancient tradition and procedure and out of touch with everyday Australia.

Reluctance to Reform

It is true that we have shown a great reluctance to mould the system to suit our own way of life in much the same way as we have traditionally rejected any change to the Constitution. Indeed we cling to many so-called "indispensable" features of the criminal justice system despite their having been disposed of elsewhere years before.

There are frequently strenuous debates in one State on reform proposals which are said to threaten the very core of criminal justice even though those proposals have been implemented and operating successfully in another State.

Proposals in New South Wales in 1990 to abolish the dock statement met with strenuous opposition yet fair justice appears to be dispensed in Queensland and Western Australia where the dock statement was abolished in 1975 and 1976 respectively.

The 1990 proposals of the former Attorney-General, the Hon. John Dowd, QC, to reform committal proceedings evoked similar vehement opposition. Again little emphasis was given to constructive criticism of the merits of the scheme of pretrial hearings which were proposed to replace committals. The suggestion of any change to the committal procedure was simply rejected.

Many other criminal law reform proposals have met with strong opposition without regard to any consideration to the substance of the reforms proposed. Little doubt that critics of the system view such reaction against change or even discussion of it, as indicative of the protection of vested interests. No participant in the criminal justice system has been immune from such criticism whether it be the judiciary, the police, prosecutors, legal aid lawyers or prison officers.

The principle most often used to oppose reform is that of independence. In fact there are so many independent parts of the criminal justice system it is a marvel that it works at all. The doctrine of the separation of powers supports the judiciary's claim to independence from the Executive Government. It represents a vital part of the checks and balances in our democratic form of government. However, the principle or some variant of it is often used to oppose reform which might touch the prosecutors, the public defenders or the police. The New South Wales Attorney-General's Department has received countless submissions over the years opposing reforms because they threaten independence. It has often been impossible to decipher exactly what is threatened other than the status quo.

There is, of course, a general commitment within the criminal justice system to ensure that no single part of the system controls the system. Given that the liberty of individuals is invariably at stake there is strong justification for that commitment. The lack of a single authority in control certainly creates conflict but it should not preclude orderly cooperation or due consideration of reform proposals.

Reform has not traditionally occurred in an environment conducive to rational discussion. More often than not criticism has been targeted at a personal level rather than at the issue. Politicians have invariably suffered the most being "damned if they do and damned if they don't".

Piecemeal Reforms

When reform has occurred, too often, it is the product of a particular crisis such as a prison escape, increased court delays or a crime wave. The media rightly draws attention to these crisis issues although sometimes with some embellishment or exaggeration. Of course, urgent action having been

demanded, it is invariably taken. The immediacy with which these issues are expected to be resolved by the community leaves little room for orderly consideration. Administrative or legal changes are implemented promptly with little, if any, time for consultation.

The answer to court delays has traditionally been more courts and more judges. An increase in crime or at least a perception of it, has led to the employment of more police. Criticism of judges for handing out low sentences has been met by increasing maximum legislative penalties. The commission of a serious offence by a person on bail has led to the tightening up of the *Bail Act 1978* (NSW). The examples are endless. Invariably little attention has been paid to the impact of such changes either on the criminal justice system as a whole or on particular components of it. Each component has proposed or implemented its own desired changes often without consultation. Change has been piecemeal and made without regard to the system in its entirety.

Whilst many reforms have been ad hoc responses to particular issues, there have been many reforms of a broader nature. However, reforms have generally been limited to one aspect of the system, for example, a review of jury legislation, sentencing laws, prosecutorial guidelines or prison administration.

There has been a general belief that no component of the system understands the special needs of another particular component. Agencies have accused other agencies of not consulting before effecting changes yet have been guilty of the very same conduct themselves. Communication within the criminal justice system has not been its strongest asset. The system has been dogged by a lack of communication, a lack of coordinated planning, the propagation of vested interests and a resistance to change.

There is little doubt that efforts have been made to develop mechanisms for improved communication. Such efforts have in the past generally been unsuccessful leading to an even greater sense of frustration and detachment. By way of example, judges have consistently believed that the Government did not understand their need for additional resources. There was an opposing belief that the court system was less than fully efficient and needed better management. The opposing views were rarely tested against each other. Observance of the vital principle of independence of the judiciary from the Executive Government has done little to assist in improving communication.

Poor communication together with the historical reluctance to make more than minor adjustments to our criminal justice system has simply made extensive strategic planning more difficult.

A National Perspective

As a Federation, Australia is blessed with nine criminal justice systems. Each has been the subject of modification over the years with the result that all nine systems exhibit sufficient differences to make interaction cumbersome and inefficient. Forums have been established to assist in overcoming these problems.

Over the years the Standing Committee of Attorneys-General, comprising the Federal, State and Territory Attorneys-General, has sought to overcome many of the legal and procedural differences by the adoption of uniform laws or by the establishment of cooperative schemes. For example, schemes are in place to provide for the taking of evidence by one jurisdiction in another, for the transfer of prisoners and for the forfeiture of assets. There are many other examples of mechanisms or laws put in place to overcome the inherent inability of our Australian criminal justice systems to interact efficiently. The Standing Committee is currently settling uniform evidence laws which when implemented could have a substantial positive impact on criminal justice in Australia.

Discussion at a national level between all jurisdictions can have a significant impact on the application of the law or the structure of the legal system at a State level. The development of the national Corporations Law scheme is a significant example. In that case the lead was taken, primarily by New South Wales and Victoria, to settle the structure of a national Corporations Law scheme with the Federal Government. The agreement reached on that national scheme has resulted in the more efficient and streamlined regulation of corporations throughout Australia.

In similar vein, the Standing Committee of Attorneys-General established a Criminal Law Officers Sub-Committee to develop a uniform criminal code which would be capable of being adopted by each jurisdiction throughout Australia. Clearly this level of Federal/State cooperation assists in smoothing out difficulties and anomalies between the laws of the various jurisdictions.

The concept of the development of a strategic plan for nine criminal justice systems is at this stage somewhat overwhelming. This paper will concentrate on what is happening in New South Wales. However, the difficulties already outlined are probably experienced by all Australian jurisdictions and most likely throughout the world.

NSW Criminal Justice System

Historically, the New South Wales criminal justice system has rarely, if ever, functioned as a system. Rather, criminal justice has been dispensed by the individual efforts of a collection of entities.

The New South Wales criminal justice system is by any standards large. In 1992-93 the recurrent and capital expenditure budget for the primary areas of police, courts, legal aid and corrections exceeded $1 billion. Approximately one-tenth of all New South Wales recurrent expenditure is spent on the criminal justice system. Of course, this does not take into account the cost to the community of services provided by other law enforcement agencies, the legal profession, educational institutions, health and welfare agencies and similar organisations.

The core of the New South Wales criminal justice system comprises, at least:

- Ministers responsible for the administration of justice;
- judges;

- magistrates;
- court administrators;
- police (including police prosecutors);
- corrective service officers;
- parole officers;
- barristers;
- solicitors;
- the Legal Aid Commission;
- the Director of Public Prosecutions;
- crown prosecutors;
- public defenders.

However, as already indicated, there are many departments, law enforcement bodies, review boards, private and public sector service agencies and support groups which provide critical services to the system. In addition, those Ministers of the Crown responsible for the various arms of the administration of justice have a pivotal role in the system. In New South Wales this includes the Attorney General, the Minister for Police and the Minister for Justice. Whilst many of my comments will focus on the public service components of the system, that must be seen in the light of the vital and overriding interest of the Government as the community's elected representatives, in ensuring the system works fairly and efficiently.

There is no denying that the New South Wales criminal justice system is particularly complex, not so much due to its size but the number of its components. Its operational complexity makes it difficult to describe and it is little wonder that few people understand how it works. The community naturally, then, tends to measure its effectiveness by its results. If the result is unacceptable then the process must be flawed. This assessment involves a subjective judgment based on a perception of the system's purpose. Few people will agree on the purpose of the criminal justice system but, everyone is happy to venture an opinion on its success or failure in a particular case.

Such judgments can do substantial injustice to individuals whose personal liberty is at stake. For example, campaigns are often mounted against an alleged offender receiving bail. The presumption of innocence is regarded as having been lost upon the person's arrest. At the other end of the scale campaigns are similarly mounted to obtain the release of a person considered to have been wrongly convicted. Our systems do provide remedies for such events and it is important that the success of the system is not judged solely upon a few cases.

What Should be the Goals of a Criminal Justice System?

With a system so complex it is not surprising that there has never been agreement on the aims of the system either within the community or amongst all criminal justice system participants.

In an environment in which there is no common goal it is inevitable that participants will pursue their own goals. The credibility of the system is seriously undermined by the absence of both an agreed understanding of its purpose and an effective coordination of all its participants towards that purpose. If there is no consensus on the purpose of the system, then it is hard to imagine how there can be a strategic direction. The question to be answered is, "What is the criminal justice system expected to achieve?".

The answer to that question will not be addressed here, but unless it is addressed, there can be no strategic direction and no focus for the efforts of those charged with ensuring the smooth operation of the system.

Of course, such a question is not readily capable of a simple answer. It raises all kinds of philosophical questions generally left to undergraduate criminology classes. However, it is vital, for example, that prison administrators are clear as to whether rehabilitation plays any role in their task.

The task of describing the outcomes expected from the system will involve an extensive consultative exercise tapping into all the system's stakeholders. This involves not only those who operate within the system and those who come into contact with it, but also the community at large which also shares an interest in its effective operation. There is a need first to ensure the environment is suitable for such a strategic planning exercise and those initiatives which are conducive to creating such an environment within the system are examined in detail here.

Improved Communication and Coordination

The traditional absence of effective communication was referred to earlier. To launch into the development of a strategic plan for the criminal justice system without first removing some of the long-standing barriers would most likely be futile. A strategic plan of its very nature requires agreement amongst those seeking to implement it. If open and frank communication is absent, then efforts to establish such a plan might conceivably worsen relationships resulting in more entrenched and polarised positions. Effective communication is vital to efforts to improve coordination.

The value of good communication has long been recognised within the criminal justice system. As well as the Standing Committee of Attorneys-General, there are other similar national forums; for example, there is the Australasian Police Ministers Council, the Australian Correctional Administrators Conference, the Special Committee of Solicitors General and the Parliamentary Counsels Committee. As well, the Police Commissioners, the Chief Justices, the Directors of Public Prosecutions and the Directors of the Legal Aid Commissions are groups which meet from time to time to discuss matters of mutual concern.

All of these forums were primarily established to enable those with a common interest to exchange information, share views and endeavour to adopt a nationally consistent focus to their particular work. These mechanisms have proven to be particularly valuable in improving our criminal justice systems and overcoming inconsistencies between jurisdictions.

There is little doubt that the New South Wales criminal justice system has benefited from its participation in these forums. However, whilst these forums have improved communication between participants of like interest they have rarely assisted in improving communication amongst those with different roles (for example, between the police and the judges). There is a need to focus on the system as a whole. That is not to say that these national mechanisms or similar State based forums are not useful; of course, they are valuable. They are not, however, the forums in which the broader strategic issues, confronting any one criminal justice system, will be addressed. They will certainly have a role in the successful development and implementation of a strategic plan. The point is that such an initiative is unlikely to arise from such forums.

The proliferation of such bodies may indeed be a reflection of the historical inability of our criminal justice system to respond to the special needs of the community or particular groups within it. On the other hand these bodies now provide the opportunity for improvement within the system and are becoming an accepted part of the system itself.

There are two other kinds of forums at a State level. First, there are those bodies established to assist the community to have input into justice issues. These consultative groups are generally established to address particular issues. Bodies such as the Victims Advisory Council and the Juvenile Justice Advisory Council play particularly important roles in bringing together representatives of various interests to address shortcomings in the system.

Following the Royal Commission into Aboriginal Deaths in Custody, New South Wales established an Aboriginal Justice Advisory Committee. Its purpose is to consider and advise the Attorney-General on law and justice issues which affect Aboriginal people in their contact with the criminal justice system.

Second, there are bodies established by the criminal justice system participants themselves to assist in internal coordination or improvement. A vast array of such bodies has been established in New South Wales particularly where the issues concerned require across discipline coordination within the system. By way of example, the Chief Judge of the District Court has established a Time Standards Committee to set and monitor compliance with standards for the disposition of criminal cases. It is a widely representative committee. Committees have also been established to consider plea bargaining, legal fees, electronic recording of interviews and so on.

The idea of establishing mechanisms to improve coordination within the criminal justice area are not new. There are many examples particularly in the United States of America of attempts to establish effective coordination. There are a substantial number of articles in US journals describing coordination efforts which have been made. In California, for example, the Judicial Council

has required courts to develop coordination plans. These plans are designed "to increase access to justice through effective use of judicial resources and to achieve cost savings in court operations". They are effectively court-based plans.

There are many similar court-based coordination bodies or plans in place throughout Australia. Various agencies also have coordination plans but closer scrutiny of the detail of these coordination mechanisms invariably highlights their limited nature. Their focus is on the interests of the particular body sponsoring the plan. For example, court plans focus on the use of the courts and judges. Nevertheless not all initiatives have been so limited.

In the late 1960s in the United States, state criminal justice planning agencies were established with policy boards widely representative of all those involved in the criminal justice systems. Considerable funding was provided to these bodies to implement projects within their jurisdictions, but ultimately the federal program was terminated. Alfred Blumstein (1986) attributes the ultimate failure of those agencies to a lack of knowledge about their systems and the inability to estimate the effects of any changes on the system and the then increasing crime rate. Efforts in a number of US States are now focussing on the value of accurately predicting the impact on the system or on its outcomes of changes in policy or procedures. For example, a crackdown by police on particular offences may lead to a need for more prosecutors, more legal aid and more judges if court delays are not to increase. These downstream effects must be capable of measurement prior to initiatives being implemented in order that the full implications are understood and, in particular, resources made available where required.

The issues of knowledge of the operation of the system and the ability to predict the outcome of changes are discussed later in this paper.

The Limitations of Agency Corporate Plans

In recent times much emphasis has been placed on the value of corporate planning by agencies and departments. Many of the core participants in the New South Wales criminal justice system developed corporate plans. Invariably these plans have been settled following a review of the functions, priorities and resources of the particular agency. These agencies have been able to review their role in the system and establish their own goals.

Although these corporate plans are documents subject to regular review, they generally suffer from being limited in focus to one aspect of the system. Whilst the vast majority of core participants or agencies in our New South Wales system have corporate or strategic plans, few of them recognise the interaction between their plans and the plans of other agencies. At the individual agency level, public documents which reflect organisational aims and achievements rarely, if at all, contain references to other agencies, to their relationship to one another or indeed to community participation. A review of the corporate plans and annual reports of a range of agencies in New South Wales shows quite clearly that organisations develop these documents with a clearly inward focus, making only cursory reference to the role of other bodies or stakeholders.

It is quite clear that what is needed is an overall strategic plan which focuses each agency and its corporate plan on the system's goals and how each agency contributes to them. Before considering how such a plan might be developed it is important to bear in mind the historical shortcomings of our system and how they might be overcome.

Improving Communication in NSW

In 1991, when consideration was being given to this issue in New South Wales, it was agreed that it was vital to ensure there was better communication and cooperation between criminal justice departments.

That year within the public service, a Standing Committee of the criminal justice system Chief Executive Officers (CEO) was established comprising the Attorney-General's Department, the Department of Corrective Services, the Department of Courts Administration, the Police Service and the Office of Juvenile Justice. Observers from the Cabinet Office, the Premier's Department and the Bureau of Crime Statistics and Research were invited. The new Ministry of Police is now also represented on the Committee and the Director of Public Prosecutions has attended meetings where issues relating to his office have been discussed.

The purpose in establishing the Standing Committee was not only to improve communication but to better coordinate the activities of the various agencies.

Developing a Strategic Direction

As events have unfolded, if the strategic planning process is to work in New South Wales then it is likely to be the CEO's Standing Committee which will drive the process.

There are four critical strategies which must be pursued before any strategic plan for the criminal justice system as a whole can be settled and agreed upon by all the key agencies, stakeholders and the community at large.

Firstly, there is a need to improve communication and cooperation within the criminal justice system. The CEO's Committee has already been successful in this regard but its role was somewhat limited by its public sector bureaucracy membership. A mechanism needed to be found for opening up the lines of communication between other core players. In 1992, the then Attorney-General convened a meeting comprising the Chief Justice, the Chief Judge of the District Court, the Chief Magistrate, the then Minister for Police and Emergency Services, the then Minister for Justice, the heads of all criminal justice agencies, the DPP, the Legal Aid Commission and representatives of the legal profession, the Treasury, the Premier's Department and the Cabinet Office in New South Wales.

The meeting was called the Criminal Justice Forum. Its aim was to provide an opportunity for frank but confidential discussion on the strengths and weaknesses of the criminal justice system. It was hoped it might also identify some immediate strategies for improving the operation of the system. The first meeting in fact identified sixteen strategies which could be

implemented to meet members' concerns and improve efficiency in the system. Almost all of those strategies have been implemented. The Forum now meets approximately four times per year.

At about the same time the Chief Justice proposed to the Premier the establishment of a smaller Executive and Judicial Liaison Committee to consider issues relating to courts administration and funding. That Committee also meets regularly generally immediately following the Criminal Justice Forum. It has already proved to be a useful forum for discussion on courts administration issues both of a criminal and civil nature.

A second but perhaps more important aspect of improved communication concerns improving the responsiveness of the system and core participants to the needs and interests of those affected by the system. The interests of victims or witnesses have, for example, been substantially ignored in the past. Only recently have the needs of victims and witnesses been seriously considered. Much more must be done to ensure two-way communication between the system (and its components) and persons affected by it, particularly members of disadvantaged groups. The establishment of the New South Wales Charter of Victims Rights was a step in the right direction.

More recently the Supreme Court Judges in New South Wales have recognised the need for improved communication between the court and the community. It has appointed a media liaison officer.

The second critical strategy after improving communication is to improve our knowledge of how the system operates. Information on the system's activities holds little value if it is inaccurate, unreliable or provided too late. In conjunction with the Police Service, the Department of Courts Administration and the Department of Corrective Services, the Bureau of Crime Statistics and Research has endeavoured to ensure the timely distribution of accurate statistical information. The Director of the Bureau, Don Weatherburn, has also acted as an adviser to the CEO's group and the Criminal Justice Forum in analysing trends apparent from the statistics. Of special interest is information on how activity within one part of the system impacts on other parts.

In addition, the Judicial Commission of New South Wales has played an important educational role for the judiciary. It has also established a Sentencing Information System to assist judicial officers and indirectly to provide consistency and accuracy in sentencing.

The reliability of information on the operation of the entire system depends upon the aggregation of information from data collected by each separate agency. The CEO's Standing Committee very early on identified the need to undertake a review of these information systems. In order to see what information was being kept; whether there was unnecessary duplication among agencies; whether the right information was being stored; and finally, to investigate improved compatibility and transfer of information between systems.

A sub-committee of information technology experts was established by the Standing Committee and it also meets regularly. Of course, the enormity of its task should not be underestimated.

Once we are confident that the data are accurate, comprehensive and reliable, we will be in a much better position to make both sensible management decisions as well as to settle strategies for the future.

The third critical strategy is to develop models to enable predictions to be made about the future operation of the system and its components. This is, of course, vital to making resource decisions and for testing in advance the impact of any proposed changes to the structure or processes for criminal justice.

Don Weatherburn has made substantial progress in the development of a model of the New South Wales criminal justice system. His foresight in proposing the development of such a model some considerable time ago is acknowledged here. The value of such a model is only now becoming clear as it is used to predict the likely impact of changes such as reduced adjournments and higher guilty plea rates on court workloads.

The need to evaluate policy options and to assess the impact of such options on component parts of the system is clear. There is little doubt that law enforcement activity drives the whole system. Changes in enforcement strategies or resourcing will impact greatly on the operational capacity and therefore efficiency of the system. The model is the first of a number of predictive models which it is hoped will be developed by the Bureau in New South Wales.

The final critical strategy is to design a framework and process for developing a strategic plan. This has certainly proved to be the hardest strategy to implement.

There has been a degree of trial and error over the past year. At first we endeavoured to have each member of the CEO's Committee outline the respective agency's view of the purpose of the criminal justice system and its role in it. There was little agreement on this, but there was also little disagreement. Each agency simply focussed on different aspects or priorities within the system. We then endeavoured to develop a descriptive model of the criminal justice system. Again this task simply demonstrated the sheer complexity of the system. During this period our efforts were assisted by Robin Sen of the New South Wales Office of Strategic Planning who had been invited to participate in the CEO's Committee. Finally, in November 1992, it was agreed that he would endeavour to create a framework for developing a strategic plan for the criminal justice system. Following extensive meetings with all key agencies, Robin Sen has prepared a draft document which sets out a framework. There will shortly be a special full-day planning meeting of the CEO's Committee to consider the planning framework.

The planning framework proceeds on the basis that the criminal justice system delivers a set of outcomes or results to the community. The focus of the ultimate strategic plan will be to obtain agreement on what those outcomes are and the extent to which the agreed outcomes can be improved over 3 to 5 years. The planning framework will lead to a strategic plan which is more pragmatic than idealistic, in that it will seek to identify what influence the CEO's Committee can have on the outcomes; what are the key joint actions required by the Committee and how these actions are to be implemented including the involvement of other stakeholders in the system.

It is hoped that at the planning meeting there will be, at the very least, agreement on the planning framework and a timetable.

Conclusion

In summary, much of the foundation work is already underway towards creating an appropriate environment for strategic planning for the criminal justice system as a whole.

Communication and cooperation both within and outside the system is improving. Our understanding of how the system operates is also improving. A criminal justice system model has been developed and a framework for developing a strategic plan is nearing completion.

The development of a strategic plan for the criminal justice system is a long-term project. It needs to be approached in much the same way as the development of a corporate plan. The steps by which a plan will ultimately be agreed upon put simply will include:

- gathering data about the system's operation (both statistical and financial);
- analysing the perception and expectations of stakeholders including participants;
- analysing likely changes or trends which may impact on the system;
- analysing the strengths and weaknesses of the system and key issues;
- developing a statement of outcomes/goals sought to be achieved;
- developing strategies and action plans to achieve those goals within a defined period;
- setting performance measures to test success/progress;
- writing up the plan and receiving endorsement of it from stakeholders; and
- providing a mechanism for regular monitoring and reporting on performance.

During the development of the strategic plan there is likely to be much broader strategic planning occurring within individual agencies. These efforts are to be encouraged for the system's strategic plan will simply assist in providing a cohesive focus for all those groups or individuals working within the system. It will also provide a benchmark of outcomes against which the performance of the system and individual agencies may be measured.

Finally, the value in the final strategic plan will be not so much in the document itself, but in the process of consultation and coordination which leads to agreement on and revision of that plan.

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STRATEGIC ISSUES IN CRIMINAL JUSTICE SYSTEM MANAGEMENT

Don Weatherburn

> . . . the front line is here and the H-hour is now. That needs, we think, to be more perfectly understood than is evident from vacuities like that uttered by the Police Minister . . . The Minister said that putting more police on patrol was not the answer to reducing crime.
>
> Excuse us while we pick ourselves up off the floor . . .
>
> "Police work and crime priorities", editorial in the *Brisbane Courier Mail,* 5 August 1992.

Overview: The Babel Criminal Justice System

LET ME BEGIN BY SETTING THE SCENE. WE ENVISAGE A TIME IN A CITY called Babel where most members of the public are temporarily unconcerned about crime. They are preoccupied, let us say, with the forthcoming Babel State elections. Into this state of criminal justice bliss comes a discordant note of rising public concern about law and order, subdued at first but gradually more strident.

After years of encouraging victims of crime to report to police every annual release of the police crime statistics now shows an upward trend in crime. The Babel police have trouble containing the rising level of public concern. No-one believes the Minister for Police when he says that upward trends in crime statistics do not necessarily mean rising crime rates.

Only two years ago he was using crime statistics to take credit for a drop in crime. Before that, in Opposition, he was using them to berate the government.

Both major political parties in Babel are well aware of the ease with which the official police crime statistics can be misinterpreted. For years, though, it has been tradition for the party in opposition to greet police crime statistics with loud claims that crime is out of control.

The media aid and abet this process. Nothing sells advertising space or time like a good crime story. So each new violent crime is happily cast by the media as further evidence of a general breakdown in law and order.

The process, of course, is irresistible. Sooner or later the Government and Opposition find themselves arguing over who has the toughest law and order policies. Privately, of course, neither party relishes this contest. In politics, though it is a case of mutually assured destruction.

Neither party can afford to lay down their arms first. If one party goes soft on law and order the other will seize the advantage.

Responding to public pressure, the Babel State Government appoints additional police, tightens the Bail Act, raises the maximum penalty for assault and increases the range of indictable drug offences. Arrest rates for offensive behaviour, prostitution, drug offences, and assault begin to rise.

For the first couple of years, the courts are able to handle the increased workload. As cases percolate through the committal process, though, the higher courts start to become seriously congested and the legal profession begins calling for additional courts, judges, prosecutors and legal aid funding. Unfortunately their calls fall on deaf ears. No one believes for a minute that increasing the police budget could be a cause of court delay.

It has been suggested, in fact, that an acquiescent approach on the part of the judiciary to requests for adjournments is often leaving courtrooms "dark" when they could be disposing of cases. No one has any evidence to disprove this because no one monitors the number of adjournments or the amount of court time lost because of them.

So at Treasury's urging consultants are appointed to conduct a major review of the State's court system. Anticipating the review, Babel's court administrators begin over-listing cases so that, when one is adjourned, there is always another one ready to go on. Unfortunately this only makes the problem worse. Listing dates become less and less certain and courts become more inclined to grant adjournments when cases are not ready to go on.

To make matters worse, as court delays lengthen, the acquittal rate rises. This further increases the incentives for defence lawyers to take their client's case to trial and seek adjournments.

The consultants, seeing all this, recommend the adoption of time standards for case disposal. Try as they might, though, none of the courts seem able to comply with these standards. The amount of hearing time able to be set aside to dispose of cases seems simply inadequate to meet the demand for it.

The Courts Department is unable to persuade Treasury of this because no-one actually keeps accurate figures on the number of cases requiring a hearing or the amount of hearing time each case consumes. The Courts Department does keep track of the number of cases being disposed of by the courts but this stopped increasing when the courts ran out of capacity.

Eventually Treasury has to give in. Public concern about court backlogs forces the Babel State Government to commit itself to building more courts.

Seizing the initiative, court administrators argue that the number of new trial courts to be built should parallel the growth in trial registrations. This turns out to be a big mistake.

When the new courts are built, court delay declines; reducing the incentive for defendants to plead not guilty. As a result, the backlog of cases awaiting trial falls much further and much faster than anyone expected.

So it happens that, a few months after the new courts open, Babel's court administrators find themselves with more judges and trial courtrooms than they know what to do with. So much for the courts.

What happened to Babel's Department of Corrective Services while all this was going on? As court delays lengthened, both the remand and sentenced prisoner populations began to rise. Correctional administrators naturally assumed that tightening of the Bail Act had caused the build up in remand numbers. The build up in sentenced prisoner receptions they blamed on tougher penalties. In fact the remand population had grown because court delays were keeping remand prisoners in custody for longer while the sentenced prisoner population had grown simply because police were arresting more offenders.

Lacking routine access to court delay and arrest data, all this escaped the hard-pressed administrators of the Babel Correctional Department. They turned in desperation to the option of building new prisons.

Correctional planners based the building program on statistical projections of recent growth in the size of the State's prison population. This turned out to be a big mistake.

Many prisoners were spending longer on remand than they would have spent in gaol if sentenced immediately. Consequently, when congestion eased in the court system, the expected growth in the sentenced prisoner population failed to materialise. Unlike the courts, though, this spare capacity did not go to waste.

Realising that prison overcrowding had eased substantially, magistrates and judges became more willing to refuse bail. The new capacity was therefore soon taken up with an inexplicable growth in the size of the remand population.

So it happened that an uncontrolled and unwarranted law and order crisis, coupled with a poorly managed criminal justice system succeeded in wasting vast sums of taxpayers money in Babel.

Strategies for Managing Criminal Justice Systems

Babel is a fictitious place. The fictitious quality, though, lies only in the suggestion that some criminal justice actually exists in which everything which could go wrong, does go wrong. The individual problems which bedevil Babel are only slight exaggerations of real criminal justice problems in Australia.

It is impossible to avoid them entirely. But there are three ways in which sensible governments can seek to minimise them and thereby create a more efficient, more effective and more equitable criminal justice system.

The first step is to reduce unwarranted demand on criminal justice resources. The second is to make a more determined attempt to gauge the likely impact of policies developed by each criminal justice agency on every other relevant criminal justice agency. The third is to subject potentially

expensive new initiatives in policing and correctional policy to more rigorous assessment in terms of their costs and benefits.

Each of these three strategies will now be described in greater detail.

Limiting unwarranted demand on criminal justice systems

Law enforcement is one of the fastest growing areas of Australian State Government expenditure (Mukherjee et al. 1990, p. 55). In the fifteen years between 1975 and 1989, the Australian per capita expenditure on police, adjusted for inflation, rose by nearly 60 per cent (Mukherjee & Dagger 1990). The recurrent budget of the New South Wales police service now stands at nearly $1 billion per annum (NSW Treasury 1992).

One might think that this investment is driven mainly by the need to deal with rising crime rates. In most States of Australia, though, increased investment in law enforcement is mainly driven by rising public anxiety about crime.

There would be nothing wrong with this if public anxiety about crime were closely related to actual crime trends and if added investment in law enforcement were always an efficacious way of dealing with crime problems. But in fact public anxiety about crime and public beliefs about law enforcement are driven mainly by fear and ignorance.

For example, between 1975 and 1988 the annual number of assaults recorded by police in New South Wales rose from 4,278 to 23,891—an increase of about 460 per cent (NSW Police Service 1989, p. 128). The increase was widely taken by the media to indicate that New South Wales was in the grip of a crime wave.

In 1990 the NSW Bureau of Crime Statistics and Research completed a detailed analysis of reports of common assault to the Police (Bonney & Kery 1991). This study suggested that most of the increase in reported assault had come from two sources.

One was an increase in the number of women reporting domestic violence. This appeared to be the outcome of government-sponsored publicity campaigns designed to encourage such reporting. The second was a growth in the number of police reporting assaults on themselves. This appeared to be due to growing awareness among police of the advantages of criminal compensation over other occupational health and safety remedies for assault. Compelling as it was, the evidence that assault rates were not actually rising was still indirect.

In the same year, however, the Australian Bureau of Statistics (ABS) carried out a household crime survey in New South Wales (ABS 1990). Among other things, the survey asked respondents whether they had been victims of assault in the previous twelve months. Fortunately a similar question had been included in the 1983 national crime victim surveys (ABS 1983).

A comparison of the results of the two surveys indicated that, despite the 460 per cent increase in reports of assault to police, the percentage of the population becoming victims of assault had actually fallen between 1983 and 1990 from 3.0 per cent to 2.1 per cent. The survey provided a graphic

illustration of just how mistaken public opinion about crime trends can be. The importance of this to public administration, however, often escapes criminal justice administrators.

Public anxiety about crime is what drives state government investment in law enforcement. It is this investment, not underlying trends in crime, which has played the dominant role in shaping demand for criminal justice resources over the last ten years.

To use a crude analogy, investment in law enforcement is like commercial fishing. The number of offenders liable to be caught is only partly affected by how many there are out there. It is much more strongly affected by the size and character of the law enforcement net. Put less figuratively, the point is that law-breakers always exist in great abundance. Thousands of people every day drink and drive, swear at each other in public places, assault each other in the bedroom or the pub, participate in illegal drug use, evade rail fares, buy stolen goods, engage in some form of fraud or commit other offences.

With additional resources it is not difficult to catch more of these people. Every increase in the level of investment in law enforcement, therefore, normally brings with it an increase in the number of arrests. Every significant increase in the number of arrests, however, also sets off a surge in demand for criminal justice resources. Prosecuting authorities demand more prosecutors, legal aid authorities demand more lawyers, court departments demand more judges and courtrooms, correctional authorities demand more prison officers and gaols. What is more, the surge in demand for resources continues to reverberate through a criminal justice system long after the initial increase in arrests has passed.

A significant proportion of the demand for court and correctional resources each year comes from those who have not paid their fine or who have breached the court order imposed upon them the previous year. Every increase in arrest, therefore, not only brings with it an expansion of the pool of people subjected to some form of court order. It also brings with it an expansion of the number of people brought back to court for breach of that court order.

To make matters worse, if the political package to deal with a law and order crisis contains either tougher bail conditions, heavier sentences or more restrictive parole regimes, not only does the number of people brought into the criminal justice system increase, the marginal cost of dealing with each person also tends to increase.

Whenever unwarranted public anxiety about crime trends is the trigger for all this, public money is being wasted on a grand scale. It is no use consoling oneself with the thought that, if the investment was driven by a mistaken view of crime trends, it will nonetheless have the effect of reducing crime. The available evidence gives little reason to believe that increased investment in law enforcement automatically brings with it a decrease in crime rates (*see* Walker 1989, Ch. 7).

Now, of course, any government which ignores public anxiety about crime and justice does so at its peril. The smart way to deal with this anxiety, though, is to improve the level of public debate about crime.

Instead of countering false claims of crime problems with exaggerated claims of success or tougher law and order policies, we should try to limit the scope for unwarranted law and order crises. How do we do this? An important first step is to move responsibility for public interpretation of crime trends away from the police and give it to an agency which is free to provide an objective account of those trends to the public. A second step is to supplement police data on crime trends and patterns with regular crime victim surveys. Crime victim surveys give a much better picture of the actual risks of criminal victimisation and also provide an invaluable cross-check on the veracity of crime data collected by police. A third step is to introduce methods for measuring the incidence of offending in those areas of crime where neither police data or crime victim surveys give useful information. The last and most important step is to provide local communities with accurate, timely and easily understood information about the crime problems (if any) they face in their area.

New South Wales has taken or is in the process of taking all of these steps and most would probably agree that it has led to a marked improvement in the level of debate about law and order issues. In fact, since the advent of the surveys in 1990, the percentage of the NSW population identifying themselves as having no crime problem has risen from 45 to 55 per cent.

What follows now is the second strategy for better criminal justice management.

Managing resource demand within the criminal justice system

Regardless of how sober the debate about law and order, the fact remains that not all upward trends in recorded rates of offending are illusory and not all law and order crises are irrational. The spread of a new form of crime or a growth in crime rates sometimes makes increased investment in law enforcement both desirable and inevitable. This investment, as I have argued, is much more expensive than it looks because it affects the level of demand for service on downstream criminal justice agencies. It is obviously critical for agencies within the criminal justice system to monitor the demand on their resources caused by any increase in arrest rates. The need to monitor the flow of demand for service between agencies, however, extends well beyond the impact of increased arrest rates.

Resource and policy decisions in any criminal justice department have the potential to significantly alter the capacity of other departments to achieve their corporate objectives. Notwithstanding this fact, criminal justice agencies generally tend to pursue their objectives as if they were fully autonomous entities rather parts of an integrated criminal justice system.

Responding to the imperative to quarantine increases in crime, police will change patrol staff allocations without regard to the impact of this on the demand for court services in a particular locality. Responding to the imperative to maximise court utilisation, court administrators will choose case listing strategies which may be optimal from their point of view but which place heavy demands on police witness time. Responding to the need to reduce overtime, correctional authorities will alter prisoner reception

procedures but often fail to see or accept responsibility for the impact of this on the number of prisoners held in police cells. Capital works plans for courts will sometimes be shaped independently of those for police despite the fact that co-location of courts and police stations can effect significant savings in recurrent spending on police.

To some extent, the new enthusiasm for corporate planning which has swept the public sector has exacerbated these problems rather than ameliorated them. The attention to agency-specific goals and agency-specific performance indicators has tended to obscure the need for a global view of criminal justice system functioning. This is not to deny the value of corporate planning in the public sector. The point is rather that, no matter how well defined the corporate goals of each criminal justice agency, or how effective the strategies adopted in pursuit of them, it is impossible to run an equitable, efficient or effective criminal justice system where individual agency objectives and/or strategies conflict.

The first step in better management of resource demand within the criminal justice system, therefore, is to ensure that the corporate goals and strategies of each criminal justice agency are in harmony with each other. This cannot be accomplished by a simple inspection of each other's corporate plans. It requires a thoroughgoing assessment of every initiative likely to impact adversely on the functioning of criminal justice agencies.

New resource or policy options should be subjected to "criminal justice impact" assessments designed to quantify the probable effects of the option in question; not only on the agency proposing the option but on other criminal justice agencies as well. These assessments require an ability to track the flow of criminal justice demand from arrest, through court appearance and onto corrections. This is where we strike another major problem in Australian criminal justice administration.

Despite the extraordinary overlap in their management information requirements, most criminal justice agencies only monitor demands on their resources when they appear at the front door. The District Court, for example, will typically keep track of the new work registered in that jurisdiction but pay no particular heed to the number of committals pending in the Local Court, though this is where its work comes from. The Court of Criminal Appeal will keep track of the number of new appeals registered but not the number of cases disposed of by the District Court, though this is where most of them come from. Corrective Services will keep track of the number of unsentenced prison receptions but not the size of the pending caseload in the Local and District Courts, though this will determine how long those received on remand will stay in custody.

In fact the "front door" monitoring which does occur often provides only a rudimentary picture of resource demand. Courts, for example, rarely keep track of the amount of court time consumed by each case, although this is as important in setting court capacity as the number of cases waiting for a hearing. These management information inadequacies seriously limit the scope for cooperative solutions to common criminal justice problems. Discussions between agencies become mired in arguments over factual matters which really ought not to be in dispute at all.

These deficiencies can only be overcome by setting up an integrated justice information system. That is, a system which allows one to monitor the progress of any class of individuals from commencement of proceedings to termination of the last court order issuing from those proceedings. Under such an arrangement, police, court, prosecuting, legal aid and correctional authorities would all share access to a common array of criminal justice performance indicators. These indicators would allow every criminal justice authority to anticipate changes to the level of demand on their services. They would also make it much easier to analyse the causes of common problems in criminal justice management.

The last of the three strategies proposed to improve the quality of criminal justice administration now follows.

Measuring the outcomes of investment in law enforcement and sentencing policy

Justice information systems have great potential to promote a more efficient criminal justice system. Much of the investment which occurs in criminal justice, however, is directed not at making the system more efficient but in achieving certain social outcomes.

Investment in law enforcement is mainly directed at reducing or limiting growth in the rate of offending. Investment in sentencing and corrections is at least in part directed at reducing the rate of reoffending. The response of crime rates and reoffending rates to such investment ought, therefore, to be a matter of abiding interest to law enforcement and correctional administrators as well as to the wider community. The fact is, though, that serious efforts to evaluate law enforcement, sentencing and correctional policies are the exception rather than the rule. The appointment of additional police, for example, is often regarded as the correct response to any significant increase in crime rates, though no-one bothers to explain precisely how additional police will get the crime rate down.

This is despite the fact that separate studies in both the United States and England have shown significant limits in the effectiveness of additional police as a crime control measure (*see* Walker 1989, Ch. 7).

The appointment of additional police is only one area where law enforcement policy passes without critical evaluation. Drug law enforcement policy in Australia, for example, is shaped pretty much without the benefit of any routine measurement of the extent of illegal drug use. The community is simply encouraged to believe that downward trends in drug arrests and drug seizures tell us usage is falling while upward trends tell us law enforcement authorities are becoming more successful.

Even where decent measures of trends in offending are available, insufficient efforts are made to use the trends to evaluate law enforcement initiatives. When Neighbourhood Watch was introduced in New South Wales, for example, Neighbourhood Watch precincts were defined in ways which made it impossible to determine the number of houses they contained. This made it impossible to determine the effectiveness of Neighbourhood Watch as a policing strategy.

In making these comments, it should be pointed out that the police are becoming increasingly aware of the need for elective program evaluation. However, few would argue that the impact of policing policy on crime rates is subjected to the kind of critical scrutiny it deserves. This brings us to the issue of sentencing and correctional policy.

In Australia at the moment, preoccupation with measuring correctional output has all but replaced concern with measuring correctional outcome. New sentencing policies are now examined, not from the vantage point of their impact on reoffending rates but solely from the vantage point of their effects on prison costs and overcrowding. No sensible person would deny that these are important issues. To judge sentencing and correctional policy solely in these terms, though, is surely the worst form of corporate navel gazing. We should be trying to deter offenders and/or to rehabilitate them.

Some academic criminologists would say we have to be shy about these things. Ever Since Lipton, Martinson and Wilks (1975) conducted their famous review of rehabilitation studies, the conventional wisdom on the subject has been that "nothing works". Deterrence has also fallen out of favour in the wake of numerous studies showing that jurisdictions with high imprisonment rates do not necessarily have low crime rates. But the results of past research studies give no ground at all for abandoning the pursuit of either deterrence or rehabilitation. Lipton and his colleagues did not show that "nothing works". They showed only that no pat formula had been discovered which always and everywhere reduced reoffending rates (*see* Sechrest et al. 1979).

Likewise, research on deterrence does not show that offenders are unresponsive to any variation in sentencing policy. For the most part it shows only that certain *sentencing* options and policies, most notably capital punishment and very long prison terms, do not have the effects sometimes attributed to them.

It is possible to identify significant differences between sentencing policies in their effects on reoffending rates. The differences, though, are not to be found addressing the sorts of issues with the sorts of crude techniques which mark most of the literature on deterrence and rehabilitation.

Rod Broadhurst and Ross Maller (1992), recently demonstrated this in their analysis of the impact of post-release supervision on recidivism among sex offenders in Western Australia. They found no difference in the ultimate rate of return to prison but significantly slower rates of return among those given prison sentences with a parole component compared with those given straight sentences. Subtle differences like this are extremely important.

Slower rates of return to prison mean lower rates of offending and lower prison costs. To pick up these effects across all sanctions, though, sentencing policy must be subjected to much more comprehensive assessment. Reconviction rates need to be monitored continuously among every class of proven offender, not just those who go to gaol. At the moment only the Crime Research Centre in Western Australia and the Office of Crime Statistics in South Australia have any capacity at all to do this. The remaining States can do little more than guess at the outcomes of their sentencing and correctional policies.

In summary then, the key strategic issues in criminal justice administration are these:

- how do we reduce the level of unwarranted demand on criminal justice resources?
- how to we go about managing the flow of demand for service between constituent criminal justice agencies? and
- how do we reduce crime and reoffending rates?

None of these questions can be answered without significant change to the range of criminal justice data we routinely collect and the way in which it is analysed and disseminated. Many may feel that these changes are just too remote from the day-to-day problems faced in justice administration to bear lengthy consideration. The next time you are grappling with one of those day-to-day problems, though, pause for a minute to think where it might have come from. Five times out of ten it will be traceable to one of the three issues discussed in this paper.

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THE CRIMINAL JUSTICE SYSTEM IN NEW ZEALAND

Heather Colby

THE STRUCTURAL ELEMENTS OF THE CRIMINAL JUSTICE SYSTEM ARE IDENTIFIED AS:

- Police (including the Traffic Safety Service formerly of the Ministry of Transport)
- Courts (including the judiciary)
- Penal Division)
)
- Community Corrections) of the Department of Justice
)
- Psychological Services)
- Youth Justice Division of the Department of Social Welfare

Together this group is comprised of three different government departments. It is the responsibility of four Cabinet Ministers, and includes the judiciary. Each of the departments at present has its own management plan agreed with the appropriate ministers and is not required to plan in conjunction with the other departments affected by its outputs and policies. There appears to be no requirement for departments or ministers or indeed organisational plans to contribute to a known and prescribed set of functions and objectives to be achieved by all parts of the system. Each of the three departments also encompasses non-criminal justice functions, which compete for scarce resources with the criminal justice responsibilities.

The three departments are generally accepted as carrying out the activities of crime prevention, crime detection, prosecution sentencing, imprisonment, and the administration of non-custodial sentences. These activities follow the same sequence in all similar jurisdictions for the prevention of crime and the application of legal processes and sanctions to those arrested for criminal offences.

Spending in the Police and Justice Departments has increased in real terms 89.6 per cent since 1984-85 to represent 1.22 per cent of Gross Domestic Product.

During this period, in spite of increased expenditure, the provision of 900 more police nationwide; proposals for longer sentences for violent offenders; consultancy reports on possible re-structuring of police and justice; and the setting up of taskforces and commissions to make recommendations to government on crime prevention, the crime rate has continued to rise unchecked.

None of the initiatives taken so far has addressed machinery of government issues as a potential solution to the problems outlined above. The only movement in this area to date has been the merger on 1 July 1992 of the Traffic Safety Service of the Ministry of Transport with the Police Department. This reluctance to embark on structural reform in the criminal justice system is in direct contrast to the experience of other State sector agencies under the fourth Labor Government (1984-1990). The present Government in its restructuring of health, and social welfare, has maintained the momentum of reform.

It may be that the risk of disruption and temporary loss of efficiency and effectiveness is considered too great in the Police and Department of Justice. Constitutional issues may also have dampened the zeal of reforming governments anxious to adopt a more integrated and managerial approach, but faced also with preserving the conventions of a Westminister system of government in respect of separation of the functions of the legislature, the judiciary and the executive.

An Interdependent System

Any police and operations decisions made in isolation by the Police Department which lead to an increase in arrests will have an immediate effect on the workloads of the courts, the judiciary, and the Department of Social Welfare. The types and length of sentences imposed in the courts have downstream effects that will be felt by prisons and community corrections. If the judiciary alters its sentencing practices, or new legislation is introduced, again the greatest effects are felt at the "back end" of the system. Downstream, though, the activities of the corrections group of prisons, community corrections and psychological services have an impact on crime prevention and reduction which in turn affects the police.

For these reasons, criminal justice systems are often described as interdependent systems, the volumes and caseloads of the succeeding agendas being determined by the policies and practices of the preceding agencies.

The Case for Coordination

If one characterises the criminal justice system as "interdependent", then it is critical that at an administrative and policy implementation level agencies have compatible outputs seen to contribute to known overall objectives and that those objectives are readily understood and communicated by the agencies involved.

Boston (1992, p. 90) makes a useful distinction between problems of policy coordination and administrative coordination. He defines policy coordination as:

> dependent on the satisfactory functioning, of at least three kinds of relationships: horizontal relationships between ministers; vertical relationships between ministers and their most senior policy advisers; and horizontal relationships between senior officials in different departments.

It is at the policy coordination level that government outcomes should be developed, preferably by reference to the collective interest of government.

It is at the administrative level that problems are most apparent within the criminal justice system in the process of translation within each agency of outcomes into outputs. Recent state sector reform has not assisted coordination in this area, with the introduction of individual performance agreements (output statements) between ministers and chief executives. These agreements do not require the collective approval of Cabinet, and encourage a departmental approach to portfolio administration serving the interests of the particular portfolio minister.

An Operationalised Function

The importance of an understanding of the function of a criminal justice system by the general public and the various elements of the system is documented in some overseas writings. Kellogg (1976, p 50) alleges that there is "little agreement (in USA) as to the "objectives of criminal justice", but that it is desirable to establish some". Grainger (1978, p. 234) and Steenhuis (1988, p. 243) believe that the elements of the criminal justice system should share a common philosophy and common objectives. This is a view reinforced by the Povost Commission of Quebec which states that:

> A detailed study of our system of justice has convinced this commission of the need to formulate a general policy which, woven into the entire system, would guide the various services with a uniform philosophy (Boydell & Connidis 1974, p. 32).

The corollary to an agreed function for an integrated criminal justice system would need to be its translation by the various agencies of the system into an agreed set of operating objectives, as suggested by Kellogg (1976, p. 50), to achieve continuity and consistency that both the public and the agencies concerned could rely on. Such a proposal is supported by Sallmann in commenting on a perceived lack of coordination in the Australian criminal justice system:

> The lack of any central philosophical threads which can be operationalised is a factor inherently conducive to inefficiency . . . and likely to lead to perhaps a punitive and repressive approach by one agency and a quite liberal approach by another (Sallmann 1978, p. 196).

A proposed function of "contribution to crime prevention" for a criminal justice system in New Zealand will be the basis for examining integration of the agencies involved to meet that objective. Other considerations will be current theories that have underpinned governmental organisation in New Zealand in the past, the reform process of the core public sector from 1984-1992, and the case for policy and administrative coordination made by Boston (1992, p. 90).

It will be the argument of this paper that there is a prima facie case for integrating the separate elements. Such a proposal is advanced on the grounds that:

- the separate elements of the existing criminal justice system are in fact an interdependent system (Blumstein & Larson 1969; Boydell & Connidis 1974; Kellogg 1976; Sallmann 1978; Steenhuis 1988; and Woolf & Tumin 1990);

- the present initiatives of the Government for more effective law enforcement associated with measures of fiscal restraint highlight the need for increased integration; and

- integrated criminal justice systems are in existence in overseas jurisdictions with varying levels of achievement.

Theories of Government Organisation

Three theoretical approaches to the organisation of the machinery of government are considered. The first—Gulick's principle of *similarity*—has provided a framework within which these issues have long been discussed within the public administration literature (Hammond 1990). The second theoretical approach is that which has traditionally applied in New Zealand: the *sectoral* approach whereby all activities relating to a broad area of government activity (for example, health, education, agriculture) are the responsibility of one agency. And, thirdly, the *functional* approach favoured in recent reforms of the New Zealand state sector.

Principle of similarity

The New Zealand public sector has until recently been broadly organised by reference to similarity of "objective"—promoting the Government's policies in health, education, justice. That is to say that government functions affecting a recognisable area of societal activity have been grouped together. *Internally* departments have been organised on a variety of patterns: geographical, functional, occupational classification and so on.

The three departments of the criminal justice system in their present structure could all be advanced as showing some aspects of organising by principles of similarity. All have regional delivery determined by place.

The sectoral model

The sectoral model vertically integrates within one organisation the advisory, regulatory and delivery functions.

Advantages of the sectoral model are thought to be better interaction and feedback between the policy advice and policy implementation sections which leads to more informed policy advice, and advice that is capable of being implemented. There is opportunity for a more rapid detection of and rectification of errors, or problems of implementation. Retention and build up of institutional wisdom within the organisations especially in areas of technology, or the specialised functions of an agency is also more likely to eventuate. Transaction costs in the provision of advice with all resources in one agency, are thought to be lower.

The functional model

In contrast to the sectoral model the functional model, sometimes called "the Swedish model" because of the constitutional division of functions in Sweden is characterised by a separation in provision of the policy advice, regulation and implementation functions of agencies. Advantages over the sectoral model are thought to be that the risk of provider capture of advice to government is reduced. The theory is that "operating arms" are simply that: they do not give policy advice. At the same time encouragement may be given to the establishment of competing sources of policy advice. Departments have more specific and focussed objectives, which enhance accountability and performance. All outputs are clearly specified with costs and processes made transparent (Treasury 1987, p. 77).

Disadvantages are thought to be the loss of informed input into policy advice from the operational agency resulting in advice that may not be capable of implementation, or has to be continually modified to rectify errors in planning.

Machinery of government issues in New Zealand

The structural organisation within the three departments of the criminal justice system continues to evolve. All three departments show strong elements of the historical sectoral model of organisation. Some aspects of internal organisation reflect elements of a model based partially on similarity of functions. The only acknowledgment of the functional model is the internal split in each department of policy units.

Restructuring across core government agencies during the period 1984-1992 has continued to follow the principles of the functional model influenced also by agency and public choice theory. There has been a strong emphasis on decoupling the tasks of policy advice and implementation. This would present a strong precedent for the agencies of the criminal justice system to be reorganised in the same way, given that evidence already exists in each agency of moves in that direction, supported by recommendation from recent government reports namely, Strategos (1989(a) and (b)).

Three Options for Integrated Criminal Justice Systems

The following three options are predicated on the basis that:

- the criminal justice system is an interdependent system;
- the overall objectives and philosophy of a criminal justice system should be known and able to be operationalised, by all of the agencies involved;
- recent state sector reform in New Zealand and government reports for restructuring in the Justice and Police Departments have favoured the functional model of government organisation.

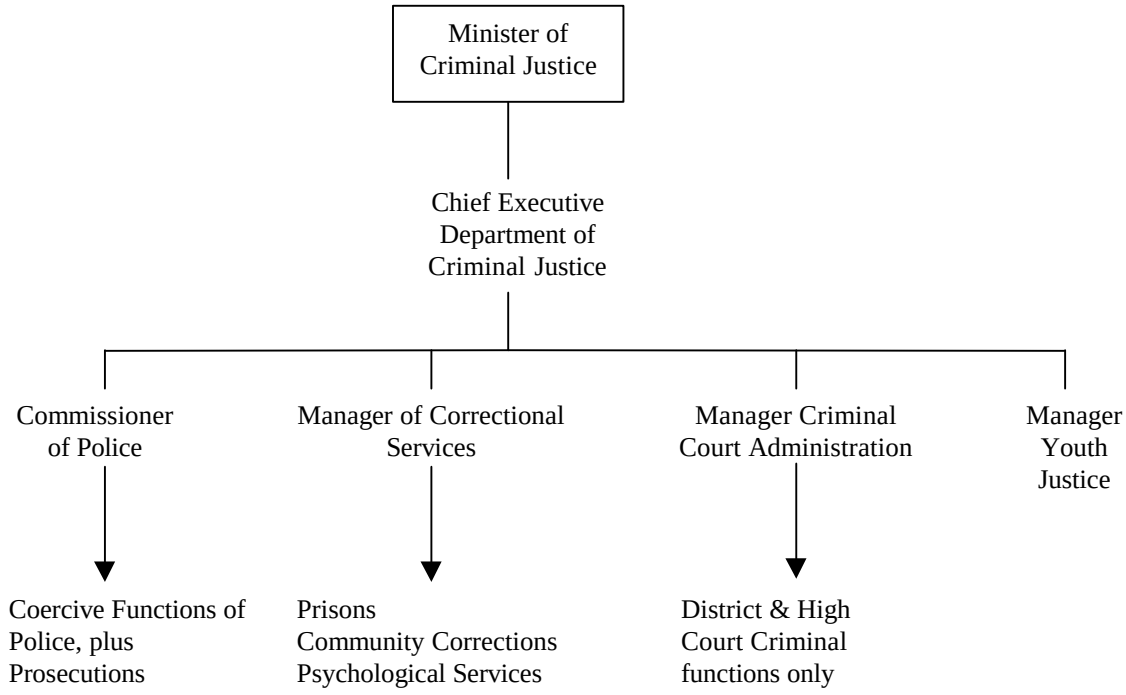
Each option will be assessed against the following criteria:

- ability to achieve the functions of a criminal justice system;
- ability to preserve the independence of the Police and the judiciary;
- ability to guard against potential abuse of the coercive powers of the state;
- ability to be cost effective.

Option one

Figure 1

An integrated Department of Criminal Justice model - Policy combined with operations



Arguments put forward for the development in New Zealand of an integrated Department of Criminal Justice would centre on the projected gains in effectiveness, efficiency and economy to be realised from having a department devoted to achieving the objectives of a criminal justice system, with all non-criminal justice functions removed. Opportunity would exist for the development of clear criminal justice objectives and philosophy, translated into well defined outputs. Proposals to have a single minister, chief executive, information system and policy and planning capability, are innovations that should lead to greater coherence and coordination, coupled with improved efficiency and accountability. There should also be a lessening of territorial interests and difference in formulating, interpreting and implementing criminal justice policy. There appear to be no "high constitutional" restraints that would prevent the formalisation of the department. The proposal would assist the setting up of a separate Maori response to criminal justice, with objectives incorporated in the common overall objectives for the department.

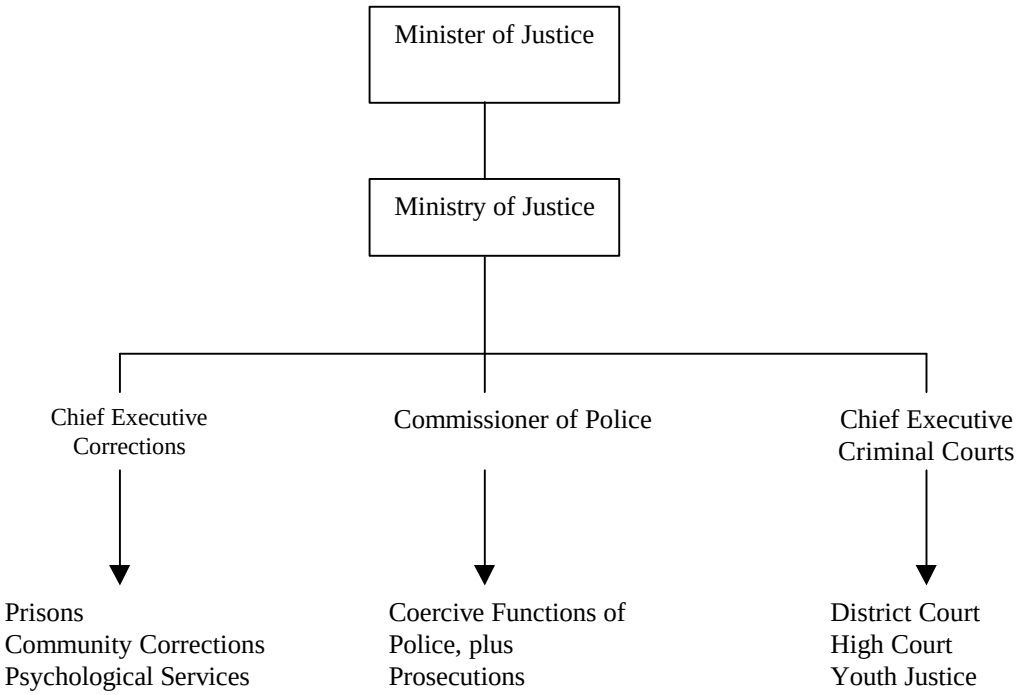
Arguments against the proposal are the undesirability of having the coercive accumulated power of the state residing in one agency, and a potential public loss of confidence in the justice system by having prosecutions, police, courts and corrections in one agency. Other considerations which mitigate against the proposal are the opportunity afforded for "provider capture" of policy advice; and the fact that the proposed departmental model is in direct contradiction to the functional model of government restructuring already implemented widely across core public agencies. The traditional functions, structure and culture of the police force would be altered by the proposal, with possible consequences in terms of industrial action supported by the public. There would be high set up costs, especially in the separation out of the criminal and the civil courts.

Option two: Variant One

A police ministry is proposed, independent of the three operating agencies. The functions of the ministry are to provide criminal justice policy advice to the Minister of Criminal Justice, and to negotiate and monitor service contracts with the stand alone operating agencies, namely, police, corrections and courts which could be established as crown owned entities under the Public Finance Act 1989. The ministry and the three operating agencies would each be headed by a Chief Executive or Commissioner.

Figure 2

The Policy Ministry Model: Variant One

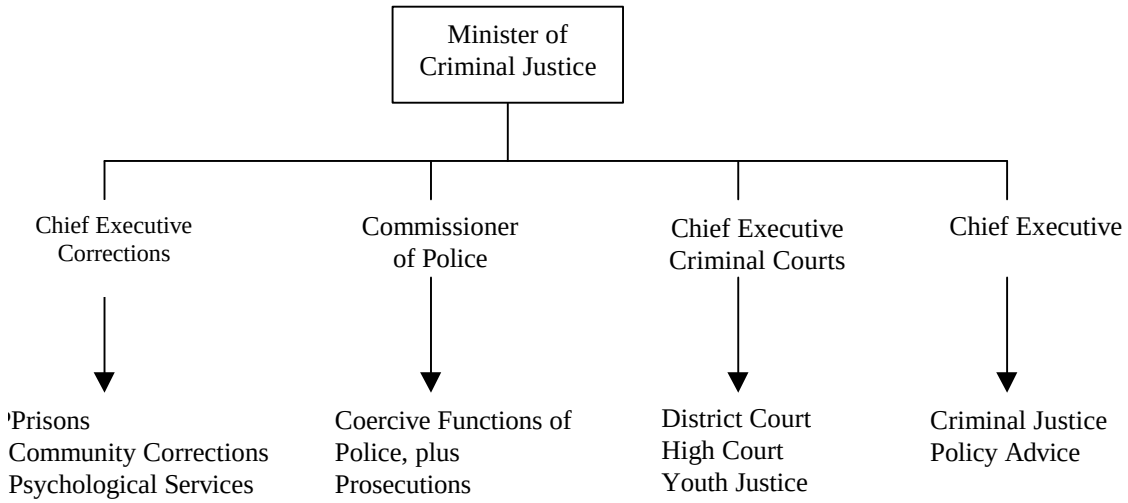


Option two: Variant Two

In this Variant, the police ministry is structured as an independent department alongside the operating agencies also reporting to the Minister. Its role is to give quality policy advice on criminal justice matters to the Minister of Criminal justice. It could also give advice to the Minister on the content of and monitoring of contracts, but all contracts, including that for the policy ministry will be negotiated with the Minister. Similar structures have already been set up in New Zealand in health and defence.

Figure 3

The Policy Ministry Model: Variant Two



In both Variants One and Two youth justice functions are integrated as part of the criminal courts division.

Variant One would effectively remove the operating arms from a direct contractual relationship with the Minister, and give the ministry dual functions to deliver quality policy advice and negotiate contracts. It is an option unlikely to be favoured by the police. Variant Two would set up contracts directly between the Minister and the operating arms, including the policy arm, which may give advice to the Minister on contracts and act in a monitoring role, but would not negotiate any contracts directly. Dilution of policy aims in implementation is considered less likely under Variant Two, and the benefits of a strong relationship between the Minister and agencies should be that criminal justice overall objectives are achieved through the ability of the Minister to directly oversee and insist on compliance.

There appear to be no "high constitutional" reasons to prevent a merger of agencies nor any likelihood that the individual independence of the police or judges will be compromised as a result. For reasons of public perception and confidence in the criminal justice system, it has been concluded that an

integrated department may not be desirable because it combines in one single department the coercive powers of the state. The ordinary citizen would not necessarily be reassured therefore that impartiality would follow in the exercise of individual agency functions all located within one department. On the other hand overseas jurisdictions with Westminister systems of government have successfully combined the agencies into one department. While potential long-term gains in economy, effectiveness and efficiency have been identified from the potential mergers, there are set up costs and fiscal and social losses that would be incurred in the short-term.

Options One and Two integrate the police correctional agencies, criminal courts, the judiciary and youth justice. Advantages of integration have been identified as: enabling an overall philosophy, a strategic plan, an information system, and policy implementation to develop under the oversight of a single Minister of Criminal Justice, to achieve the known objectives for a criminal justice system. The model would overcome the present fragmentation and lack of coordination between the interdependent agencies of the criminal justice system each pursuing their own objectives, under three separate ministers.

Options One and Two both depend on extensive restructuring of present agencies to create the new department together with the contracting out, transfer or cost recovery of residual departmental functions that are not part of criminal justice. Overseas experience of restructuring government departments has produced scepticism from some commentators about the gains in economy, efficiency and effectiveness that were expected as a result of reorganising. Hood, referring to the Australian public sector restructuring, recommends that:

> the Australian experiment be carefully monitored to find out to what degree and in what manner the promised bureaucratic economies of scale are in fact obtained (Hood 1989, p. 58).

and Salamon, in reference to bureaucratic reform in the United States comments that:

> Not only are the aggregate administrative savings potentially available from reorganisation more limited than commonly believed, but there remain serious obstacles to gauging the contributions that reorganisation or any other change can make to governments efficiency (Salamon 1981, p. 482)

From a New Zealand perspective Boston (et al. 1991) has come to the same conclusion with regard to the restructuring of government departments from 1984 to 1990. He cites consultancy costs, costs of reorganising, redundancy costs, loss of morale and experienced staff, temporary loss of efficiency, and retraining costs as some of the losses incurred through restructuring, without evidence of quantifiable gains being achieved. His recommendation is to look first for internal efficiencies to achieve the same objectives.

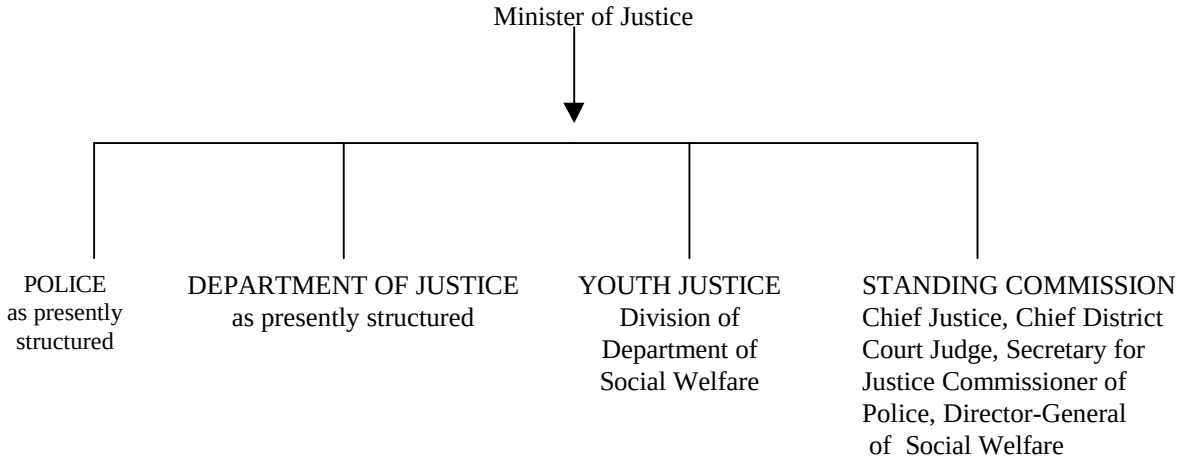
It must be noted too that with the exception of Nanus (1974), none of the other criminal justice commentators quoted in this paper who subscribe to the

notion of a fragmented interdependent system, in need of reform, recommend widespread structural reorganisation as a solution.

Option three

Figure 4

The Status Quo, but with a Minister of Justice and a Standing Commission



Option Three was compared to several overseas initiatives in the area of criminal justice coordination, namely: the United States, Canada, Australia and the United Kingdom. Consideration was also given to the recent New Zealand report of the Crime Prevention Action Group (1992). Some common themes emerged, of direct applicability to all of the options proposed, namely:

- that the success of any coordination initiative will be enhanced by direct access to a Minister of Justice;
- that the judiciary is an important component of the criminal justice system, and needs to be part of any coordination initiatives;
- that because of the separation of powers under a Westminister system of government, the judiciary cannot be part of any committee involving the police and prosecution which has executive powers;
- that the relationship under the State Sector Act between a Minister and Chief Executive or Commissioner cannot be interfered with by way of a Standing Commission;

- that there is an urgent need for an integrated information system about the workings of the criminal justice system;
- that an overall criminal justice philosophy should be developed and published binding all agencies;
- that an integrated strategic planning facility is needed to develop both "official" and "operative" goals for the criminal justice system;
- that coordinated decision-making about the use and allocation of scarce criminal justice resources to meet agreed objectives is indicated;
- that criminal justice research needs should be cooperatively prioritised;
- that coordination at both national and local levels is indicated;
- that the agencies of the formal criminal justice system are not the only agencies who should be involved in preventing crime.

It was considered that any proposals for integration between agencies which excluded the judiciary would omit a key component from the equation.

Conclusion

None of the options for integrating the agencies of the criminal justice system as described above meets all the criteria to a greater degree than any other two options.

The case for integrating the agencies in some way however, remains strong, backed up by overseas experience and initiatives, and by the recent New Zealand report of the Crime Prevention Action Group (1992).

The creation of a "super ministry" of criminal justice is the least appealing option because of the potential disruption and costs of such a large restructuring, without assurance based on overseas experience of government restructuring that the overall objectives for a criminal justice system would be met in a better way. There remain serious concerns about the coercive powers of the state residing within one large ministry, and the potential that amalgamation has for a serious loss of public confidence in a greatly altered police force and court system.

There are elements, however, from all three proposed options which could combine into a compatible rearrangement of the status quo, to meet the stated criteria, namely:

- a single Minister of Justice with portfolio responsibility for police, justice and youth justice;
- the creation of a Ministry of Justice, reporting to the Minister of Justice, with responsibility for policy advice on criminal justice

matters and for setting and monitoring contracts with police, courts, corrections, youth justice and any private providers of present criminal justice services including potential Maori and Pacific Island providers;

- the setting up of a Crime Prevention Unit also reporting to the Minister of Justice with an information and research capability, and a role to advise the Minister across the total area of crime prevention;

- the setting up a of a Standing Commission on Criminal Justice with advisory functions only, comprising the Chief Justice, Chief District Court Judge, Secretary for Justice, Commissioner of Police and the Director-General of Social Welfare. Research and information services to the Commission could be provided by the Minister or the Crime Prevention Unit.

Such a proposal would go some way towards addressing the problems of policy and administrative coordination referred to earlier in the paper, as a set of horizontal and vertical relationships between Minister and agencies would be put in place.

The proposal as set out would provide the Minister with wide-ranging policy advice on criminal justice issues, accurate information regarding trends and the effects of implementation within the wider context of crime prevention, a research capability and the facility to develop and monitor enforceable contracts with the agencies involved to meet overall objectives. The inclusion of the Standing Commission would ensure that operational issues also informed policy advice without capturing it, and that the mainstream agencies including the judiciary were involved and committed to work together to achieve known objectives by operationalising them within their respective agencies and roles.

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ESTABLISHING A MINISTRY OF JUSTICE IN WESTERN AUSTRALIA

Denzil McCotter

> We trained hard, but it seemed that every time we were beginning to form teams we were reorganised. I was to learn later in life that we tend to meet every situation by reorganising, and a wonderful method it can be for creating the illusion of progress while producing confusion, inefficiency and demoralisation.
>
> Gaius Petronious Arbiter, Pro-consul of Bithynia in the time of Nero.

HISTORICALLY, FOUR AGENCIES HAVE BEEN RESPONSIBLE FOR THE JUSTICE system in Western Australia. The Crown Law Department in servicing the Judiciary and the Courts; the Department for Community Development in managing juvenile offenders through its Youth Justice Bureau and Corrective Services in managing adult offenders.

Geographically the largest State, Western Australia has been characterised by:

- an increasing crime rate;
- increased community concern about public safety;
- high rates of juvenile crime;
- inequities in Aboriginal justice;
- insufficient attention to victims of crime;
- an inconsistent approach to sentencing;
- inequities and delays in access to justice;
- escalating costs; and
- a disillusioned community.

In addition, the high level of imprisonment has in this State been a concern. In April 1993 it was 115 per 100,000 which is well above the national average. Thirty-six per cent of the incarcerated population are Aboriginal people. Sixty per cent of receivals are imprisoned for minor offending for periods of 3 months or less, and 75 per cent for six months or less.

With regard to juveniles a spate of high speed chases resulting in the deaths of innocent victims led to vociferous public protest and the very hasty passage of Western Australian's *Crime (Serious and Repeat Offenders) Sentencing Act 1992*. This legislation was condemned nationally and internationally and polarised the community.

Even before this Western Australian's management of juvenile offending was being questioned. In this context in 1989, the Corrective Services Department made the first move towards integration, in proposing the amalgamation of the juvenile and adult systems. Predictably this was opposed by the Department for Community Development and the welfare lobby, although there was a surprising degree of support from within the Aboriginal community. This debate continued over two years, but amalgamation did not occur.

In the meantime glaring inconsistencies in the Western Australian justice system were apparent. For example, the Work and Development Order, introduced in 1989, to alleviate imprisonment by reducing the number of fine defaulters clogging up the system had no such effect. Instead there was a massive reduction in fine revenue estimated in 1992 to be in excess of $8 million and the growth of a Work and Development Order industry within Corrective Services.

With these matters in mind study tours were organised and the integrated justice systems in operation in The Netherlands, Finland, Austria and Germany were examined. The *Report Of The Official Visit To Europe To Examine Criminal Justice Policies* was tabled in the Western Australian Parliament in November 1991 by the Honourable Joe Berinson, Attorney-General and Minister for Corrective Services.

The coordination and effectiveness of criminal justice policy was seen in Europe to be linked to the integration in a single Ministry of the court, prosecution, adult and juvenile corrective services functions. In spite of this assessment the setting up of a Justice Department was not recommended. Instead a Criminal Justice Coordinating Council was proposed, but not implemented.

Nothing further happened on the integrated Justice System concept until the publication of the Western Australian Coalition Policies on *Law and Justice* and *Law and Order* in January 1993. The creation of a single Justice Ministry, incorporating the Crown Law Department, the Department of Corrective Services and the Juvenile Justice Bureau was central to these policies and aimed at "ensuring a coordinated focus on the people to be served".

The Ministry of Justice Taskforce

Once the Coalition was elected a taskforce was set up and given five weeks to examine and report on the establishment of an amalgamated organisation

that was capable of developing and implementing coordinated and integrated criminal justice and associated policies and services. Efficiency and effectiveness were to be emphasised. Three potentially contentious questions had to be addressed.

- Was a Ministry of Justice necessary to achieve a coordinated justice focus, or could it be achieved in some other way?
- Would the exclusion of the police render the Ministry ineffective?
- Would the cultures of the three agencies be so different that their marriage would be an unhappy one?

Key features of the policy documents specifically taken into account were:

- the encouragement of a close working relationship between the Ministry of Justice, the judiciary, the police and the community through an executive committee under ministerial control;
- the provision of information to victims of crime;
- the establishment of a sentencing information data base;
- restoring a strong focus on juvenile justice;
- the establishment of a Juvenile Justice Advisory Board;
- a commitment to reducing the proportionally high representation of Aboriginal people in prison;
- the establishment of community justice centres;
- access to the law;
- support for the Western Australian Crime Research Centre;
- reform of sentencing legislation.

These key features were used in producing the draft mission statement for the Ministry.

Mission

To provide a fair and equitable system of justice that protects the rights of individuals and that is responsive to the community's needs for a safe and ordered society.

The Ministry will

- develop public confidence in the justice system;

- acknowledge the specific needs of Aboriginal people, youth and victims of crime;
- ensure access to an efficient and cost-effective system for resolving disputes;
- make available, with community participation, a range of programs to reduce crime;
- make available timely and objective advice and information on justice and legal matters.

Justice System

The justice system refers to that range of informal and formal procedures officially used to resolve social conflicts, including criminal behaviour, according to principles of reason and stated terms of law, rules and agreements.

Core principles or values inherent in the justice system enable programs to be structured to achieve the objectives of the Ministry and to guide decision making at administrative and operational levels. These core values are:

- an adherence to the rule of law;
- equity and access in service delivery;
- minimum intervention necessary in the lives of citizens;
- an emphasis on the rights and needs of victims of crime;
- a commitment to consultation with the community and with related agencies.

This mission statement will be referred to the new chief executive officer of the Ministry for his/her consideration.

The three agencies under consideration are characterised by very different cultures. The Crown Law Department exemplified a comfortable relationship between the clients, the judiciary and the senior law officers of the Crown such as the Crown solicitor and the Parliamentary Counsel and their Crown law support systems. The clients were very satisfied with the service received and the service providers confident that they were doing a good job. Both were fearful that the creation of the Ministry would undermine this happy marriage. In addition, the senior law officers of the State were concerned that their "special" relationship with the Attorney-General would be compromised by the creation of the Ministry.

On the other hand the Youth Justice Bureau personnel were worried about a Corrective Services takeover and the wholesale and inappropriate application of adult offender management techniques to juveniles. Only Corrective Services personnel were enthusiastic about the proposed changes,

seeing amalgamation as the key to reducing the State's high level of imprisonment and an end to inconsistent policy making.

A short but intensive briefing and consultation process was established. Senior personnel in the affected agencies and other relevant departments or organisations, the chief justice, the chief judges and the chief magistrate, and a range of community groups were included. All complained of the short time frame available.

The judiciary and the senior law officers saw no benefits whatsoever in the creation of the Ministry and were concerned that in some way it would compromise the Attorney-General's ability to obtain independent advice from her law officers.

Whilst expressing concerns about access and resources, in general the community groups welcomed the creation of the Ministry and saw it as necessary if policy and service coordination and consistency were to occur.

The Aboriginal agencies and groups that were consulted favoured the creation of the Ministry and were hopeful that it would facilitate the establishment of coordinated Aboriginal justice polices and programs.

In addition Mr Ian Graham, Director of Juvenile Justice in New South Wales and Mr Mel Smith, Acting Secretary for the Department of Justice in New Zealand were brought to Western Australia and consulted by the Taskforce regarding their experiences. The New South Wales problems regarding juveniles falling between the Juvenile Justice and the Family and Community Services Departments were noted, as was the absence of Juvenile Justice from the New Zealand Department of Justice.

The result of these deliberations and ongoing discussion with the Attorney-General is presented in Figure 1 which shows the structure of the Ministry and associated councils and offices.

Features of the organisation will be:

- The Director General, as Chief Executive Officer, is the accountable officer for the purposes of the *Financial Administration and Audit Act* and the Chief Executive Officer for the purposes of the *Public Service Act*.

- The Corporate Executive will comprise the Director General, the five Executive Directors and the Crown Solicitor and the Parliamentary Counsel.

- The Crown Solicitor and the Parliamentary Counsel will be administratively responsible to the Director General but will have a separate and independent reporting relationship to the Attorney-General on professional matters.

- There will be a strong emphasis on justice policy coordination across the Ministry through a Strategic and Specialist Services Division. However, each Division will have a policy development capability.

- There will be a predominantly centralised Corporate Services Division with some functions which might normally be regarded as corporate services being decentralised and remaining with the Divisions.

- Primary responsibility for coordinating the development of policies relating to Aboriginal justice issues and victims of crime within the Ministry will take place in the Strategic and Specialist Services Division.

- The Corrective Services Division will comprise a Prisons Directorate and a Community Corrections Directorate. Operations within these Directorates will not change (except insofar as they are better coordinated through a common approach to policy development).

- The Juvenile Justice Division will replace the Youth Justice Bureau of the Department for Community Development. The Division will manage a full range of programs for juvenile offenders. Officers involved in supervising juvenile offenders in the community may be located in Community Corrections offices of the Corrective Services Division but will be responsible to senior officers in the Juvenile Justice Division.

- The Courts Management and Development Division will replace the Court Services Program of the Crown Law Department. Tribunal services will be transferred from the Ministry of Consumer Affairs and will incorporate the Equal Opportunity Tribunal. The Tribunals will continue to operate from their existing locations, which will be reviewed as part of the review of court accommodation.

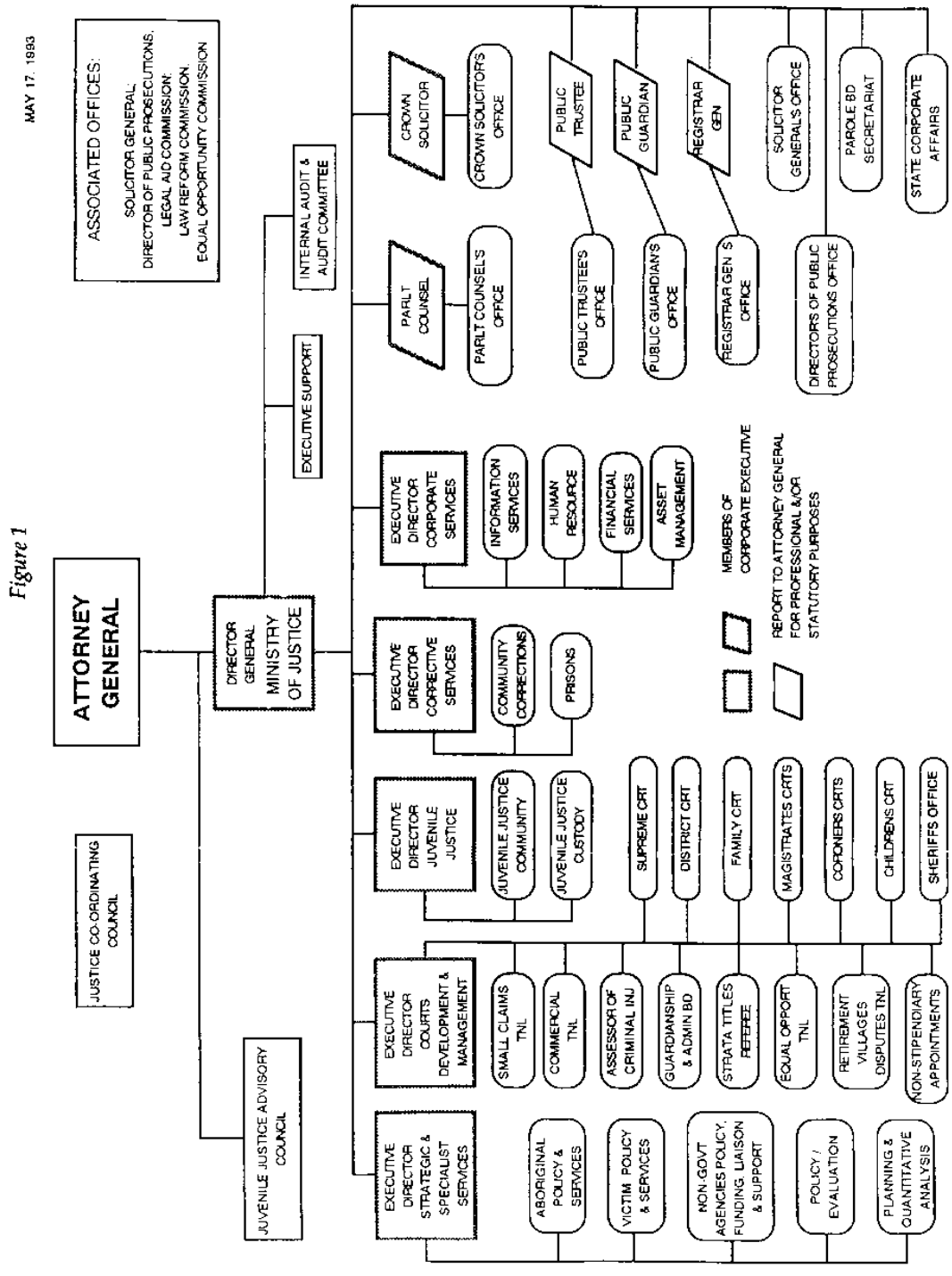
- The Strategic and Specialist Services Division will oversee matters of strategic significance to the Ministry, coordinate and develop Aboriginal, Victim, and Community Justice policies and services.

- Offices which in the past have received corporate services from within the Crown Law Department will have a similar relationship in the new Ministry.

These offices are:

- Director of Public Prosecutions;
- Public Trustee;
- Registrar General;
- Office of State Corporate Affairs;
- Parliamentary Counsel's Office;

Figure 1


MAY 17, 1993
ATTORNEY GENERAL
ASSOCIATED OFFICES:
SOLICITOR GENERAL
DIRECTOR OF PUBLIC PROSECUTIONS
LEGAL AID COMMISSION
LAW REFORM COMMISSION
EQUAL OPPORTUNITY COMMISSION
JUSTICE CO-ORDINATING COUNCIL
JUVENILE JUSTICE ADVISORY COUNCIL
DIRECTOR GENERAL MINISTRY OF JUSTICE
EXECUTIVE SUPPORT
INTERNAL AUDIT & AUDIT COMMITTEE
PARLT COUNSEL
PARLT COUNSEL'S OFFICE
CROWN SOLICITOR
CROWN SOLICITORS OFFICE
PUBLIC TRUSTEE
PUBLIC TRUSTEE'S OFFICE
PUBLIC GUARDIAN
PUBLIC GUARDIAN'S OFFICE
REGISTRAR GEN
REGISTRAR GEN S OFFICE
SOLICITOR GENERALS OFFICE
DIRECTORS OF PUBLIC PROSECUTIONS OFFICE
PAROLE BD SECRETARIAT
STATE CORPORATE AFFAIRS
EXECUTIVE DIRECTOR CORPORATE SERVICES
INFORMATION SERVICES
HUMAN RESOURCE
FINANCIAL SERVICES
ASSET MANAGEMENT
EXECUTIVE DIRECTOR CORRECTIVE SERVICES
COMMUNITY CORRECTIONS
PRISONS
EXECUTIVE DIRECTOR JUVENILE JUSTICE
JUVENILE JUSTICE COMMUNITY
JUVENILE JUSTICE CUSTODY
EXECUTIVE DIRECTOR COURTS DEVELOPMENT & MANAGEMENT
SUPREME CRT
DISTRICT CRT
FAMILY CRT
MAGISTRATES CRTS
CORONERS CRTS
CHILDRENS CRT
SHERIFFS OFFICE
SMALL CLAIMS TNL
COMMERCIAL TNL
ASSESSOR OF CRIMINAL INJ
GUARDIANSHIP & ADMIN BD
STRATA TITLES REFEREE
EQUAL OPPORT TNL
RETIREMENT VILLAGES DISPUTES TNL
NON-STIPENDIARY APPOINTMENTS
EXECUTIVE DIRECTOR STRATEGIC & SPECIALIST SERVICES
ABORIGINAL POLICY & SERVICES
VICTIM POLICY & SERVICES
NON-GOVT AGENCIES POLICY, FUNDING, LIAISON & SUPPORT
POLICY / EVALUATION
PLANNING & QUANTITATIVE ANALYSIS
MEMBERS OF CORPORATE EXECUTIVE
REPORT TO ATTORNEY GENERAL FOR PROFESSIONAL &/OR STATUTORY PURPOSES

- Crown Solicitor's Office;
- Solicitor General's Office;
- Public Guardian;
- The Ministry will provide a secretariat service to the Parole Board and corporate support to the Law Reform Commission;
- The distinctly different roles of the Public Guardian and the Guardianship and Administration Board are recognised in the structure. The Board is to be serviced by the Courts Management and Development Division. The Public Guardian retains a direct reporting relationship to the Attorney General for statutory purposes while the office of the Public Guardian is supported by the Corporate Services Division.

In addition, the Justice Coordinating Council will be established. This is a Council consisting of the ministers and chief executive officers of the Ministry of Justice, the Police Department, the Aboriginal Affairs Planning Authority, the Ministry of Education, and the Department for Community Development. The Director of Public Prosecutions and the Director of the Legal Aid Commission will be included.

A Juvenile Justice Advisory Council will also be established, replacing the existing State Government Advisory Committee on Young Offenders.

The Police

Although the police are not included in the Western Australian Ministry they are viewed as the "gatekeepers" to the criminal justice system. The Police Commissioner has agreed in principle to formal regular meetings with the Ministry Chief Executive Officer and to a similar arrangement between the Executive Director of Strategic and Specialist Services and the Assistant Commissioner of Policy, Planning and Evaluation. In addition, a police presence in the Victim Support Services Branch will continue and the police will be represented on the Justice Coordinating Council.

The Future

The Ministry will be established on 1 July 1993. The Ministry will be unique in the Australia/New Zealand region in that it includes juvenile justice, the co-location of juvenile and adult community services in most instances, and the presence of the Crown Solicitor and the Parliamentary Counsel on the Corporate Executive. Incidentally the parallelograms that made the distinction between those with a "special" relationship with the Attorney-General and those not in this category (*see* Figure 1), became a status symbol and anyone who was someone was in one!

Trying to accommodate the policy requirements of government whilst addressing the concerns of those affected directly and indirectly has not been easy.

The priorities are:

- the establishment of the Ministry's financial system by 1 July 1993;
- the smooth transfer of the Youth Justice Bureau from the Department of Community Development to the Ministry;
- the establishment of mutually agreed protocols of operation between Department of Community Development and the Ministry of Justice;
- the establishment of the Strategic and Specialist Services Division's role in developing and implementing coordinated criminal justice and associated policies;
- comprehensive consultation with affected agencies and organisations;
- the establishment of the proposed working relationships between the police, community groups, the Aboriginal community and the Ministry of Justice;
- the speedy establishment of the proposed corporate services changes; and
- the development of a sense of identity within the Ministry.

Savings both immediate and ongoing will result, but more importantly for the first time ever in Western Australia the coordinated development and implementation of criminal justice and associated policies and services will be possible—the marriage of the three agencies neither unhappy, or a mere convenience, but one made in heaven[1].

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[1]. The Ministry of Justice was established on 1 July 1993, and the Acts Amendment (Ministry of Justice) Act 1993 passed in December 1993.

COMMONWEALTH GRANTS TO STATES AND TERRITORIES ¾ THE IMPACT OF CRIMINAL JUSTICE SERVICES

Robert J. Searle

THE MAJOR PART OF THIS PAPER IS A DISCUSSION OF THE RECENT WORK of the Commonwealth Grants Commission in deciding on the differences in costs that States and Territories (hereafter referred to as States unless the context indicates otherwise) would incur if they all provided the same level of police, corrective services and administration of justice services at the same level of operating efficiency. That discussion is prefaced by some remarks to put the Commission's interest in criminal justice services into perspective and is followed by a brief description of the information the Commission holds and how States and other organisations might access it to assist their research.

Commonwealth Assistance to States

In the Australian federation, there is what is known as a large *vertical fiscal imbalance*. That is, the different levels of government do not have revenue raising capacities which match their expenditure responsibilities. The Commonwealth raises much more in revenue than it spends on its own account, while the States raise much less. In 1991-92, the States in total depended on transfers from the Commonwealth for 42 per cent of their recurrent revenue (Commonwealth Budget Paper No. 4, p. 14).

Imbalances in fiscal capacity between levels of government are a common feature of federations, but they are exceptionally large in Australia. As a result, the financial transfers within our federation are more important in State budgets than elsewhere, and for that reason, probably come under greater scrutiny. As can be seen from Table 1, they take the form of both general revenue grants and specific purpose payments.

Table 1

Commonwealth Payments to States 1992-93

	General Revenue Grants ($m)	*Specific Purpose Payments ($m)*	*Total ($m)*
Recurrent Funding	14,189	12,776	26,965
Capital Funding	513	4,399	4,912
Total Transfers			31,877

Source: Commonwealth Financial Relations with Other Levels of Government, 1992-93, Commonwealth Budget Paper No. 4, AGPS, Canberra 1992.

This paper discusses only the recurrent funding transfers. Criminal justice activities (or law and order services as the Commission knows them) have no impact on capital transfers. Over 55 per cent of those funds are for roads and housing.

Recurrent specific purpose payments

Commonwealth Budget Paper No. 4 for 1992-93 lists 76 different programs under which the States are funded by specific purpose payments (SPPs); there are many others which the Commonwealth does not classify as SPPs. Not surprisingly, most of the programs (and most of the transfers) are for education and health which make up over 50 per cent of States' budgets. But what is a little surprising is the degree to which law and order functions are under-represented in these programs.

On average across the States, nearly 9 per cent of recurrent expenditure is on law and order, yet only about 1 per cent of recurrent SPPs from the Commonwealth are for these functions. One could speculate as to why this might be. Is it an indication that the Commonwealth is happier with the standard of services States provide in these areas than in others; is it a reaction to there being fewer pressure groups for better police, corrections and courts systems; or does it have something to do with most of the electorate being apathetic to criminal justice services? We are told that Federal funding of criminal justice activities in the USA came about largely as a result of major problems in social disorder and the deaths of Senator Robert Kennedy and Dr Martin Luther King. Maybe the Australian people have not perceived any need for Commonwealth funding because, thankfully, they have not been faced with such a serious situation. Were the Prime Minister's recent election campaign remarks about Commonwealth funding for the social education of State judges representative of a wider public perception and a real indication of a change in Commonwealth policy? Perhaps not.

By their nature, SPPs are provided to the States to achieve specific Commonwealth objectives. They therefore have conditions attached to them to ensure that those objectives are met. The SPPs identified in Commonwealth budget documents as supporting State law and order functions are those for

legal aid and some elements of the grants resulting from the Royal Commission into Aboriginal Deaths in Custody.

The Commonwealth's purpose in distributing legal aid funding is simply to contribute to the joint provision of legal aid services through State Legal Aid Commissions.

The proportion of total public funding the Commonwealth gives for legal aid services varies across States. The distribution of this funding is changing so that by 1996-97 the Commonwealth will contribute 55 per cent of funding received from governments by the Legal Aid Commissions of New South Wales, Victoria, Queensland and the ACT, and 60 per cent of the public funding received by the other States. In 1992-93 the Commonwealth is providing well over 60 per cent of funding in some States—Tasmania (70 per cent) and the Northern Territory (80 per cent).

The Commonwealth's funding reaction to the Royal Commission into Aboriginal Deaths in Custody is much more complex. Published in October 1992, the Aboriginal and Torres Strait Islanders Commission (ATSIC) response to the Royal Commission recommendations lists 29 areas of funding, ranging from pre-school programs within the Aboriginal Education Strategic Initiatives Program ($10m over four years) to an expansion of Aboriginal Legal Services so that funding is $10.08m per annum.

The method of distributing the ATSIC funds to the residents of each State—either directly to Aboriginal organisations or through State Governments—differs somewhat between the 29 programs. Most frequently, however, it is submission-based and could thus be seen as depending as much on the ability of organisations or individuals to make submissions as on the true relative needs of the Aboriginal communities they represent.

The basis of distributing these SPPs is of interest when compared later with the principle on which the Commission's work is based.

Recurrent general revenue grants

The distribution of general revenue assistance to the States (that is, the money they can spend however they wish) is where the Commonwealth Grants Commission becomes involved in Commonwealth transfers to the States. The role of the Commission is to recommend on the interstate per capita distribution of over $18,000m annually (in theory, the Hospital Funding Grants of $3,922m in 1992-93 are SPPs but, in practice, this amount is added to general revenue before the application of the Commission's recommendations).

The Commission's recommendations are discussed at the annual financial Premiers' Conference when the Commonwealth makes an offer to the States on how much it is prepared to transfer and what the distribution between the States should be. The distribution within the Commonwealth's offer is usually based on the recommendations of the Commission.

The present system is that every five years, there is a major review of the method of deciding the basis of distribution of the general revenue funds. Between these reviews, there are annual recalculations to take account of more up-to-date population and other data. The *Report on General Revenue Grant Relativities 1993* was the result of a quinquennial review and took nearly

two years to complete. Unless the system is changed at the July 1993 Premiers' Conference, the methodology decided upon in that report will be used until 1998-99.

The Commission's Assessments

In all the Commission's inquiries, the guiding principle is what is known as *fiscal equalisation*. It is mentioned in the legislation under which the Commission operates and is included in the Terms of Reference for each inquiry. The recent report (vol. I, p. 6) states the principle of fiscal equalisation as being that:

> each State should be given the capacity to provide the same standard of State-type public services as the other States, if it makes the same effort to raise revenues from its own sources and conducts its affairs with an average level of operational efficiency.

The application of this principle thus necessitates the study of differences in need and cost structure experienced by States in the provision of services, and differences between States in their revenue-raising capacities. In summary, what we have in Australia is a system of general revenue grants based in part on an examination of the specific functions of States to determine why they need to spend more or less to provide the average level of services.

Police, corrective services and the administration of justice are three of the State government services considered by the Commission. It commenced its recently completed Review with an overall reassessment of how State Government services should be defined and grouped together. During this process, there was much debate about whether the criminal justice activities should be grouped together as one function of government, but it was eventually decided that because of the way they were currently organised by State Governments (still predominantly as separate services), they should continue for the time being to be treated as three services rather than one.

In these, as in all other areas of State activity, an assessment is made of what each State would need to spend if it were to provide the standard (or average) level of service at the standard level of efficiency. The assessments are therefore based on what is actually happening in Australia; not on what the Commission or any other organisation think should be happening. The use of internal actual standards, both in determining the average per capita level of expenditure and the standard policies in service provision priorities, sets these procedures apart from the SPP methods. While SPPs are designed to influence State expenditure policies, the Commission's methods are designed specifically so that the grant distribution has very little if any impact on expenditure patterns. States cannot influence their grant share by changing their expenditure patterns.

The assessments of States' relative expenditure requirements are done by what is called the factor assessment method. Under this process, *disability factors* (that is, the influences beyond a State's control which result in it having to spend more or less than the Australian average per capita expenditure to

provide the standard level of service) are quantified for each State, compounded and applied to the standard level of per capita expenditure. The result for any particular State is what it needs to spend to provide the standard level of service if it operates at the standard level of efficiency.

The Commission's assessment

In summary, the disability factors applied in the consideration of law and order services are shown in Table 2. Each of these is explained briefly later in the paper, but the important attribute they have in common is that they cannot be influenced by the actions of the State Governments. This conforms with the Commission's objective of making the grant share received by any State independent of that State's actions.

Table 2

Summary of Disability Factors Applied

Disability	*Police*	*Corrective Serv.*	*Admin. of Justice*
Relevant Population		x	
Administrative Scale	x	x	x
Age/Sex Composition	x	x	x
Cross-Border Usage	x		x
Dispersion	x	x	x
Input Costs	x	x	x
Service Delivery Scale	x		
Commonwealth Offenders		x	x
Socioeconomic Composition	x	x	x
Transient Population	x		
Urbanisation	x	x	x
Land Rights			x
Transitional Allowances	x		

Source: Commonwealth Grants Commission, *Report on General Revenue Grant Relativities*, 1993, Volume II, Table 3-2, AGPS, Canberra, 1993.

One way of looking at the importance of these assessments for State general revenue grant funding is shown in Table 3 which gives the standard (or average) per capita expenditure on each of the three functions in 1991-92, and the Commission's assessment of what proportion of that expenditure each State would need to spend if it were to provide the average level of service at the average level of efficiency. It is this type of data that is frequently used by State Treasuries and other Departments when the annual debate about funding for the next year is taking place. This is not the purpose of the assessments but it does give States some appreciation of how they compare with others in terms of both levels of service and cost of provision.

Table 3

Relative Costs of Providing the Average Level of Services 1991-92

	Police	*Corrective Serv.*	*Admin. of Justice*
Standard per capita expenditure	*$134.67*	*$39.43*	*$63.63*
	Proportion needed to spend to provide average level of service at the average level of efficiency		
	%	*%*	*%*
New South Wales	94.14	92.11	95.95
Victoria	86.85	76.59	94.31
Queensland	105.73	109.40	101.49
Western Australia	115.02	126.00	107.40
South Australia	89.01	89.54	94.94
Tasmania	91.50	95.10	96.24
Northern Territory	498.90	677.36	283.25
Australian Capital Territory	114.33	100.80	137.16
Australia	100.00	100.00	100.00

Source: op. cit. Tables 111-35 to 111-37.

A more appropriate indicator of the importance of criminal justice activities for the purpose of this discussion might be the impact of the assessments on the distribution of the total grants pool in 1992-93. This is shown in Table 4.

Table 4

Impact of Law and Order Assessments on Estimated State Grants 1992-93

	$m	*$p c*
New South Wales	-93.4	-15.58
Victoria	-133.4	-29.82
Queensland	29.9	9.76
Western Australia	60.6	36.21
South Australia	-26.1	-17.78
Tasmania	-5.6	-11.82
Northern Territory	157.7	926.01
Australian Capital Territory (a)	19.4	65.23
Amount redistributed	258.5	-14.67

(a) About $9.0m of the impact on the ACT is in Transitional Allowances because it did not have full policy control over the level of expenditure on police.

Source: Commonwealth Grants Commission, unpublished analysis.

It indicates that because of the assessments the Commission makes of States' law and order requirements, New South Wales, Victoria, South Australia and Tasmania receive about $260 million less in funding and the other States, a commensurate amount more. This illustrates that the importance of law and order assessments on the distribution of general revenue grants is considerable, and I am sure the amount of money involved more than justifies the effort States make in assisting the Commission and preparing arguments to justify a change in the assessments.

The disability factors

As outlined in Table 2, the bases of the Commission's assessments are a series of disability factors it applies to each of the three functions. What follows is a brief explanation of what each of those disability factors is intended to measure and how they are quantified. Because they are based on what is actually occurring in State service provision, they can be said to react to State policy rather than influence it. Certainly, the Commission knows of no instance where the assessment of a disability factor has resulted in a State Government changing its policy in an attempt to increase its share of Commonwealth funding.

Relevant population is the basic measurement of potential demand when a service does not apply to the entire population. For police and administration of justice, the services are seen as being used by the entire population but in the case of corrective services, the assessment is that no one below the age of 15 is held in an adult correctional facility. This accords with data obtained in the Australian Institute of Criminology's National Prison Census. The relevant population in each State is therefore the number of people 15 years and over. There is, however, no assumption that all people in the total population or the relevant population group use the services to the same degree.

Age/sex and *socioeconomic composition* factors are applied where it is known that differences in these variables influence the demand for services. In corrective services, the Prison Census data enabled the derivation of usage probability weightings to be applied to specific age bands for both Aboriginal and non-Aboriginal people and these were applied to States' population profiles to determine the relative advantage or disadvantage each State has compared to the average. In addition, based on information gathered during the Commission's visits to a number of prisons, cost weightings were applied to Aboriginal prisoners because of the greater average cost per day of their incarceration, with account also being taken of the different security classification patterns attaching to the two groups of prisoners.

In both police and administration of justice, Aboriginal people were weighted by twelve and people from non-English speaking backgrounds by two, although, in administration of justice, the weights were applied only to the population aged ten years and over. The age/sex weights for administration of justice were derived from courts data for the three States in which it is available while those for police had to be estimated based on the many discussions the Commission had on this subject with both police

officers and departmental personnel. As expected, the recent deliberations resulted in the highest weighting still being attributed to males in the 17-20 years age group but, in keeping with recent trends, the weighting now given to younger males has been increased from that used in 1988.

The weightings given to Aboriginal people result in some parties claiming that the Commission is encouraging States to increase or at least maintain an iniquitous situation. This is not so. There is no financial incentive for States to treat this group of people differently from other Australians. Certainly, by increasing the level of services provided to this group, the policy weighting attributable to them will change, but any resultant change in Commonwealth funding will cover only part of the total cost of the additional service. Indeed, because there is some State own-source funds being spent on services to Aboriginal people, there is a financial incentive to reduce the level of servicing.

The *urbanisation* factors applied to this group of functions recognise the association between urban centre size and population density on the one hand with higher crime rates and criminal justice costs on the other. Data enabling the measurement of these influences is practically non-existent and the Commission had to use its judgment to allow for both the demand and unit cost variations resulting from greater urbanisation.

The *Commonwealth offenders* factors were applied because, while all States have a responsibility to perform criminal justice functions on behalf of the Commonwealth, this responsibility does not fall evenly upon them. The measure of relative disability was generally based on the average number of Commonwealth offenders held in States' prisons, but Western Australia was given a small additional allowance because of the particular burden of illegal Indonesian fishermen.

The *transient population* factors were applied in the police assessment because of the impact that this group has on workload. The measurement of relative advantage and disadvantage was based on the numbers of interstate and international tourist visitor nights in each State, the data coming from the Commonwealth Bureau of Tourism Research.

The ACT and New South Wales have a further factor applied to their assessment because of the substantial *cross-border* flow of people into the ACT from the surrounding region. This factor allows for the cost disability therefore experienced by the ACT and the advantage received by New South Wales.

The disability factors discussed above could jointly be described as the demand influences that are taken into account (although there are of course some unit cost influences included in the measurement of the socioeconomic composition and urbanisation factors). We turn now to disability factors which the Commission believes cause variations in the unit cost of providing services. These are generally much more difficult to measure in an objective way and Australia is unusual in including them in its fiscal equalisation system.

Administrative scale factors were included to allow for variations between States in economies of scale in the administration of services. It allows for the extra per capita costs less populous States face in providing policy

development and administration in central offices and the specialised State-wide services such as police forensic services.

Because there are substantial differences in the distribution of population within the Australian States, the Commission included *dispersion* factors to allow for differences in unit costs which result. In measuring this disability, costs such as telephone, freight, staff removal and locality allowances are considered and a standard provision policy is applied to the actual distribution of population in each State. In this way, the actual policy of the State is not influencing its assessment, yet any natural disadvantage it incurs because of population dispersion is being allowed because an average policy is being applied.

Service delivery scale also takes account of the distribution of the population, but under this heading the Commission considers differences between States in the efficiency with which staff can be used at the points of service delivery. Police is the only law and order category where this factor applies. Neither corrective services nor the courts system need to be as dispersed as police stations but the Commission believes that State's population densities and clustering differ to such an extent as to have an influence on overall police to population ratios because of the varying need to have small (less efficient) police stations.

Input costs factors are designed to allow for differences between States in wage and salary costs, electricity costs and office accommodation costs. The Commission believes that some aspects of each of these areas of cost difference experienced by the States are beyond the policy influence of the States and has in this review, for the first time, included factors to allow for them.

In the Northern Territory's assessment, there is the special *land rights* disability factor which makes allowance for costs the Territory incurs as a result of the Commonwealth *Aboriginal Land Rights (NT) Act 1976*. No other State has similar costs due to Commonwealth legislation.

There is also a further element to the assessment for the ACT. Called the *transitional allowance*, it was originally applied to give the ACT Government time to phase-in their own policy control and overcome the large "overspending" they inherited from the Commonwealth. In the law and order field, a transitional allowance now only applies in police where the Commission has been unable to detect (for the period from the introduction of self-government to 30 June 1992) any ACT Government influence on the total expenditure by the Australian Federal Police on ACT community policing. It has therefore assessed the whole of the excess between actual and standardised expenditure (standard expenditure by the total disability faced by the ACT) as a transitional allowance. Thus, the ACT has been funded for all its actual expenditure on police services (*see* Commonwealth Grants Commission 1993 for complete details of the Commission's assessments).

The more important factors

In all three assessments, the most important determinants of the relative needs of the States were the age/sex and the socioeconomic composition factors, although the administrative scale factor also played a major role. Urbanisation was important in the police assessments.

The dominance of age/sex and socioeconomic composition comes about not so much from the actual differences in the profiles of States' populations (with the exception of the proportion of Aboriginal people in the Northern Territory) but from the relatively large differences in weighting applied to different groups. In overall terms, the different proportions of Aboriginal people in States' populations and the weightings applied to this group were the driving force behind the Commission's assessment of States' needs.

The actual measurement of each factor applied in each of the assessments is explained in detail in the Working Papers associated with the 1993 Report on General Revenue Grant Relativities.

Other Uses of Commission Data

Almost all of the information held by the Commission on police, corrective services and the administration of justice is available for public use. A copy of the complete data files is supplied to each State Treasury so, for those working in a State department or authority, Treasury should be contacted in the first instance.

The cornerstone of the Commission's assessments is an analysis of State financial accounts to put together comparable expenditure figures, by function, both over time and between States. These take into account differences in administrative and accounting arrangements between States and are the most comparable set of functional expenditures available. The totals for each function are published in Commission reports but if you want more information, such as what adjustments are made to the police department's published figures, they are available in Working Papers.

On how departmental resources are distributed between locations, the Commission is also a valuable source of data. For the inquiry just completed, we collected police staffing, salaries and vehicle allocations for each service outlet establishment in each State; and similar staffing and other resource inputs were collected for corrective services. States, through their Treasuries, have already been provided with a computer file holding all the base data.

Submissions made to the Commission (dating back to 1980) are a valuable source of information for some research projects. These are more difficult to obtain but are public documents and can always be accessed in the Commission library in Canberra. State Treasuries have also been provided with sets of the submissions and there is a partial collection in some State reference libraries.

The Commission encourages the use of the information it has collected. If ever you have any difficulties obtaining it, please do not hesitate to contact either myself or another member of the Commission's staff for assistance.

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POLICE RESOURCE ALLOCATION

Catherine Bright and John Walker

IN THE COURSE OF THE 1993 REVIEW OF GENERAL REVENUE GRANT Relativities recently undertaken by the Commonwealth Grants Commission (CGC), one area which attracted a considerable amount of discussion was the perceived effects of "urbanisation" on both the higher usage and the higher costs of the provision of law and order services in urban areas.

The Commission had recognised certain supposed effects of population concentration and urban size on police workloads, the workload of courts and on higher crime rates in the 1988 Review, but during the recent Review the less populous States questioned this association, arguing that demographic and socioeconomic characteristics of populations were the more likely determinants of crime rates, rather than population concentration and urban size per se.

As an introduction to the research reported in this paper, some of the specific arguments put forward by States are summarised below.

Queensland questioned the existence of a simple correlation between high crime rates and urbanisation, claiming that rapidly growing fringe areas and tourist areas were more likely to foster higher crime rates than areas characterised merely by high population densities. At a conference on Law and Order issues held in Sydney in June 1992 by the Commission, Queensland cited a "lack of social cohesion", such as can be seen in tourist areas, as an important determinant of high crime rates and claimed that the growth of crime was not proportional to the size of an urban area.

South Australia argued that socioeconomic characteristics such as unemployment and income differentials, residential stability and family structure exhibited strong correlations with rates of crime. It claimed that, despite having a relatively small urban area, relatively higher crime rates for certain offences were found in South Australia than either New South Wales or Victoria.

Western Australia claimed that research had indicated that crime rates peak at a relatively low population threshold, beyond which the incidence of crime can be attributed to factors other than urban size and population concentration per se, such as the relative youth of the population, income and employment levels and standards of education.

Tasmania pointed to an increasing crime rate in its State without an accompanying increase in urbanisation and claimed that the source of demand for law and order resources was related to socioeconomic characteristics such as age, sex and social composition rather than the extent of population concentration or urban size.

Responding to these arguments, New South Wales claimed that urban crime is much more resource intensive than non-urban crime. This was due, they argued, to a combination of the anonymity of urban areas and the reluctance of urban communities to assist with investigations; increased travelling time as a result of higher traffic densities; longer investigation time due to the difficulty of making contact with people in urban areas who typically worked long distances from where they lived, and the larger number and concurrent handling of several investigations by police. New South Wales claimed that these and other factors resulted in lower clear-up rates in urban areas and that comparative crime statistics showed generally higher rates of crime in urban areas.

Victoria provided statistics which they claimed showed that higher crime rates were associated with larger urban concentrations, arguing that greater demand for police services was also related to a larger number of family incidents in urban areas and higher collision rates. They argued that large urban centres require more sophisticated services and that considerable additional costs are incurred in servicing central business districts, entertainment venues and the industrial and financial centres of large cities.

The smaller States disputed the claims of New South Wales and Victoria concerning the association between higher rates of crime and urban areas. They referred to the 1991 study by Dr Chris Devery of the NSW Bureau of Crime Statistics and Research which found that in New South Wales, "for both violent and property offences, country Local Government Areas (LGAs) had the highest proven offender rates".

At the Commission's Law and Order conference, the Director of the Bureau, Dr Don Weatherburn, stated that while he agreed that in New South Wales and, he suspected, "around Australia . . . rural areas generally have higher crime rates than urban areas", there was "a countervailing tendency for very large cities to have very high crime rates in their inner city area, just by dint of the provision of opportunities". Dr Weatherburn continued that "a supply of motivated offenders and a supply of criminal opportunities" were "both important ingredients in determining the crime rate at any given time" at least in regard to "acquisitive crime rather than crime not carried out for any particular personal gain" (Commonwealth Grants Commission 1992).

Clearly there is dissatisfaction with the simplistic assumption that the need for criminal justice resources increases according to city size, in some simple way, but equally clearly there is disagreement over which of a number of possibly conflicting theories should supersede it in the formula used by the Commission to determine funding allocations.

Aim of the Research

The Commission's duty, in the process of determining Commonwealth Grants funding relativities, is first to determine the underlying reasons for differential expenditure on law and order services between States, in particular to identify those factors which are beyond the control of the State or Territory governments. If these factors can be identified then it might be possible to answer questions relating to possible inefficiencies in service delivery and to explain the reasons for higher costs in delivering law and order services between States, in order to adequately compensate those disadvantaged jurisdictions.

At the Law and Order conference, John Walker, a Senior Criminologist with the Australian Institute of Criminology (AIC), had pointed out that many of the regional characteristics which were believed likely to affect crime, and therefore the costs of delivering law and order services in the region, were related to the industry and occupational characteristics of the region. Thus crime in, say, a mining town would be different from crime in a tourist region. Each distinct type of region would have its own set of characteristics which determined the demand for law and order services. This argument appeared to be well received at the Conference as it suggested a mechanism whereby the apparently inconsistent theories and data could be reconciled.

In the light of State submissions and the discussions at the Law and Order conference, therefore, the Commission decided to investigate the existence of a relationship between socioeconomic, demographic and industry characteristics and the costs of delivering government services in the area of law and order. The research was undertaken in consultation with John Walker.

The aim of the research was to develop a broad based index of social disadvantage which could be used as a measure of demand for law and order services. The intention was to determine the links between the policing, corrective services and administration of justice functions in order to derive the relationship between demographic, socioeconomic and industry characteristics and the demand for these services.

Due to the difficulties associated with deriving an appropriate measure of input and the absence of reliable and comparable interstate crime data for Australia, the research was ultimately limited to the investigation of the effects of socioeconomic, demographic and industry characteristics on policing. The results therefore were able to be related to police resources only rather than to the whole range of law and order services, but the style of analysis is also applicable to the courts and correctional areas, and it is reasonable to think that in large measure the conclusions in respect of policing would follow through to subsequent sectors of the criminal justice system.

Socioeconomic and Demographic Characteristics and Offending

Devery (1991) reviewed the extensive overseas research into the relationship between socioeconomic and demographic characteristics and crime rates. A major area of research, and one which has received considerable publicity in Australia recently, is the association between unemployment and crime. Most overseas studies support links between these phenomena.

Some research has suggested that the association between violent crime and economic hardship is due to the increased frequency of aggressive acts due to frustrations resulting from economic hardship, and the supposedly inherently more violent working class culture. High population density, crowded accommodation, transient population and dilapidation are also suggested as characteristics which can be identified with higher crime rates.

Referring to the many studies that have investigated "the role of the family in the origins and maintenance of criminal behaviour", Devery (1991) concluded that the family plays a crucial role and that "it is possible that the effects of family disruption, lack of supervision and poverty combined can have a marked influence on the risk of offending".

With regard to the contribution of age to variation in crime rates, Devery suggested that the risk of persons in high crime age groups becoming offenders was modified by other factors such as employment status, family background, and area of residence and that other socioeconomic factors were as important in determining the crime rate as the number of people in a particular age group.

Devery examined regional patterns in local court conviction rates in NSW in an attempt to determine the socioeconomic factors which influence crime rates. He claimed that the study confirmed the results of overseas research in showing that regional differences in social and economic factors such as the level of unemployment, the proportion of poor/single parent families, and the number of Aboriginal people, were closely related to the rate per head of population of proven offenders.

The results suggested that, for the Sydney statistical division, there was a strong link between social factors such as the level of educational attainment, employment status, and income and conviction rates; that, in country areas, conviction rates showed a correlation with a similar variable identified as disadvantage; and that other key indicators were unemployment, single parent and poor families, and Aboriginality, with low income being a common component of each of these.

A report of the Melbourne Metropolitan Board of Works in May 1974, based on variables associated with social dysfunction or socioeconomic status, also found a relationship between social dysfunction in the central parts of Melbourne and the situation of relative poverty found there.

The analyses produced a clear concentration of social problem areas in central Melbourne and a collection of socioeconomically advantaged areas in the east and south of Melbourne. In the inner core areas, low socioeconomic status was generally associated with social problems, while in areas of higher socioeconomic status, social dysfunction was correspondingly lower. A very high correlation was found between the male unemployment rate and the

first component of social dysfunction suggesting that the former could be used as a proxy for an indication of the relative social dysfunction of an area; and, that anything which affects the unemployment rate in an area will influence, either directly or indirectly, the incidence of social dysfunction.

At the Law and Order conference, NSW suggested that the urban and rural indexes derived by Devery provided a means of weighting variables which appeared to have a relationship with the propensity to offend, and that they could predict demand specifically for law and order services because they were based on accurate predictions of court appearance rates.

The Use of Police Resources as a Measure of Demand

The demand for police resources is often measured, somewhat naively, by police statistics on numbers of crimes reported to police or recorded by police. It is recognised however, these days, that these figures are themselves influenced significantly by police resource allocation, and by differences in levels of reporting of crimes. Thus, low incidence of crime in a region, as measured by recorded crime figures, is ambiguous. It could mean exactly what it appears to say, and either be the result of some positive characteristics of the community or the results of successful crime preventative efforts by the police and other community groups. On the other hand, it could be the result of very low levels of community trust in the police, with low levels of reporting of crime, and hence the data could mask a much more serious crime problem. It is clear, from the International Crime Victims Survey for example, that apparently low levels of recorded crime in East European countries are entirely the result of public mistrust of police, and a gross misrepresentation of the true crime level. Fortunately, the same international survey showed that in general the police in Australia are regarded positively by the public (*see* Walker 1993). Nevertheless, even in Australia, the need for data which take account of unrecorded crime is acknowledged in order to properly measure the demand for law and order services.

Furthermore, it is debatable whether any measures of actual incidence of crime can be entirely fair measures of the demand for law and order services. Police strategies which successfully reduce crime rates, sometimes in areas which one would expect in serious crime problems, can be at least as resource intensive as strategies which merely aim to keep up with recorded crime patterns. Ideally, a model should be formulated on the basis of the extent and nature of crime that could be expected in a given area and, by quantifying the interaction and links between the policing, corrective services and administration of justice functions, the index could be applied across all law and order services.

What was required was an accurate picture of the Australia-wide law and order experience, related to objective data on population and geographic characteristics and other relevant information. Such a model would take into account differential resource allocation between States, for example differences in the extent of proactive and reactive policing. This would ensure that States which put extra effort into crime prevention, rather than reactive policing, were not penalised, which could be the case if crime statistics were

used as the measure of input. It would be unfortunate if successful crime reduction programs, resulting in lower crime rates, then resulted in lower allocations for law and order the next time round.

But an alternative measure of input is very difficult to quantify due to the differences in the way States organise their services, for example differences in the allocation of police staff to State-wide, regional or local services; the differential use of custodial services and community services; and the sentencing options employed in States.

Until these differences can be analysed and quantified on the basis of reliable and objective data, we believe that a set of comparable and reliable interstate crime statistics provides the best measure of the demand for services to combat crime.

However, since the first dataset to be produced by the National Uniform Crime Statistics Unit will not be available until 1993 and existing statistics on levels of crime are known to be non-comparable across jurisdictions, the use of crime data as a measure of demand was precluded.

For the 1993 Review, the Commission had undertaken a detailed delivery unit survey of police statistics, the 1990-91 Police Special Data Collection (PSDC). The collection comprised data on staffing, finance and vehicles, and policy and practice data. A nationally comparable dataset of police staff statistics was thus available at the police station level.

If it could be assumed that numbers of police provide a reasonable proxy for overall incidence of crime in different areas, then regression of police numbers against regional population characteristics would result in an acceptable model of demand for police resources. While there were policy influences implicit in the use of police staff numbers, it was considered that, in the absence of any other suitable measure, their use was justified and that judgment could be used to determine the final index, once relationships had been established.

Perhaps a more direct measure of differential costs between stations would have been data on police salaries, but, since the PSDC did not contain a request for data on salaries by station, the research used numbers of police staff as a proxy for police costs.

Examination of data on salaries and overtime obtained as part of the PSDC indicates that, at least in some States, the proportion of overtime to salaries in non-metropolitan areas is consistently higher than that in metropolitan areas. This suggests that if salaries data rather than police resources had been used, or if staff numbers had been adjusted to reflect this pattern of overtime, the research may have resulted in different conclusions.

The Structure of the Analysis¾ Which Variables to Use?

In deciding on the research method, we believed that the fundamental concern in considering the need for police services, and hence the implied costs of delivering the same, should be the extent of crime that is expected in

a given type of area or region. If possible, police resources should be related to these expectations, rather than recorded crime rates or crime victim surveys.

Taking note of the discussion at the Law and Order conference, we considered that the accessibility of offenders to opportunities to commit crime should be an important component of any methodology which attempted to measure the costs of policing so that a more precise measure of the propensity of particular areas to generate crime, and therefore demand for public services, would be obtained.

Recent research based on surveys of business crime victims (Skogan 1992, unpub.) indicates that the frequency of crime, and corresponding use of police resources relating to specific types of businesses, is increasing.

We believed that it was not sufficient to use a single measure of opportunity such as population size or density as the only determinant of the likely extent of crime. Since inner urban areas appear to be characterised by a different range of factors which may determine the extent of crime, we surmised that an explanation for crime rates (as a proxy for police resources) was almost certainly the product of a number of different dimensions, including that related to the industry and occupational structure of areas, as well as the demographic and socioeconomic status of areas.

It was thought likely that different forms and types of crimes would be found in different regions. For example, the patterns of crime in a mining town could be expected to differ substantially from crime in a tourist town or a regional commercial centre.

A 1983 study by the then Department of Home Affairs and the Environment which produced a classification of regions on the basis of 13 industries, as a basis for analysing trends in the economic functions of areas, found that a town's industrial structure was related to many aspects of urban well-being. It noted that "a town's industry mix is related to the income which its residents earn" and that the growth prospects of a town were considered to be partly determined by "the influence of industrial mix on labour force participation rates" and "the range of occupational choices for people of varying skills and abilities". The study concluded that stability and long-term economic viability in a town were enhanced if the economy was diverse, rather than highly specialised.

Some reservations were also held about the conclusions reported by Devery (1991). We considered that a possible explanation for the higher reported conviction rates in some rural areas of New South Wales could relate to the fact that some Local Government Areas (LGAs) only contained urban parts, including shopping centres, restaurants and hotels, while surrounding rural shires had far fewer opportunities for crime. Since rural LGAs were not generally broken into separate urban and rural parts this could provide a possible explanation for the higher reported conviction rates in some rural areas.

It was thought that an examination of the industrial and occupational nature of areas could indicate whether conviction rates depended as much on the relative extent of the opportunity for crime, as on socioeconomic and demographic status.

Another problem with the urban/rural distinction was that rural areas identified as being of "high socioeconomic status" all appeared to be tourist areas. The higher conviction rates for these areas therefore need to be considered in relation to the non-residential population. The use of "unemployment" as an indicator of low socioeconomic status in these areas was also questioned since those residents employed during peak tourist periods were often unemployed at other times of the year.

It was thought that an analysis of industry/occupation data may provide clarification, although the census takes place in June when seasonal employment is likely to be at its lowest.

To summarise, we considered that the distinction between urban and rural areas in Devery's study may be largely artificial and that the apparent differences in conviction rates between urban and rural areas could, in fact, be a proxy for the underlying industrial and occupational structure of areas. If this were the case, then some of the variance in the relationship was wrongly ascribed to low socioeconomic status/disadvantage, and a better explanation may be able to be obtained by investigating the relationship between policing and an expanded set of variables including indexes relating to industry and occupation.

This conclusion reinforced our contention that an explanation for conviction rates or policing was not entirely due to demographic and socioeconomic characteristics and that the industry mix of an area will assert an influence on the patterns and levels of crime in that area, which interacts with but can be distinguished from, the influence of sociodemographic factors on crime.

Accordingly, we decided against the direct use of Devery's indexes. Instead we decided to attempt to derive a new broad based index of social disadvantage which could be used as a measure of demand for law and order services by using all the variables employed by Devery, augmented with a range of variables which categorised areas according to industry and occupation characteristics.

The Use of Occupation Variables as a Proxy for Industry Mix

Data on occupation of employed persons were used to reflect the industry structure of each area in preference to data on category of industry in which the person works. These latter data do not necessarily reflect the characteristics of the persons resident in the area, nor the characteristics of perpetrators of crime in the area. For example, on the basis of employment by industry, Melbourne would be ranked as the largest mining town in Australia because of the large office-based workforce employed by mining companies in Melbourne.

An ideal measure, but one which was too complex to obtain in the time available for the research, would have been a cross-tabulation of industry with occupation data for an area, as used by the Department of Home Affairs and the Environment 1983 study.

Since data on occupation are based on place of residence, the use of these data as a measure of the industry mix of an area introduced a small element

of bias into the analysis. The problem may arise because the analysis categorises a police station by the occupations and socioeconomic and demographic characteristics of the people living in the area surrounding the station.

The Methods

A model was formulated on the hypothesis that it is the *interaction* between the industry mix and socioeconomic aspects of areas, rather than *solely* different socioeconomic characteristics of these areas, which leads to different crime rates in urban and rural areas.

A series of analyses were designed to investigate the proposition that different types of crime require different levels of police resourcing, and that different types of regions generate different mixes of crime types.

In order to obtain as robust a result as possible, and assuming that an overall explanation for policing levels could be obtained, it was decided:

- to undertake the research on the basis of all police stations in all States across Australia; and

- to utilise socioeconomic, demographic and industry data aggregated at the lowest possible level.

The most detailed level of data collection used by the Australian Bureau of Statistics (ABS) is Census Collection District (CD)[1] data. CDATA 86 is a database of CD statistics containing census data produced by the ABS. It contains the area, population, latitude and longitude for each CD; the SLA and Urban Area or Bounded Rural Locality to which it belongs; and detailed socioeconomic, demographic, occupation and industry data relating to each CD.

Police station catchment areas were formed by grouping CDs around police stations, rather than police divisional boundaries. The latitude and longitude recorded for each CD is that of its centroid. Each police station was associated with the centroid of a CD using the following aids:

- (Statistical Local Areas) SLAs nominated by States as those in which police stations were located; and

- maps provided by States and the ABS which indicated the exact location of police stations.

This information, together with the centroids of every other CD in the State, was used to allocate each CD to the nearest police station and thus form notional catchment areas for police stations, using the methodology outlined

[1]. CDs are the areas used by ABS to collect completed Census forms. There are approximately 30,000 CDs in Australia, of which about one-third are in NSW. They are fairly small in size in urban areas, and typically they contain a population of between 500 and 1,000 persons, while remote CDs cover larger areas.

for the point of service delivery scale calculation in the CGC Reports on Technical Issues 1991 (Commonwealth Grants Commission 1991).

Since available computing resources did not allow processing of a dataset as large as that which would result from the proposed number of variables and the total of all police stations in Australia, the analysis was based on a 25 per cent sample of the data.

The work was undertaken in two stages. Since the model employed a large number of different socioeconomic, demographic and occupation variables, it was expected that many of these indicators would be correlated with each other. The determination of the effects of individual variables on police resourcing would thus be complicated by the need to determine the effects of individual variables on each other.

To simplify this task, the technique of principal components analysis (PCA)[2] was used to summarise the variation in the 32 variables. This technique reduced the full set of 32 individual variables to a smaller number of new variables or components that could describe fundamental aspects of social structure and industry mix as measured at the level of police station catchment area.

The new variables or components obtained from the PCA summarised much of the variation in the original dataset and, because they were uncorrelated with each other, they were able to be tested for association with numbers of police staff. If it were possible to interpret the components, then we intended to describe all police stations across Australia on the basis of the components.

1The second stage of the analysis consisted of multiple regression analyses of the principal components to determine whether any or all of these components were useful as predictors of:

- the spatial distribution of police resources (as a proxy for crime rates); and
- rates for certain crimes (only Queensland data were readily available).

A series of correlation and regression analyses were performed using three police to population ratios derived from the PSDC as the dependent variables, and the six industry types as the independent variables.

The police to population ratios were:

- local police officers per 100,000 population;
- the total of local and regional police staff per 100,000 population; and
- the total of all sworn and unsworn officers per 100,000 population.

[2]. PCA attempts to explain part of the variation in a set of variables on the basis of a few underlying dimensions by focussing on the total variation in the observed variables. The technique results in a smaller number of uncorrelated linear combinations of the original variables that capture most of the information in the original variables.

The Relationship Between the Socioeconomic and Demographic Characteristics and the Industry Mix of an Area and Police Resources

The Results

We believe that a sensible interpretation of the components has been possible on the basis of the relative importance of each variable making up the component, and that all police station catchment areas can be described on the basis of the components.

The first 6 components explain a total of 68 per cent of the variation in the original datasets. We believe that they identify a basic set of regional or functional groupings which can be described as follows:

- Component 1 represents average urban environments because variables measuring unemployment and every occupation, apart from that of the composite agriculture/mining occupation group, have the highest weights.

- Component 2 represents metropolitan middle-class environments because variables measuring ethnicity, high educational attainment, social incohesion as evidenced by divorce/separation/de facto relationships, population density, and ages 18-24, have the highest weights.

- Component 3 represents disadvantaged environments because variables relating to disadvantage such as low income, lack of educational attainment, high number of single parent families and divorced/separated families, and youth unemployment have the highest weights.

- Component 4 represents agricultural centres because variables relating to agricultural occupations, a relatively aged population, and a predominantly Australian born population have the highest weights.

- Component 5 represents tourist/retirement centres because variables relating to a predominantly Australian and relatively aged population have the highest weights; while occupations in the recreation and financial services such as real estate, and low income and youth unemployment which could be related to the propensity of some youth to take advantage of seasonal work for only part of the year, have moderate weights.

- Component 6 represents mining centres because variables relating to the number of Aboriginal people, a relatively young population, high income, relatively low neighbourhood stability and a high incidence of single parent families have the highest weights, while the

composite agricultural/mining occupation variable has moderate weights and the highest of all the occupation variables in the component.

The remaining components were not easily interpreted. They can be considered to represent exceptions to the above patterns (for example, centres such as Alice Springs which are tourism but not retirement centres), and to embody most of the remaining variability in the dataset. They accounted for only a very small percentage of variance in the data and, by the normal conventions of principal components analysis, were ignored.

Accepting this interpretation of the components makes it possible for *police stations across Australia to be classified according to the type of region or functional areas which they serve.*

In proposed future research, we intend to validate the interpretation of the components by using discriminant analysis to categorise police stations according to the regions (functional areas) resulting from the analysis.

Models were derived for the full 25 per cent samples and for smaller samples which resulted from the exclusion of outlying observations. Correlation analyses were performed to identify associations between policing and the sociodemographic characteristics and industry mix of areas.

The result of the regression analysis was that *there is no apparent relationship between the level of policing and the different types of functional areas.*

Only very weak associations were obtained between the level of policing and:

- metropolitan average urban areas (rank correlation of .08 for all sworn and unsworn staff);
- metropolitan middle-class urban areas (rank correlations of .12 for local police staff, and .21 for each of the totals of local and regional staff, and all staff);
- tourist/retirement towns (rank correlations of -.06 for local police staff); and
- mining towns (rank correlation of .12 for local staff).

No significant associations at all were found between policing and the other principal components.

The inference is that, with the exception of the stations identified as statistical outliers, police resources are distributed purely on a pro-rata population basis with no account taken of the different characteristics of the regions.

Outlier stations were those identified as having very high police to population ratios. In general, these were either stations in or close to the central business districts (CBDs) of capital cities, or small, isolated stations. While it can be observed that staffing levels at these stations are in response to particular types of regions (either CBD or isolated rural areas), these functional types do not result from the analysis and so cannot be related to

policing or crime rates in the same way as the six components previously described. Therefore, in order to estimate the average relationship between the sociodemographic characteristics and industry mix of areas and policing, this type of station was removed from the analysis.

While the PCA provided evidence that it was possible to classify police stations according to the different types of regions that they serve, even the best models were not able to differentiate different levels of police resources on the basis of different sociodemographic characteristics and a different industry mix between areas.

This result is illustrated in the regression coefficients for the only two components which were significant, namely those representing metropolitan middle-class areas and mining areas (R^2 of .014 and .01 respectively). The coefficients were so small as to have virtually no effect on resource allocation.

It should be noted that, despite repeated attempts to improve the model using variable selection techniques, it was not possible to obtain evidence of a stronger relationship between policing and regional type.

Implications for Police Resource Distribution

The analysis indicated that, across Australia as a whole, police staffing distributions as presently implemented by States, do not reflect relative needs relating to urbanisation, disadvantage, tourism or other factors. Instead, by implication, they appear to be simply a function of State policy as determined by population size and historical factors.

Thus, even if regional type does affect the relative need for policing, as argued in the case of large urban areas by Victoria and New South Wales, and while it may be true that police are distributed in some States on the basis of relative need, this is not reflected in police staffing allocations across Australia as a whole.

Investigating the Relationship Between Crime, Industry Mix and the Socioeconomic and Demographic Characteristics of Areas

This analysis was undertaken to determine whether rates of different types of crime actually differ across regional types, even where police resources do not differ. Unlike the analysis of sociodemographic characteristics and the industry mix of areas and police resources, the analysis of crime rates could not be done at the level of CD and police station catchment area, because the lowest level at which crime statistics are available is at the level of police administrative districts.

The apparent lack of a relationship between policing and regional type could suggest either that regional type does not affect the need for policing, or that the need for policing is not accurately reflected in the present actual distribution of police resources.

Since crime data were available for Queensland at the district level and because that State has both substantial urban areas and a representative range of the other regional area types (mining towns, agricultural centres and tourist towns) identified in the principal components analysis, it was considered worthwhile trying to determine what relationship could be found

between the crime data, the resource data, and the regional characteristics data for Queensland.

Six different crime types were considered, namely:

- offences against the person;
- property offences;
- fraud offences;
- drug related offences;
- traffic offences; and
- other offences.

The analysis resulted in much more robust models with correspondingly higher R^2 (ranging from .47 to .88) and, with the exception of "other offences", significant relationships between the different crime types and the different regional groups. The application of variable selection techniques resulted in optimal models consisting of the components which had demonstrated significant relationships in the full models.

Among the major results were :

- that, with the exception of "other offences", the selected offences vary positively with metropolitan middle-class areas and mining towns (regression coefficients range from .02 to .18 for metropolitan middle-class areas and from .02 to .43 for mining towns);
- that property offences vary positively with every regional type except for agricultural centres, in which they vary negatively (regression coefficients range from .11 to .32, with -.23 for agricultural centres); and
- that traffic offences vary positively with tourist and retirement areas (regression coefficient of .07), as well as metropolitan middle class areas and mining towns (regression coefficients of .04 and .43 respectively).

Conclusion

We concluded that, at least in Queensland, there are significant differences in the nature and levels of recorded crime types across different types of regional areas. The analysis indicates that, while different levels of recorded crime in different types of regions are apparent in at least one State, there is no evidence that police resource distribution across Australia as a whole is in accordance with the observed crime rates.

Future Research

We plan to continue this research using 1991 Census data and output from the National Crime Victims Survey and the National Crime Statistics Collection, when these become available. Data on staffing from the PSDC could be used again as its timing relates closely to these data.

The object will be to verify the present analysis, but also to determine differential policing needs between States more accurately, by undertaking the analysis in a slightly different way. The proposed analysis would place greater emphasis on investigating the relationship of police numbers to the crime rates in different States, to determine whether there are indications of a relationship between policing and areas of relative need.

The analysis would be undertaken in the following steps:

Step One

- From Population Census data, the type of region being served by each police station, in terms of its demographics, indicators of socioeconomic disadvantage, and the occupational characteristics of its population would be identified. Discriminant analysis will be used on the same data to allocate each police district to the category which best describes it. The distribution within each jurisdiction will be shown by mapping the regions according to these categories.

- The sorts of crime patterns typically found in each of the regional types identified in step one will be identified for the States for which crime data at the police district level are available. The analysis will be primarily done at the State level, then amalgamated to provide an Australian perspective.

- A multiple regression analysis will be done for each jurisdiction, using the per capita rates of crime in each crime type as the dependent variables and the regional sociodemographic components as the independent variables.

Step Two

- The level of police resources associated with each type of crime will be identified by regressing local and regional police resources against the levels of crime in each category in each police district.

- Regional sociodemographic and occupational characteristics will be related to the level of need for police staff in each police district in each jurisdiction using the relationships already derived for different crime types.

- Aggregating these figures will give total State and Territory staffing needs.

The research should:

- provide indicative differential requirements for policing between States on the basis of the socioeconomic, demographic and occupation status of areas;
- enable comparisons to be made between actual and expected police staff, on the basis of the prevalence of crime and police numbers in each State; and
- provide verification of the conclusions drawn from the research presented in this paper.

Postscript: Since the time of writing, the Commission has decided to undertake a wide-ranging review of the influence of the socio-economic composition of populations over a number of functions, including law and order. The specific proposals for further research reported above have not been pursued but, in the context of the wider project, will be considered in determining the direction of future analysis.

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THE NEED FOR STRATEGY IN DEVELOPING TEAMWORK BETWEEN AGENCIES OF THE CRIMINAL JUSTICE SYSTEM, HEALTH AND WELFARE AGENCIES, AND THE COMMUNITY

Keith Hamburger

THIS PAPER UNDERLINES THE NEED FOR A STRATEGY IN DEVELOPING teamwork between agencies of the criminal justice system, health and welfare agencies, and the community. As Director-General of Corrective Services I am in charge of an organisation which receives the final product of the functioning of an imperfect world—the human failures of our society—and tragically more and more of these failures are young people.

Correctional organisations have no option but to accept these human failures. Some people believe we should accept who we are given without comment. I cannot, and will not, subscribe to that point of view. The Queensland Corrective Services Commission believes its role includes a requirement to initiate change which can assist society in overcoming some of its problems.

Speaking out, and indeed taking the hard decisions, can bring problems and in this regard I am reminded of the words of Jim Kennedy nearly five years ago when he telephoned to advise me I had been appointed as Director-General of Corrective Services. He said "Keith, apart from whatever qualities you may bring to the job, one of the reasons we chose you was because of your name—we wanted someone who could be the meat in the sandwich". I

thought he was joking but after my experience over the past four and a half years, I am now not so sure.

The question facing correctional administrators today is: can we continue to passively administer sanctions imposed by Australia's criminal justice system when all the evidence available to us shows that the system is not working? This is not because it is intrinsically flawed but because it tends to operate in a stand-alone manner somewhat isolated from the rest of our social system.

The system as it currently operates is unfair. It discriminates against victims; it is playing a large part in the destruction of the Aboriginal and Islander people; it is not restorative, largely fails to rehabilitate and it does not deter crime. On top of all this is the enormous cost to the taxpayer.

One only has to look at the percentage of offenders in prison today who have been in prison at least once before, to see that prison as a deterrent is a fatally flawed hypothesis. Most importantly, the criminal justice system, as it operates today, allows governments and the community not to face up to the real underlying social issues causing crime. This paper will focus on this issue.

While I work as a gaoler, I am also a member of the community and, because of my position, I see daily the very worst that society produces and I fear for the future of our society unless positive action is taken. As a gaoler, I do not like many aspects of what I do, but as the criminal justice system functions at the moment it is a job that must be done and I and my officers and colleagues right around this country do it to the very best of our ability. The great tragedy of this country today is that in many areas there are negative scenarios being promoted which unfortunately are becoming self-fulfilling prophecies. This is no more so than in the area of criminal justice.

Prophets of doom aided by sensational media reporting of crime and social breakdown have created a mind set in the population at large that our social system is in rapid decline and that the major contributing factor is the failure of the criminal justice system to adequately punish offenders, punishment which exacts vengeance and punishment which deters others. The notion that it is possible for society to punish crime and social breakdown away is of course absurd and illogical. I will expand upon this point in a moment.

In this country and in many other countries, particularly the United States of America, where the negative self-fulfilling scenario of inevitable social breakdown has taken hold, we see emerging the intellectually negative law and order proponents who persuasively pedal the simplistic and flawed notion that more police, harsher sentences, even capital punishment, provide the answers to our social problems. These people denigrate the judiciary and correctional authorities as being soft and weak and through their media support, frighten politicians into adopting law and order stances which have resulted in our criminal justice system becoming increasingly armed and aggressive and consequently adding to the problem of crime and social breakdown rather than reducing it.

The law and order proponents, base their thesis of "punishment—the answer to social breakdown" on the assertions "that a good kick in the

backside at the right time did me a lot of good"—"a bit of good old army discipline sorts young blokes out" and they extrapolate these notions to a panacea for the whole of society. If only they had the capacity to stop and think, if only they could see the human flotsam and jetsam that I and my colleagues right around this nation see on a daily basis, surely they would rethink their position.

Most of us grew up in loving, supportive families where discipline was imposed in the context of an overall supportive environment. It was usually explained to us and understood by us as children to be generally appropriate. Over the course of our childhood most of us would have received more positive encouragement than discipline and we grew and flourished in a loving, supportive environment. Ninety-nine out of one hundred children who grow to adulthood in this type of family situation do not come into the clutches of the criminal justice system and ultimately do not come to prison.

The children who largely grow up and come to prison are those who come from dysfunctional families, who from the earliest age have suffered the horrendous trauma of sexual abuse, neglect, lack of food and shelter, coping with abusive, drunken parents, children whose whole living existence has been one of "punishment"—no love and support, no toys at Christmas, birthdays forgotten, just growing up in an environment where abuse is commonplace and where disputes are settled by screaming and by violence.

The year before last in Queensland, there were 4,000 cases of substantiated child abuse—sexual, physical and emotional abuse, dealt with by the Department of Family Services. On this basis, over the next five years 20,000 Queensland children will be emotionally damaged through sexual and physical abuse. It is not difficult to understand why we have an upsurge in juvenile crime.

Over a one year period 25 March 1991 to 13 March 1992, Kids Help Line, a telephone counselling service, took 36,900 calls from Queensland children. Of these 77 per cent, that is 28,759, were problem calls relating to some form of abuse or relationship difficulties. This is a shocking indictment of the way a section of our society lives and also of the rest of society who are largely prepared to sit by while children are abused and prisons overflow.

I sit as a member of the Queensland Community Corrections Board, the Board which considers parole applications for offenders serving sentences of more than five years. Around 80 per cent of these offenders come from the dysfunctional family situations I have just described. I do not present this circumstance to excuse their behaviour, but to perhaps explain it. However, more importantly I present it to show how illogical, cruel and unthinking is the thesis that a society can punish social breakdown and crime away.

All of you who have stood face-to-face with our clients, the products of horrific sexual, physical and emotional abuse, the products of utter neglect, can any of you think of any further punishment we could inflict that would improve their social functioning? Can any of you think of any punishment we could inflict that would deter them from offending behaviour? I cannot—there is nothing worse we can do to them.

What the tunnel visioned law and order proponents must understand is that you and I who have had the great good fortune to be reared in loving,

supportive, family environments, which fortunately applies to the majority of our society but perhaps a decreasing majority, do not need the threat of punishment to stop us murdering, raping or stealing.

We don't wake up each morning and immediately think "I must not commit a crime today because if I do I might go to gaol." Punishment by the criminal justice system is not a conscious deterrent to us committing crime because we have been appropriately socialised to go about our daily lives naturally doing the "right thing" living by the accepted norms of society.

Similarly when we study those who come before the criminal justice system we find that prison as punishment is not a conscious deterrent for them, indeed for many it is a family tradition to be involved with the criminal justice system. It is a part of life and prison offers a temporary refuge to meet peers and to reinforce a rebel identity.

We will not punish social breakdown and crime away and governments who allow themselves to be coerced by the vocal unthinking law and order lobby into punitive, aggressive and violent sanctions are doing this nation a grave disservice and our children's children will pay the price.

The criminal justice system exists as a consequence of system and personal failure in the wider community and is grossly misused as a system of social control. It is easier for the community to salve its conscience, to take quick revenge by putting somebody in gaol than to do the hard work and undertake the self-analysis involved in addressing the underlying social issues which result in a democratic and free society imprisoning large numbers of its citizens.

The philosophy for corrections in this country must be viewed in the context of an understanding that we are but one part of the wider social system and that reform in corrections in isolation from wider community reform can at best be only cosmetic.

We must alert the community and governments to the fact that the debate in Australia today should not be about a negative scenario based on crime and punishment but must be about a positive self-fulfilling philosophy of developing a caring more supportive society, about creating a system of justice which "keeps peace in society" and is restorative and facilitates conflict resolution and victim compensation.

If we are going to achieve a more caring, supportive, safer and just society we must start with consensus about the real underlying problems in Australian society which lead to social breakdown and crime. We must agree on the need for cooperative teamwork between significant community agencies, governments and government bureaucracies to address the problems.

We must move from the reactive after the event approach, building more prisons, hiring more police and so on, to a proactive preventative model which focuses upon the real underlying front end issues such as child abuse and neglect, domestic violence, substance abuse, the relevance of the current education system to at risk children, and the policies affecting our Aboriginal and Torres Strait Islander people.

If real progress could be made in these areas we would see a massive reduction in crime and deviance and we would see a quantum shift towards

a safer, more caring society. We cannot continue with a system which allows the welfare authorities, Aboriginal and Torres Strait Islander Affairs departments, the education system, the courts, the police and corrections authorities to operate in isolation one from each other and at times in conflict with each other.

We cannot allow these government bureaucracies to continue to operate in isolation from, or at times in unhealthy competition with, community based agencies who in many cases are better placed to deal with some of our fundamental social problems.

There needs to be a whole of government approach to social breakdown on a state-by-state basis. This perhaps could be coordinated by cabinet sub-committees assisted by chief executives of the relevant government agencies and very importantly leaders from significant community groups. Alternatively or perhaps complementary to the cabinet sub-committee approach, in Queensland we have the Criminal Justice Commission which is ideally placed to play an oversighting and driving role in coordination and planning.

Structurally one of the major shortcomings in public administration in this country and particularly in the criminal justice system is the exclusion of real and meaningful community input including input from academia. The Queensland Corrective Services Commission model of a statutory authority controlled by a board of part-time commissioners has much to commend it in relation to real community input. I believe the concept should be used to direct other criminal justice agencies as well as education, health, welfare and Aboriginal Affairs departments.

In so far as criminal justice and social agencies are concerned—the people end of government business—I am very wary of the super ministry models controlled by bureaucrats where process becomes more important than output. I much prefer smaller units, with clearly identified client groups, under strong community control or guidance with heavy emphasis upon managing and coordinating the interface between agencies.

I do not believe human beings have the capacity to manage large organisations effectively and humanely. I do not believe it is possible for individuals to gain the same sense of ownership or esprit de corps in large organisations as they do in small organisations.

There should be national conferences of the relevant State ministers involved to share experiences and to encourage national debate on the topic of achieving a more caring, safer, crime free society. In this time of great economic difficulty such an initiative is extremely important, as a reduction in social breakdown will bring immense savings to the taxpayer. The cost of crime to the Australian taxpayer is in the order of many billions of dollars each year compounded by the immense misery and tragedy caused to citizens.

I predict that when people of good intellect and good intent come together across the political spectrum and across the wider community to search for positive solutions to social breakdown, within a short space of time many magnificent programs and initiatives will start to take effect across the nation.

We perhaps could see a rapid escalation of the move towards Aboriginal and Torres Strait Islander people being responsible for their own system of justice and sanctions which would be interwoven once again, as it was for thousands of years, with their spiritual beliefs and their system for socialisation of their young. Perhaps something would be done to free the Aboriginal and Torres Strait Islander people from the shackles of a pensioner mentality.

We perhaps would see within the education system an approved compulsory process for identification of children "at risk", that is, children whose personal and/or family circumstances are such that they lack the basic stability to develop their learning potential and/or to cope with the school environment. Having identified these children, the education authorities could perhaps in consultation with appropriate community agencies, establish a system of community based intermediaries, to work with the school and the family, drawing on the resources of specialist agencies, to resolve problems in the home which impact on the ability of the child to participate in the education process.

In addition, we would perhaps see an alternative system of education established complementary to the mainstream, for certain categories of "at risk" children where the emphasis is upon nurturing, self-esteem, values and practical skills aimed at engendering personal self-confidence. The overall aim would be to encourage these children back into the appropriate level of mainstream education once their basic personal needs for nutrition and self-esteem have been met. It must be clearly recognised that we cannot expect children to concentrate on the "3r's" if they are worried about being sexually abused at home, are not being fed and so on.

Perhaps we would see further development of Queensland's concept of work outreach camps for adult offenders to be tailored to meet the self-development and nurturing needs of young homeless people. Someone may convince the Canberra bureaucrats that a national service scheme along the lines of the "Serving Australia" concept put forward by His Grace Archbishop Peter Hollingworth, may have something to offer to a significant proportion of our young people.

It is possible that governments may see the need for an integrated national strategy against child abuse and domestic violence with strong funding for appropriate community based support agencies. They may even extend this to look at the whole question of effective parenting. Funds may be found for more intensive education and other preventative programs against substance abuse.

Perhaps we would reach national agreement on the need to limit the use of prisons to house violent offenders and others who pose a substantial risk to the community and deal with all other offenders by community based sanctions, thus saving millions of dollars of taxpayers' funds annually.

Perhaps at budget time when the police unions, the law and order proponents and the prison officers' unions lobby governments for funds for more police and more prisons, governments right around this country, strongly supported by their bureaucrats and their community advisers, will

call a moratorium on funding for police and prisons and divert funds to the front end to allow some of the initiatives I have already mentioned to proceed.

Perhaps we will see an overhaul of the criminal justice system with its clearly stated goal as being "to keep peace in society" and for it to be based on a restorative justice model with emphasis on restitution out of court settlements, with victims and/or their agents playing a significant role in a more personalised system of justice. Millions of dollars of community work could be performed each year as restitution by offenders as part of a package involving access to rehabilitation and family reintegration programs.

The picture I have tried to paint is that there is no one simple answer to the problem of crime. Crime largely has its genesis in social breakdown and no community or government agency working alone can solve the problem or even stem the tide. The issues cannot be segmented and neatly confined within the boundaries of the various individual government agencies.

There must be teamwork, firstly to agree on the problems and issues, and secondly to work towards solutions. We must approach our respective governments, we must generate support in our local communities for a whole-of-government and community approach to social breakdown. We must continue to balance in the media the outpourings of the simplistic law and order proponents and we must never forget that the goal of the criminal justice system should be "to keep peace in society".

If we take this approach I believe there can be a positive self-fulfilling prophecy for the social development of Australia and in the years ahead when we talk to our children's children, we will be able to say with pride that we left this country in better shape than we found it.

COUNTERING ORGANISED CRIME THROUGH STRATEGIC PLANNING AND EFFECTIVE COORDINATION

William J. Horman

DURING THE 1970S AND EARLY 1980S, AUSTRALIANS WERE SLOWLY being forced by a number of Royal Commissions into the uncomfortable realisation that organised crime had established itself quite firmly in their country.

First, there was:

- the Moffit Royal (commission into Licensed Clubs in NSW (1973-74) then:
- the Woodward Royal Commission into Drugs (1977-79)
- the Williams Australian Royal Commission of Inquiry into Drugs (1977-80)
- the Costigan Royal Commission into the Federated Ship Painters and Dockers Union of Australia (1980-84); and
- the Stewart Royal Commission of Inquiry into Drug Trafficking (1980-1983/4/5)

Each inquiry revealed complex webs of organised crime that none of the existing law enforcement agencies had the necessary powers, the national scope or the resources to effectively attack. Highly sophisticated criminal networks were identified spreading across State and Territory borders and, in some cases, into the international arena as well.

Over time, it became clear that these inquiries were not revealing isolated pockets of organised crime, but a culture of organised criminal activity that was steadily gaining hold in Australia. It was no longer a question of whether organised crime was operating here in Australia—but what form the action against it should take.

Strategies To Combat Organised Crime In Australia

Governments, ministers and heads of law enforcement agencies in the 1980s took a number of steps to ensure the policies, laws, practices and procedures were better equipped to tackle the organised crime problem. Changes were introduced in relation to collection, analysis and dissemination of criminal intelligence with the establishment of the Australian Bureau of Criminal Intelligence, the National Crime Authority, a new investigative body with coercive power was established and, in more recent times an agency known as AUSTRAC has been established to counter the underground cash economy, tax evasion and money laundering and so impact on the profit motive of organised crime.

Establishment of the Australian Bureau of Criminal Intelligence

A number of the early Royal Commissions criticised the lack of information sharing between the various police forces and law enforcement agencies and suggested some form of central repository for criminal intelligence in Australia be formed. In 1981, under the auspices of the Australian Police Ministers' Council (APMC), the Australian Bureau of Criminal Intelligence (ABCI) was established in Canberra. The ABCI came into existence by virtue of an Inter-Governmental Agreement and is staffed by police officers on secondment from the Australian Federal Police, the Northern Territory and each State police force and is supported by public service staff.

The concept of the ABCI is for it to be the central repository for criminal intelligence in relation to its "specific intelligence interests" (which are set out in the Inter-Governmental Agreement and include illicit drug trafficking, illicit gambling, national and international movement of profits of organised crime; corruption in public life, and so on). The criminal intelligence is provided to the ABCI by the Bureaux of Criminal Intelligence of the police forces as well as other law enforcement agencies. The role of the ABCI is to collect, collate, evaluate, analyse and disseminate criminal intelligence. It is tasked by and reports to a Management Committee (consisting of the Police Commissioners throughout Australia) and the APMC.

Initially the ABCI held twice yearly meetings of the Heads of the Bureaux of Criminal Intelligence. Then various agencies were invited to have "observers" attend the meetings. Last year the decision was made to rename the meetings which are now known as the Heads of Criminal Intelligence Agencies Conference which are convened by the ABCI and attended by the heads of the Police Bureaux of Criminal Intelligence and representatives of the Australian Customs Service, the Australian Securities Commission, the Australian Taxation Office, the Department of Immigration, Local Government and Ethnic Affairs, the National Crime Authority, the Queensland Criminal Justice Commission, the New South Wales Crime Commission and several overseas law enforcement agencies as well. These meetings endeavour to identify matters, including possible targets, of mutual interest and concern.

The existence and role of the ABCI greatly facilitates improved relationships between the various law enforcement agencies as well as the collection and analysis of intelligence on a national basis.

It is also worth noting that the ABCI is only one of a number of common police services which are making a significant contribution to the increased professionalism of the police services and law enforcement in Australia.

The other common police services include:

- The Australian Police Staff College;
- The National Police Research Unit;
- The National Exchange of Police Information;
- The National Uniform Crime Statistics Unit;
- The National Institute of Forensic Science; and the
- (only very recently established) National Police Ethnic Advisory Bureau.

These common police services are contributing to the closer working relationships and a greater communication, consultation, cooperation and coordination between police forces and other law enforcement agencies.

Establishment of the National Crime Authority

Another result arising from the reactions to the disclosures by the Royal Commissioners was the realisation that some form of commission of inquiry with appropriate coercive powers was required to tackle organised crime. Following long, complex and often spirited community and parliamentary debate, the Commonwealth Parliament enacted the *National Crime Authority Act* and the National Crime Authority (NCA) came into existence on 1 July 1984 with the proclamation of the NCA Act. (Later, supporting legislation was introduced in Australia's States and Territories.)

But finding a role for Australia's new, premier organised crime fighting organisation was not easy. Competing interests had to be balanced and serious questions resolved before a new powerful player could enter Australia's law enforcement field.

The Commonwealth Government had to be confident that the new agency could effectively attack organised crime and be sure it would attract the support of the existing crime fighting agencies with which it would need to work to achieve maximum effectiveness. The new agency had to be powerful enough to do its job but not so powerful that it could become a law unto itself. As well, civil rights had to be balanced against the NCA's need for powers that would allow it to successfully attack entrenched organised crime.

In short, the NCA would be Australia's first national crime fighting agency, with a specific brief to attack organised crime. It would have the power to compel people to produce documents and give evidence on oath—

powers not available to police forces. It would also be the only law enforcement agency to have under-pinning legislation in every State and Territory as well as the Commonwealth, giving the NCA truly national scope.

The NCA was established to fill a gap. It had become clear that existing law enforcement agencies were not equipped to tackle the problems that had been identified by the Royal Commissioners and it seemed that the sophistication of Australian organised crime demanded a sophisticated response. The NCA was not designed to take over from any of the existing law enforcement agencies. It was designed to complement and coordinate, not compete. The parliamentary debate on the formation of the NCA offers a good description of how the organisation was expected to fit in with the rest of the law enforcement community. In his second reading speech, the then Minister for Communications, Mr Michael Duffy said:

> . . . it is the nature of organised and sophisticated crime that particular manifestations of that crime, particularly in the areas of drug importation, corporate fraud and tax evasion, may not come to the attention of the police forces. Activities of this kind may be so intricately interwoven, may involve so many jurisdictions and may be so well camouflaged under legitimate ways of doing business that they may well not cause any one police force to take notice . . . (House of Representatives debate on the NCA Bill, 7 June 1984)

The NCA Corporate Plan sets out a very specific "mission statement" for the NCA:

> The National Crime Authority's mission is to counteract organised criminal activity and reduce its impact on the Australian community, working in cooperation and partnership with other agencies.

The NCA was never envisaged as a stand-alone organisation. Indeed, a key feature of the NCA is the coordinating role it plays in the law enforcement community, ensuring that criminal intelligence and information is shared by all the relevant crime fighting agencies. This includes sharing both strategic intelligence about national trends and patterns in organised crime and tactical intelligence or information about specific investigations.

Because organised crime does not respect State or even national boundaries, the NCA has important links with the international law enforcement community as well. This network includes the NCA's involvement in an international task force on money laundering called the Financial Action Task force made up of all OECD countries as well as Hong Kong and Singapore. The NCA chairperson, Mr Tom Sherman, is the current president of this group.

The parliaments of Australia recognised that the problem of organised crime in Australia was too big and complex for any individual law enforcement agency to tackle it successfully alone. That includes the NCA.

The relationship between the NCA and the various police forces and other law enforcement and regulatory agencies has not been without certain "tensions". These have been well aimed, documented and recognised—and efforts have been made to address the issues.

The NCA staff represents less than 1 per cent of Australia's total law enforcement resources, so the NCA must work with other agencies to fulfil its charter. The former Chairman of the NCA, then the Hon. Justice John Phillips, explained it this way:

> . . . Essentially, I envisage the authority as a body which should act as a partner to the other law enforcement agencies. It should not be—or appear to be—a competitor.
>
> Rather, it should follow the roles of a coordinator and an agency offering complementary services to the other agencies. It must not act to give rise to it being perceived as a "ninth police force".
>
> It should follow an operational mode based on the successful multidisciplinary task-force format—teams composed of police, finance and intelligence advisers and lawyers—and develop that so as to attain expertise coordinating multi-agency task forces.
>
> It must give high priority to collection, analysis and dissemination of relevant criminal information and intelligence together with recommendations for relevant law reform.
>
> "Future Directions for the NCA" Submission to IGC, November 1990.

The NCA has regional offices in Adelaide, Brisbane, Melbourne, Perth and Sydney. It is staffed by lawyers, accountants, analysts, computer and other support staff and police investigators on secondment from all of the police forces. The fact that police investigators bring to the NCA their experiences and skills helps certain relationships as does the fact that they subsequently return to their Forces with a greater knowledge and understanding of what the NCA is about and how it goes about trying to achieve its functions and objectives.

Establishment of the National Consultative Processes

The "Future Directions" paper proposed as the primary selection vehicle for NCA references (which permits the use of its coercive powers) or inquiries the following consultative process:

Consultative Committee: The Consultative Committee was established in 1991 and it consists of the Commissioner of the Australian Federal Police, the Northern Territory, and each State police force; the Chairperson of the NCA, Deputy Chairman of the Australia Securities Commission, the Director of the Australian Bureau of Criminal Intelligence and the Director of AUSTRAC, whilst representatives of the Australian Customs Service, the Australian Taxation Office and other agencies might attend from time to time upon invitation or request.

Consultative Committee Secretariat: The Consultative Committee is serviced by a Secretariat comprising a representative from each police service, the ABCI, the Australian Customs Services (ACS), AUSTRAC and the NCA.

These representatives are assigned the task of identifying matters which might prove suitable for references/inquiries with NCA involvement. The Secretariat is tasked with preparing a short list of proposed references/inquiries and briefing papers for the consideration of the Consultative Committee. Criteria for the selection of such references inquiries include the circumstances that matters cross jurisdictional boundaries or reflect offences of a like character being apparently committed in several States or Territories.

The advantages envisaged by the establishment of this consultative process include:

- being a national body, its composition should help to identify references inquiries of a national character and thus appropriate to the attention of the NCA;
- its composition should ensure that duplication of effort is avoided;
- its composition should assist to overcome the "territorial/turfdom" disputes and tensions which have occurred in the past.

White Collar/Organised Crime Committees: The NCA's "Future Directions" paper which was prepared in 1990 followed the corporate excesses of the 1980s and was developed during the period when the Australian Securities Commission was getting established. It addressed a number of comments to the problem of combating serious white collar corporate crime. The paper stated:

> It must be accepted that in the last decade there has not been a single body which was in fact responsible for combating serious white collar corporate crime or perceived by the public to have such a role. That must change. On the other hand, it must also be accepted that effective control of such white collar crime is beyond the capacity of any one agency, Commonwealth or State. Because it usually transcends State boundaries, it requires for its control an organisation with a physical presence in all the States and Territories . . .
>
> The task is, however, within the capacity of a cohesive combination of existing agencies utilising joint task forces; allocation of clearly defined responsibilities and proper supervision and coordination. Within this concept I propose that the NCA perform both coordinating and participating roles in partnership with the existing agencies ("Future Directions" submission 1990, p. 4).

In support of this concept of inter-agency liaison, cooperation and coordination, White Collar/Organised Crime Liaison Committees have been established in all States and Territories of Australia with the exception of the Australian Capital Territory and New South Wales where it is hoped that similar committees will be established in the near future.

These committees are made up of representatives of the Australian Federal Police, the local State or Territory Police Force, the Australian Customs Services, the Australian Securities Commission, the Australian

Taxation Office, AUSTRAC, the office of the Director of Public Prosecutions, the National Crime Authority and other relevant agencies such as the Queensland Criminal Justice Commission. (The DPPs are invited to participate because of their prosecutional role, interest in legal issues and law reform and because of the DPP's role in Proceeds of Crime matters.)

An article about the Victoria Police Chief Commissioner, Mr Neil Comrie in *The Age* newspaper of 14 April 1993 stated:

> He said the challenge was to deal with such [white collar] crime nationally. For the first time there are national investigations in place involving virtually every law enforcement agency in Australia. That's a tremendous initiative if we are going to be effective in dealing with the upper echelon of crime (*The Age*, 14 April 1993, p. 5).

Other initiatives arising out of the closer working relationships between the NCA and the law enforcement agencies have included:

- annual conferences coordinated by the NCA on a major criminal justice theme (outcomes including recommendations for law reform, changes to practices and procedures, and so on);
- the development of a National Strategic Intelligence Analysts Training Course;
- the introduction of a National Management of White Collar Crime Investigations (2 weeks) Seminar. (The 1992 Seminar was attended by 34 representatives from 21 agencies, including 7 from 6 overseas countries);
- the development of a Money Laundering Course; and
- other cooperative efforts to address matters of mutual interest and concern (including inter-agency training).

Establishment of AUSTRAC

In 1985 the then Attorney-General, Mr Lionel Bowen, went on public record as saying that financial institutions in Australia should be required to report cash transactions along the lines of a requirement in place in the United States under the Bank Secrecy Act. He emphasised the need to obtain information about cash transactions in order to detect illegitimate transactions and prosecute those responsible. He pointed out that although a lot of the information was already on public record, a large part of the success of the Costigan Royal Commission was due to the Commission collation of information and analysis of the patterns the conduct revealed.

Mr Bowen also noted Mr Costigan's views that the most effective means of curtailing organised crime was by tracing financial transactions: which without this capacity to "follow the money trail" he suggested, it is virtually impossible to apprehend the most important criminals (Costigan Royal Commission 1984).

Mr Bowen's views followed those expressed by Mr Costigan in his report into tax evasion and criminal activity and an earlier report by Mr Justice Stewart in the Royal Commission of Inquiry into Drug Trafficking (Stewart Royal Commission 1983). In his report, Mr Justice Stewart said:

> Cash is a very mobile commodity and it is this ease of movement that partly originated the concept centuries ago. Properties in cash passes on delivery. Criminals accept the advantages that cash is difficult to trace and that its use assists in the avoidance of taxation. That there are problems for criminals who obtain large amounts of cash. Apart from the difficulty of obtaining an unobtrusive investment for cash in bulk and its erosion by inflation if an investment is not made, there are difficulties of storage to prevent theft of moving cash in bulk and of avoiding suspicion which attends possession of large amounts of cash (Stewart Royal Commission 1985).

The original Cash Transaction Reports Bill in 1987 was introduced into the House of Representatives on 13 May 1987 by the Attorney-General Mr Lionel Bowen. A revised version of the Bill was introduced into the Senate by the then Minister for Justice, Senator Michael Tate, and referred to the Senate Standing Committee on Legal and Constitutional Affairs.

The present legislation is a result of the review process of the original Bill by the Senate Standing Committee as well as further amendments to correct some deficiencies and as a result of extensive consultation between AUSTRAC, the Attorney-General's Department, cash dealer representative bodies and the law enforcement community. In introducing the Bill to the Senate on 18 May l988, Senator Tate said:

> The Bill represents one of the most significant initiatives to counter the underground cash economy, tax evasion and money laundering. It is notorious that the underground cash economy provides great scope for tax evasion both domestically and internationally.

The CTRA (Cash Transaction Reports Agency) was established in February 1989 and subsequently changed its name to AUSTRAC in December 1992. The *Cash Transaction Reports Act 1988* requires cash dealers (banks and other financial institutions, certain gambling institutions and others as defined) to:

- report transactions suspected of relating to tax evasion and serious breaches of the law including laws relating to money laundering, and proceeds of crime (suspect transaction reports);
- report cash transactions involving A$10,000 or more (significant cash transaction reports); and
- to identify all new signatories to accounts in the manner specified in the Act.

The Act makes it an offence to open or operate an account in a false name. It is also an offence for a cash dealer not to report transactions in the way

required by the Act. Persons deliberately structuring transactions to avoid the significant cash transaction report requirements commit an offence under the Act. These and other provisions have created a package of measures which together with other laws creating offences of money laundering and proceeds of crime as well as taxation and customs laws now has Australia in good shape to attack the profit-motive of organised crime. AUSTRAC, however, does not actually carry out investigations as such in the traditional sense but relies on the investigative resources of their agencies.

Access to financial transaction reports information is limited to AUSTRAC staff and those law enforcement and regulatory agencies which are named in the *Financial Transactions Reports Act 1992* (Cwlth). AUSTRAC presently provides access to reports of significant cash transactions, reports of suspicious transactions and reports of movements of currency into and out of Australia. Those organisations will also have access to International Telegraphic Transfer (ITT) data as FTR information as it progressively becomes available during 1993. The law enforcement and regulatory agencies which may receive FTR Information are specified in the FTR Act as follows

- Australian Taxation Office
- Australian Federal Police
- National Crime Authority
- Australian Customs Service
- Australian Securities Commission
- All States and Territory Police Forces
- NSW Crime Commission
- Queensland Criminal Justice Commission
- NSW Independent Commission Against Corruption.

Within AUSTRAC an Analysis Unit (AAU) has been created to utilise the services of the major law enforcement and regulatory agencies in Australia, in company with AUSTRAC, to produce "alerts" from the significant cash transaction reports. Having identified an "alert", the AAU then "adds value" to the information contained in those reports through the use of public records and their various intelligence holdings. If the value added to the alert indicates that the matter may need to be pursued further, the package will be referred to the relevant law enforcement or revenue agency to be further assessed and investigated if deemed appropriate by that agency.

Within a very short time AUSTRAC has demonstrated its role and capacities are important to law enforcement in Australia. A heading from a recent article in *The Australian Financial Review* (16 April 1993, p. 36) stated "AUSTRAC raises $30M from dodgy dealings" and reported on AUSTRAC's

submission to the Senate Standing Committee on Legal and Constitutional Affairs.

AUSTRAC, because of its functions and capacities and because its Director is a member of both the NCA Consultative Committee and the Consultative Committee Secretariat, it has an important role in the inter-reaction between the law enforcement and regulatory agencies and the investigation of organised crime.

Strategic Planning

The law enforcement community in Australia, from the level of the Australian Police Ministers' Council and the NCA Inter-Governmental Committee, through the Police Commissioners and the heads of other law enforcement and regulatory agencies, have in recent times taken a number of positive steps in regards to strategic planning. Initiatives have included:

- the preparation of national assessments on various aspects of crime;
- the establishment of a Strategic Intelligence Unit within both the Australian Bureau of Criminal Intelligence and the National Crime Authority. (Additionally, a number of the police forces and other agencies have also established strategic intelligence sections within their agencies.);
- the development of a Strategic Intelligence Analysts Training Course (which is held at the Australian Police Staff College and conducted by the Australian Bureau of Criminal Intelligence and the National Crime Authority).

Strategic intelligence, which can be defined as an insight or understanding, including advice on current and emerging trends and areas of operation, which is relevant to the development of strategies to achieve longer term and broader organisational objectives, is crucial to strategic planning. The strategic intelligence function can assist the executive to:

- determine relative priorities for the allocation of limited resources and select operational strategies and appropriate areas of operation;
- evaluate the overall effectiveness of operational activity in meeting corporate objectives, and evaluate the impact of specific operational strategies;
- increase organisational expertise through the consolidation of knowledge and experience;
- coordinate with other agencies, through the sharing of information and experience, leading to the development of consensus on the nature of the threat and the most appropriate response; and
- provide informed advice to Government.

Some strategic work being undertaken at the present time includes the ABCI's assessment of the Australian criminal environment. The aim of that project was to provide an overview of all types of criminal activity and, where possible, identify trends. A task being undertaken by the NCA has been to prepare a discussion paper on "Criteria for Evaluating the Impact on the Australian Community of Specific Types of Organised Criminal activity". This may facilitate a systematic comparison of those activities and provide a basis on which to determine relative priorities, formulation of policies, allocation of resources, and so on.

At all levels there is a recognised need not only to react to problems and issues but to be proactive, which necessitates a strategic approach to matters which appear to be "over the horizon".

Coordination Of Law Enforcement Efforts

In the past decade or so, improved communications, increased and swifter mobility, sophisticated technologies, different national and international legal structures, organisations and laws have at times worked in favour of organised crime.

Governments and law enforcement agencies have accepted that no single agency has the necessary powers, national scope, resources or expertise to effectively tackle organised crime and that new strategies and approaches were needed.

The concept of task forces, joint task forces or cooperative law enforcement effort are not new—but in recent years there has been far greater consultations communications, cooperation and coordination between the law enforcement and regulatory agencies within Australia.

This is well illustrated by the fact that in recent times the Management Committee of the ABCI referred a National Assessment Report on a particular aspect of organised crime in Australia to the NCA Consultative Committee Secretariat to develop a national strategic plan to combat the specific organised criminal activities of the particular group and the fact that, for the first time in Australia, all police forces and other law enforcement agencies are now participating in a major organised crime investigation under an NCA Reference with the NCA providing the coordination role.

An example of a highly successful multi-agency task force investigation was "Operation Quit" where the NCA coordinated investigations into State tobacco tax evasion and federal income tax evasion. Initially a number of State revenue and other agencies were carrying out separate investigations, which often crossed State boundaries, on the same issues and often involving the same persons. This investigation by a multi-agency task force and ultimately coordinated by the NCA, has been described as a "significant venture" and resulted in a number of persons being charged (with a significant gaol sentence in one case so far), significant cash amounts seized and tens of millions of dollars of otherwise lost revenue expected to be recovered. The success of this operation was greatly assisted by the "new boy on the block", AUSTRAC. The multi-agency task force involved eighteen different agencies and over 200 personnel. Although the role of the NCA in

Operation Quit is generally described as a "coordination role", more accurately it was a coordination and support role. The NCA provided assistance to the cooperative effort by making its computer technology available as well as financial analysts, lawyers, investigators and use of its physical and technical surveillance capabilities.

Another recent example is where a known person wanted on warrant in a particular State had not been apprehended over a period of years despite a number of concerted efforts. Although it was rumoured that he had been in various States it was not until a State police force approached the NCA that a more national multi-agency approach was adopted. Within a comparatively short time the person was located on a cannabis plantation, apprehended and subsequently extradited to face the outstanding charges. The multi-agency effort which the NCA coordinated and provided support, involved police personnel from three forces, NCA personnel from three regional offices and at last one other law enforcement agency. It involved general investigations and both physical and electronic surveillance. The successful operation was a good example of what can be achieved through cooperation and coordination.

The Chief Commissioner of Victoria Police, Mr Neil Comrie, at a conference held in Melbourne on 18 April l993 by the NCA and the Victorian Council for Civil Liberties on the theme "Liberty, Law Enforcement and Accountability" said on the issue of partnership between the traditional law enforcement bodies (police forces) and the other "specialist agencies" such as the NCA, that the following matters need to be addressed to achieve maximum results:

- clearly define the parameters of the specialist agencies;
- there must be a timely and accurate sharing of information;
- there must be open communication between agencies (bearing in mind security and privacy issues);
- training—Detective Training School and specialist courses should be made available to specialist agencies;
- there must be memorandums of understanding negotiated with each agency and resourcing of ongoing investigations to be included;
- a knowledge, use and availability of specialist agencies' coercive powers should be made available;
- in the areas of white collar crime, the Investigators Working Party Paper and recommendations presented at the NCA Conference on White Collar Crime (15-17 June 1992) should be acted upon.

Law enforcement in Australia today is very accountable. Agencies are responsible to Ministers and government, complaints may be addressed by the office of the Ombudsman, decisions may be enquired into by use of

Freedom of Information applications and reviews undertaken by the Administrative Appeals Tribunal, matters may be publicised in newspapers or aired in parliament and, of course, there is the court system and judicial oversight. The NCA is also monitored by an all party Parliamentary Joint Committee (PJC) and an Inter-Governmental Committee (IGC) which consists of the Commonwealth Attorney-General, the Attorney-General of SA and the Ministers responsible for the police in the other States and the Northern Territory.

But ultimately the success of the law enforcement efforts against organised crime in Australia will very much be determined by the quality of life enjoyed by the ordinary citizens of Australia—which I suggest will be significantly enhanced by countering organised crime through strategic planning and effective coordination.

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PERSPECTIVES ON THE CHANGING ROLE OF THE JUDICIARY IN COORDINATING CRIMINAL JUSTICE

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THROUGHOUT AUSTRALIA, THE ROLE OF THE JUDICIARY IN COORDINATING criminal justice is changing. In addition to undertaking the usual judicial functions, the judiciary is becoming increasingly involved in coordinating matters concerning the administration of criminal justice and that involvement leads into areas which traditionally have been the responsibility of others.

Historically, when a procedure, policy or practice of a criminal justice organisation has been found during the course of proceedings before the court to be in need of change, comments concerning the desirability for change have been made by the judiciary, either during the proceedings or in a judgment and those comments were made with the expectation that some appropriate authority would consider the suggestions. Whilst some matters received immediate attention (particularly if the comments attracted the attention of the media and involved issues currently on the political agenda), not surprisingly, the majority of comments disappeared into bureaucratic processes, most never to surface again.

In the past, it was not expected by the judiciary that a reporting system concerning the suggestions would occur as it was considered that the matters raised were the responsibility of others.

Apart from the traditional consultation between the Executive and either the Chief Justice or the heads of jurisdiction in respect of policy proposals that affected the courts, the judiciary has not usually been involved in any coordinating role. The traditional scenario has changed and is changing in parts of Australia.

This paper discusses the extent of the increasing involvement of the judiciary in coordinating criminal justice and considers some of the reasons

for the changing role. It concludes with perceptions about the likely future role of the judiciary in coordinating criminal justice.

The Driving Force¾ Cost And Delay

Delay in criminal proceedings, particularly in the higher courts, still is at the top of the agenda for all organisations involved in criminal justice. In courts, delay in criminal trials and initiatives to overcome those delays has been the driving force behind the increasing involvement of the judiciary.

In most states of Australia and in most higher courts, special delay reduction programs have been implemented. A comprehensive analysis of those initiatives and programs will be found in Sallmann (1992), *Managing the Business of Australian Higher Courts.*

The United States Management Model

Many publications concerning delay reduction program and case-flow management emanate from the United States. Much attention has been given to the problems of delay in the United States and organisations involved in supporting courts or providing consultancy assistance to courts, have designed and published information about the elements of delay reduction programs.

The leading publication (American Bar Association 1986, *Defeating Delay, Developing and Implementing a Court Delay Reduction Program*) has been used as a guide in some courts in Australia, including, in particular, the Supreme Court of NSW and the District Court of South Australia.

In this publication guidelines concerning building the design team, designing the delay reduction program planning for implementation, and sample delay reduction plans are included.

In relation to building the design team, the following principles are recommended:

- The first important concept for the delay reduction programming is that the court must control the pace of litigation;
- The key to an effective delay reduction program is committed leadership; and
- Since it is the judges who must be responsible for the pace of litigation, it is the judges who must be the formal leaders of the reform effort.

In relation to the agenda for any delay reduction program design team, the following principles are recommended in *Defeating Delay*:

- Time standards, which are the goals of a delay reduction program, must be adopted. Achieving substantive justice in individual cases must be a stated goal of the program;

- An in depth analysis of the current caseload must be completed;
- After statistical analysis identifies the location of delays, then the specific reasons for the delays may be determined (Weatherburn 1993);
- Although many techniques exist to attack delay, the heart of all programs is active caseflow management (the term caseflow management denotes management of the continuation of processes and resources necessary to move a case from filing to disposition whether that disposition is by settlement, guilty plea, dismissal, trial or other method. It is concerned with active attention by the court to the progress of each case once it has been filed with the court);
- A monitoring system must be established which is as simple as possible while still providing the information needed for management of the caseflow;
- Date certain scheduling of cases is necessary. Counsel must believe that the cases will be heard when scheduled;
- A firm adjournment policy is required for high productivity.

The recommendations in *Defeating Delay* concerning the planning for implementation of a delay reduction include matters relating to administration, lines of communication with system organisations, specific responsibilities for system participants, training programs and education initiatives.

The author's purpose in highlighting the elements included within a delay reduction program is to emphasise the extent of involvement by the judiciary in such programs and to show how the programs involve in principle the need to coordinate matters and the organisations involved in the administration of criminal justice.

There are many examples from the United States of how courts can succeed in reducing delay in criminal proceedings (*see* Hewitt, Gallas & Mahoney 1991). Earlier empirical work in the United States established common elements in those courts which successfully reduced delay (Mahoney 1988). Those elements were:

- Leadership;
- Goals;
- Information;
- Communications;
- Caseflow management procedures;
- Judicial responsibility and commitment;
- Administrative staff involvement;

- Education and training;
- Mechanisms for accountability;
- Backlog reduction inventory control.

In relation to communication Mahoney states:

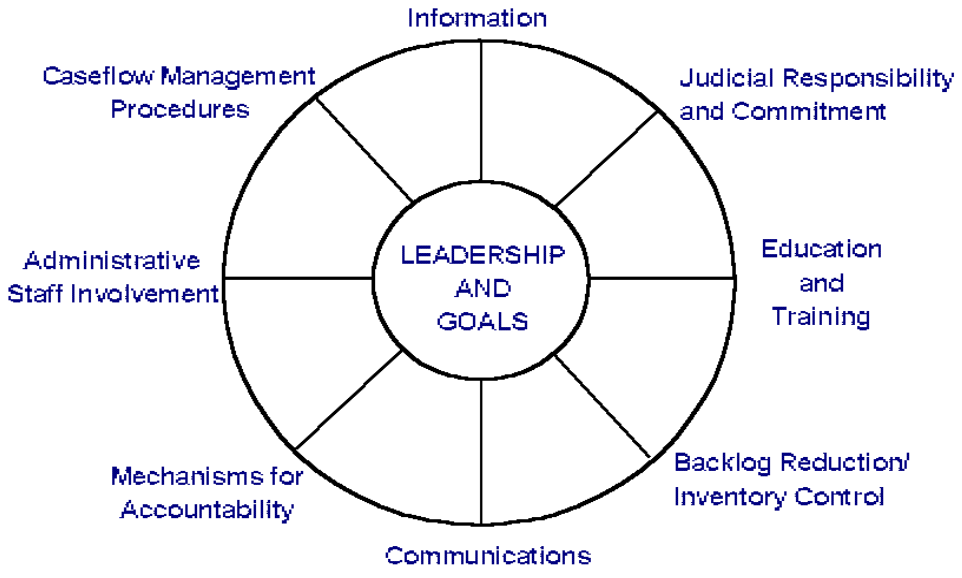
> Delay reduction and delay prevention programs are not undertaken in a vacuum. If there is any one lesson from the research and experimentation of the past decade, it is that good communications and broad consultation—within the court (including both judges and staff), between the trial court and state level leaders, and with the private bar and key institutional actors such as the prosecutor and public defender—are essential if a program is to succeed (Mahoney 1988).

The later research in 1991 mentioned above confirmed elements for successful courts:

> The ten elements are interdependent and, except for leadership goals, without an implied hierarchy. Leadership and goals are the hub of an eight-spoked wheel, signifying the centrality of these elements within the synergistic character of the whole (*see* Hewitt, Gallas & Mahoney 1991).

Figure 1

Common Elements of Successful Programs: A Synergistic Relationship



Source: Hewitt, Gallas & Mahoney 1991

In the courts studied in the publications mentioned, the coordination of criminal justice agencies arose, amongst other things, as a result of the element of "communication".

The point I wish to make is that there is a need to coordinate to be successful. That need results in communication between the judiciary and other justice agencies.

The Australian Models

Whilst empirical research is yet to be conducted in Australia in relation to the elements of successful courts, there is evidence of success for the same reasons identified in the United States studies and, not surprisingly, the United States models of success, have been adopted.

The District Court of South Australia has adopted the United States model.

The Caseflow Management rules are almost identical for the Supreme Court and the District Court and, for ease of reference, are set out below:

> **Caseflow Management**
>
> 5.01 These Rules are made for the purpose of establishing orderly procedures for the conduct of the business of the Court in its criminal jurisdiction and of promoting the just and efficient determination of such business. They are not intended to defeat a proper prosecution or to frustrate a proper defence of a person who is genuinely endeavouring to comply with the procedures of the Court and they are to be interpreted and applied with the above purpose in view.
>
> 5.02 With the object of:
>
> (a) promoting the just determination of the business of the Court;
>
> (b) disposing efficiently of the business of the Court;
>
> (c) maximising the efficient use of the available judicial and administrative resources; and
>
> (d) facilitating the timely disposal of business at a cost affordable by the parties and the community generally;
>
> proceedings in the Court will be managed and supervised in accordance with a system of positive caseflow management. These Rules are to be construed and applied and the processes and procedures of the Court conducted so as best to ensure the attainment of the above objects.
>
> 5.03 The system of caseflow management is directed towards achieving the disposal of the business of the Court in accordance with the following standards:
>
> (a) That 90 per centum of the cases of persons committed for trial should be tried to verdict within 90 days of that person's first appearance in the Court.

(b) That 98 per cent of the cases of persons committed for trial should be tried to verdict within 180 days of that person's first appearance in the Court.

(c) That all of the cases of persons committed for trial should be tried to verdict within 365 days of that person's first appearance in the Court.

(d) That 90 per centum of all persons committed for sentence should be sentenced within 60 days of that person's first appearance in the Court.

(e) That all persons committed for sentence should be sentenced within 90 days of their first appearance in the Court.

In the Supreme Court of New South Wales, the United States model has been applied, but not to the same extent as the District Court in South Australia.

Whilst most of our efforts have been devoted to civil proceedings in the Common Law Division, we have some plans in relation to crime and, in that regard, it will be similar in many aspects to the South Australian approach. Our system will be known as Differential Case Management and early discussions have taken place with other criminal justice agencies. It will include the same principles as applied in South Australia.

It is important to note, however, that like all other models mentioned, the Supreme Court is taking the lead and is involved in coordinating other agencies in delay reduction initiatives.

Additionally, the establishment of the Department of Courts Administration in New South Wales has resulted in an increased involvement by the judiciary in committee work concerning criminal justice issues across agencies. For example, committees are presently involved in matters relating to videotaping of police records of interviews, and, a bail application video link between the Supreme Court and Long Bay Gaol. Not surprisingly, the judges on the committees tend to take a leading role.

A Different Approach To Understanding The Changing Role

Where does the buck stop? Who or what is responsible for coordinating criminal justice? Who does the community view as responsible for effective criminal justice? Who is responsible for balancing the need to administer individual justice in individual cases against the need to protect individuals from the arbitrary use of government power?

The simple answer to all of these questions is government. But what is government? Is it the Parliament, the Executive and the Judiciary? If one asked the same questions of the different arms of government a variety of answers would be received. The important and relevant consideration, however, is what the public thinks. If the public were asked the same questions it is likely that the overwhelming view would be that the courts (and therefore the judiciary) were responsible. The media also plays a role in creating that understanding.

If the proposition is accepted that the public at large perceives the courts as being responsible for the administration of justice, how then do courts measure their performance and how should they measure their performance?

Courts have been exposed to extensive scrutiny and publicity in recent years. There have been inquiries into courts, the litigation process, the legal system, the legal profession and administration supporting courts. With continuing concern about cost and delay, further examination is inevitable.

In the Supreme Court of NSW, many representations were received directly from litigants at the time when delays were at their worst and those representations asked, what was the court doing about the problem? As it is well known, the court has taken up the challenge.

The fundamental difference to the laissez-faire approach is the way in which, as a matter of policy, the Court has taken control of the pace of litigation which involves dealing with issues concerning coordination of agencies involved in the process. Related to taking control for the purpose of managing is the extent to which and way in which effort and resources are deployed.

In the United States models are available (for example, National Centre for State Courts, 1990, *Trial Court Performance Standards*, with commentary) and standards have been established for access to justice, expedition and timeliness, equality, fairness and integrity, independence and accountability, and public trust and confidence. As well as standards, performance measures have been developed which include measures to evaluate public opinion concerning, for example, standards of public trust and confidence.

Although the performance standards of the kind developed in the United States have not been adopted, performance standards for courts in Australia are under consideration (for example, 1992/3 Corporate Plan, NSW Department of Courts Administration). The relevance of the issue of performance standards to the role of the judiciary in coordinating criminal justice is related to the concept of courts taking control of the pace of litigation. Courts and the judiciary are measuring performance against expectations, particularly in relation to delay reduction, and the next step is not far away. Greater measurement of performance against public expectations will lead to greater involvement by the judiciary in coordinating other agencies. The United States experience seems to be a good guide following the adoption in Australia of the delay reduction program models mentioned above.

Conclusion

On a final note, changes to the way in which courts are managed will lead to greater involvement of the judiciary into areas where the Executive has traditionally been responsible. (*See* Sallmann and Church, 1991).

As the administration of courts changes, together with the case management procedures implemented, it will be inevitable for the judiciary to become more involved in coordinating criminal justice.

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CRIME PREVENTION AND CAR THEFT IN NEW SOUTH WALES: A CASE STUDY

Jeff Jarratt

BETWEEN JULY 1991 AND JUNE 1992 THE THEFT OF MOTOR VEHICLES IN New South Wales—cars, trucks, trailers, caravans and motor cycles—dropped by over 25 per cent. The timing of that reduction coincided with a concerted effort by the police service to target car theft as a specific issue and to apply the concepts of crime prevention and proactive community based policing, on a concentrated basis, to a particular category of crime.

The police developed, and have largely followed, a "strategic direction" which combines many of the familiar aspects of crime prevention—deterrence, education, removal of opportunity and structural redesign of social and environmental factors which allow, or even encourage, criminal behaviour and tendencies.

The process applied was:

- identify the real problems;
- identify the real players;
- identify possible solutions;
- raise awareness;
- gather support from as wide a range as possible;
- involve the stakeholders;
- make them reinforce each other;
- where necessary play them off against each other.

The strategic direction combined a rigorous analysis of the issue with a community safety approach to involving the wider community, including other departments, agencies and the private sector in addressing the problems.

A forum of senior executive officers, the development of specific action plans, a high level steering committee, organisational commitment, cooperation, visits to manufacturers and media coverage were all utilised to put the issue and the solutions firmly on the State and national agenda. The NSW Police did not set out consciously to develop a project which would become a "case study". The project grew as it went along and as the people involved in guiding it became more knowledgable and more confident in what they were doing.

The strategy really began when the former Premier of NSW, Mr Greiner, responded to one instance of particularly negative publicity by directing the Service to develop a strategic plan to address car theft. It was made clear, however, that there was to be no extra money and extra resources. The problem had to be solved from within existing budgets. There was an immediate impetus to applying the best problem solving techniques accessible. There were certain known factors at the start.

The objective was quite clear. Solve car theft by preventing it from occurring in the first place not by improving the clear up rate. No-one tries to stop and book every speeding driver. The removal of opportunity, the fear of being caught and the manipulation of public perceptions and values have, however, contributed to a significant fall in road deaths and casualties. Similarly no police service can catch and arrest every car thief or return every stolen car. But they can make stealing cars less attractive and less easy.

Secondly, it was known that traditional policing alone was not going to achieve the reduction looked for. What was wanted was a sustainable self-perpetuating gain, one which was not dependent on the deployment of finite resources away from other policing functions which have their own imperatives.

Car theft had been a serious problem for a number of years and significant progress had already been made, but at a tremendous cost in terms of manpower and other resources. "Gotcha" cars, covert operations and investigations, beat policing and media campaigns had all contributed to a reduction in car theft from record levels in 1988 of around 5,800 cars per month to about 4,200 in July 1991. But the intensity could not be maintained and the effectiveness of those measures which the police, acting alone, could take, had been very nearly exhausted.

Thirdly, car theft showed itself to be particularly sensitive to the introduction of new measures and to publicity. Each time a new initiative was commenced or announced, there was a corresponding drop in the month for car thefts.

Therefore the police service knew it wanted to prevent car theft, that it had to involve other parts of the community and that car theft was not a constant type of crime but highly sensitive to the environment.

Car theft made a good subject for a case study on crime prevention because of a number of factors. Probably the most important of which were

its high profile (which was accompanied by consequent political interest), the relatively large amount known about the "industry" and the fact that it was a discreet problem, easily identified and targeted.

It was, however, accompanied by a number of drawbacks such as the bad publicity which it had already attracted for the police (insurers and others were regularly launching attacks on NSW as the "car theft capital of the world" whenever it came time to increase premiums), the "humdrum" nature of the problem (preventing car theft is not as glamorous as smashing an organised crime ring, locking up drug pushers or high speed chases), and the undeniable fact that many of the factors contributing to car theft were beyond the control, or even direct influence of the police. With these points in mind the first step was to gather all the available evidence and the conclusions it suggested and to present it publicly to those people and organisations which could help the police service reduce motor vehicle theft.

The first forum was held in July 1991. It was stage managed only to the extent that the service had identified some of the problems, solutions and stakeholders and presented that information to the forum. It was the participants themselves, however, who added new information detail and accepted ownership of the issue.

A national forum on car theft in July 1992 echoed the problems identified at the State level and reinforced the need for a national approach to many aspects of the issue. Sadly, this national approach has temporarily stalled, in part due to a bureaucratic reluctance in Canberra to implement one of the most important recommendations.

Each of the above factors warrants further explanation as they were very important in determining how the service approached the issue, the objectives and the strategy designed to address it.

Profile and Media Coverage

The profile of the issue was well established and the NSW Police were periodically subject to a ritual beating by the media on the subject of NSW being, as I have said, "the car theft capital of the world". It was therefore relatively easy to get at least formal support for making the prevention of car theft a major project.

This was very important as one of the major points behind the strategy was publicity and public awareness. The ability to get media coverage for the problem magnified the effect of the practical and operational strategies. Every time a significant drop occurred in car theft or a specific action took place the media was utilised to help get the message across.

Television shows such as "The Investigators" were happy to help publicise concerns about security and component part labelling. Radio and print media assisted in getting the message across, particularly at the local level, and individual patrols used their access to local media to reinforce local concerns such as car park security.

When the issue started to look like it was running out of steam, or when an opportunity presented itself, another announcement or action was identified to keep the momentum going. Frequently these proved as useful if

not more useful than the formal meetings, for example the visit of the Commissioner to the chief executives of the major car manufacturers in Melbourne and Adelaide. The cordiality and helpfulness of the CEOs particularly of Holden and Ford and their willingness to discuss issues such as enhanced vehicle security was one of the great pleasures of the time. It was a great pity that the Commissioner chose to visit Nissan on the day it was announced they would cease Australian manufacturing.

The community as a whole can play a very important part in crime prevention. When people are aware of problems and the solutions, they are more likely to take care with their own possessions, more responsible in their corporate decisions and less accepting of offending behaviour by friends and acquaintances which otherwise may have been seen as misdemeanours or even clever little earners. The profile of the campaign was therefore vital.

Inter-agency Cooperation

The support from the Premier was also particularly helpful in enabling the service to get all the other important stakeholders and key players together. This was an obviously important ingredient as it was well known that the policies and practices of a number of other agencies, both public and private sector, impacted on car theft.

There had been numerous reports and recommendations on motor vehicle theft over the last decade and most of the recommendations made concerning the police had already been implemented or were being pursued. It remained a structural problem due to forces outside the control of the police. Insurance industry practices, manufacturing and design, registration and motor trades industry practices were all elements which, unless addressed, would prohibit further success.

The profile of the issue enabled the Commissioner, Tony Lauer, to make the forum a gathering of interested parties at the highest level. There had been many working parties, committees, and so on over the years, but this time it was the chief executive officers of the responsible areas who got together to review the evidence and canvass solutions.

This was very important as without that level of interest the changes being sought would never have made their way through the system. The players at the grassroots have the capacity to make certain things happen at the local level, the players at the top of organisations can make things happen simply by saying "do it" but the middle only ever acts as a conduit and without the imprimatur of the top often fails to make real changes. "Officer level discussions" often seem a euphemism for getting bogged down.

Knowledge of the "Industry"

Car theft, like other types of crime is not homogenous. There are many reasons behind it, many ways of accomplishing it, many and diverse offenders and many elements to solution. However these variables had mostly all been identified and possible solutions canvassed.

The nature of the crime furthermore was such that it was a discreet problem, it was relatively easy to focus on the issue and, importantly, it was

almost instantly measurable. Month to month, patrol to patrol, region to region it could be seen how many offences had been reported, whether the trend was up or down, which geographical areas were "hot spots" and what type, make and age of car was being stolen at what regularity.

The importance of this should not be underestimated as it was a powerful tool in getting commitment from other agencies and more significantly from the grassroots of the Service. Fairly soon after the strategic direction was established car theft started to be an agenda item for senior management. It also started to crop up in job interviews and performance evaluations.

Forum and Report to the Premier

Attendees at the forum included police, insurance companies, vehicle manufacturers, motor trades associations, the Roads and Traffic Authority (RTA), Consumer Affairs, Transport, Education, the Commonwealth Government and more.

The Forum identified the major categories as theft for:

- Insurance fraud;
- Spare parts;
- Rebirthing;
- Convenient transport;
- Transport in other crimes; and
- Fun.

From those present at the forum it became clear that certain agencies were more integral than others in addressing the problem. The most important, in terms of measurable impact and deliverables were quickly identified. After presentation of the results to the Premier and a public launch of the "Lauer Report" on motor vehicle theft, the Premier authorised their invitation to form the NSW Motor Vehicle Theft Steering Committee to oversee implementation of the strategic direction determined from the forum.

Very early in the process, in fact immediately after the first forum, specific action plans were developed. These targeted each particular category of crime, the reasons why it occurred and the agency, organisation, group or individual able to make the most impact in reducing the incentive to the theft.

By common and almost unanimous agreement, responsibility and accountability were demonstrable and organisational commitment forthcoming. It became public knowledge that the problem of car theft could be solved if certain agencies were willing to assist. Furthermore, we were able to demonstrate that this problem cost:

- the community—through personal trauma, property loss and higher insurance premiums;

- the insurance companies—through fraud and policy payouts;
- the government—through extra police, vandalism, courts and justice administration and large computer systems such as REVS and Drives.

As the cost, estimated as high as $200 million nationally, became apparent it has also become apparent that this cost could be significantly reduced by responsible attitudes.

Because of the publicity surrounding the forum and the strategic direction, the major players in the insurance, manufacturing and trades industries were therefore, in a sense, becoming publicly accountable for their policies. Each responded, in varying degrees to the areas identified for action.

Insurance Fraud

Insurance fraud occurs when a vehicle which is reported stolen is actually disposed of in one way or another by the owner. This can happen because there is a perception in the public mind that many vehicles are insured for more than they are worth, and/or because the owner cannot sell the vehicle.

Accounting for between 10 and 15 per cent of theft, insurance fraud needed to be addressed by reducing the economic incentive for the fraud, effective detection of attempted fraud and making it socially unacceptable. The community needed to realise that insurance fraud was not a victimless misdemeanour on a faceless "insurance company", but a crime which pushed up reported thefts and impacted on all sections of the community through increased premiums.

Insurers were, understandably, reluctant to admit that agreed value policies played a role in car theft. They are still reluctant to do so; however, over the past year, agreed values have been revised downwards closer to market value (although this is attributed to a slowing economy making resale values lower and market and agreed values catching up with each other!). From a national perspective it is important to note that NSW was one of the few Australian States with agreed values. There has been some concern expressed in other States that car fraud may rise as agreed values become more common.

Insurance companies, however, have been extremely cooperative with the police and our association has been of great benefit. Certainly the liaison between insurers and the police has improved, records are clearer and attempted frauds are discouraged as more and more people become aware that insurers will report such attempts to the police. Insurers have also become a firm ally in influencing other players, such as manufacturers, to adopt more responsible policies and practices.

Theft for Parts

In excess of 40 per cent of stolen cars are stolen for parts; they experience minor stripping, major stripping or simply disappear altogether.

Many vehicles are stolen simply to provide spare parts for damaged older vehicles. The most commonly stolen, in any one year, are usually those

models most commonly sold 5 to 10 years earlier. In 1991 the top ten stolen makes were Commodores 1981, 86, 87, 80, 79 and Falcon 1987, 85, 84, 86, 82. The popularity of the model and its age are important predictors of its susceptibility to theft.

Trade in these parts can be discouraged through:

- keeping affordable inventories of spare parts for older models;
- insurers and motor trades associations strictly policing the practices of motor vehicle repairers;
- and, by providing audit trails for car parts.

Enhanced vehicle security also helps by making cars harder to steal.

The Motor Trades Association, manufacturers, insurers and Consumer Affairs were all asked to help in reducing the opportunity for this type of theft. Manufacturers were asked to make cars harder to steal and spare parts more readily accessible and affordable. Repairers were asked to be more responsible for recording and proving the legitimacy of parts used, by adopting processes similar to those required by the Consumer Affairs Agency from auto dismantlers, who are required to keep strict records of purchase of parts.

Rebirthing

Other stolen cars can be the victim of rebirthing, when they are reborn at the hands of professionals with the identity of another vehicle, usually one categorised by insurance companies as a "write off" sold at public auction and reworked. This can be the fate of almost any category of stolen vehicle, but especially the specialty market from Porsches to XU 1 Toranas to Falcon GTs.

Operational police like to raid the so-called "chop shops" where this practice occurs and there have been some spectacular successes, but in reality it can happen in any panel beating establishment, of which there are hundreds in any big city. The real way to target these offenders is not through special operations and raids but through removing those things which encourage and enable the trade, that is, lack of records about written off vehicles and the anonymity of car parts once removed from their host vehicle.

A wrecks register has been a priority of the Police Department, Consumer Affairs and the RTA for a number of years and assurances have been given that it will soon be up and running, enabling any reregistration of a once written-off vehicle to be instantly flagged and investigated. This would be even more effective if other States had similar records.

Even more importantly there is an urgent and vital need for parts identification such as that enabled by vehicle component part labelling. It is a cause of constant frustration to the police, insurers, the RTA and the Motor Trades Association that manufacturers and the Commonwealth Government have failed to take heed of our constant calls for the Draft Australian Design

Regulation on Component Part Labelling to be adopted. The Commonwealth did indeed release a draft in 1991 and comment was sought by February 1992. Nothing further has been heard.

Manufacturers have however responded on an individual basis with the Ford Capri and Falcon being fitted with component part labelling as a matter of course, partly because of the need to comply with the regulation for the US market. Hopefully in 2002 it will be unlikely that the 1992 Ford Falcon will be in the top 10 stolen cars.

The introduction of component part labelling could reduce car theft for professional reasons by up to 80 per cent or 25 per cent of the whole. The fact that there seems to have been so little progress in this is very disappointing but points even more strongly to the need for a concerted inter-agency push for adoption of ADR 61.

Transport

Theft for transport is another category which until now has not really received the attention it deserves. Making cars more secure in themselves and making the environment safer are certainly strategies which are being addressed. Vehicle manufacturers have responded to police concerns in a very gratifying way and increased security features in Holdens, Falcons and Nissans over the past 18 months will certainly be not only a marketing advantage to them at the present but a boon to police and consumers in the next decade.

Similarly it is hoped that local government, building owners and managers, developers and shopping centres will create and build more secure parking facilities for cars. It has been demonstrated time and time again that car parks, for example, once boom gates are installed experience an astounding drop of up to 75 per cent in the number of cars being stolen from them.

Nevertheless there is no doubt that a significant number of hitherto unapproached "soft" infrastructure providers are players, especially in this type of theft. Transport, planning, education and youth affairs agencies could better target policies to reduce car theft. Indeed all crime could be better served by a greater attention to community safety from these agencies.

The moves to community safety through crime prevention which are currently on the agendas of the Australian Police Ministers Council and others must include the coordination of these service providers as crime preventers more clearly than in the past.

Conclusion

There were many other actions and concerns identified not detailed in this paper, ranging from the import and export of stolen vehicles through to police practices at the level of the local patrol. Many of these have still to be fully pursued. Indeed not even all those strategies briefly outlined here have been fully implemented. If they had, it could be confidently expected that there would be a 50 per cent drop in thefts, not 25 per cent. Sadly, car theft in

NSW has plateaued out and there is no longer a continuous reduction in car theft month by month.

There are a number of reasons for this, including the reluctance of the Commonwealth to gazette ADR 61. But it is also true that momentum has been lost as other issues and other concerns temporarily take the spotlight. The effectiveness of the strategy is highlighted by the fact that, when it ceases to be pursued, then the wins start to peter out. It is the intention of the police that as a new set of contributing factors are identified and the players once again start to meet together, that the success of 1991-1992 can be replicated.

Epilogue

The subject of this address has ostensibly been about a car theft case study. It has not been particularly detailed because in reality it is instead about applying the principles of prevention and commonsense to crime and policing. Management trends over recent years, in the police service as well as other organisations, have been to push the concepts of doing better with less, clever thinking and problem solving. However, it is a long way from the rhetoric to the reality and many people and places remain input oriented, reactive and crisis driven.

In the police service this has been reinforced by over a century of reactive policing, by the "we're here to catch crooks" attitude and by the ingrained belief that police respond to crimes once they have already been committed. The movement towards crime prevention, instead of crime solution or even retribution, requires problem-solving techniques which recognise that the police service can help orchestrate a safer community through means other than operational policing. This will have profound effects on the way policing is managed in future years. No longer will resourcing, for example, be based on demand as determined by increases in certain crime trends. The traditional input/output model will need to be critically appraised and the importance of outcomes—in the form of safer streets and communities—will need to be accepted throughout the police and general community.

Car theft was an example whereby a significant change was achieved without significant extra resourcing, in fact with no identifiable extra resourcing from the Police. Car thefts fell from 50,955 in 1990-1991 to 41,248 in 1991-1992. Using ABCI figures that equates to a saving to the community in New South Wales of over $50 million.

THE RELATIONSHIP BETWEEN POLICE AND OTHER GOVERNMENT AGENCIES: RECENT CHANGES IN PERSPECTIVE IN QUEENSLAND

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POLICING ORGANISATIONS IN AUSTRALIA HAVE TRADITIONALLY BEEN given a range of functions to undertake on behalf of other government agencies. While the historical reason for this is understood—as police are often the only twenty-four hour service, and sometimes the only government service in rural and remote areas, it has detracted from the capacity of the police to deploy resources to core policing functions such as the protection of life and property across the state.

In recent years we have seen increasing rates of crime, both violent crime and property crime, and the emergence of new forms of crime—mainly in the areas of organised crime, the environment, fraud, computer and other "white collar" related crime (Federal Justice Office 1992, pp. 5-7). At the same time there have been increasing demands on the public purse from a myriad of directions, coupled with the increased social costs of changing economic and demographic patterns, for example increased costs of supporting higher levels of unemployed and an aging population. These competing demands lead to greater expectations that all government agencies must be "leaner", more accountable for their use of public funds and, in line with broader community trends, make productivity gains. That is "do more with less". The current pressures on police therefore include expectations that they will:

- enforce an ever-increasing range of criminal and regulatory laws against criminals who are becoming more sophisticated and using improved technology;

- be more accountable, including ensuring that police are better trained and more professional and move to a more interactive, community based mode of operation;
- always be there when a member of the community wants a response on an incredibly vast range of issues;
- be leaders in the community on development and implementation of crime prevention programs;
- and finally, do all this within existing or restricted resources.

This paper examines the changing relationships between police and other government agencies, in the context of recent experience in Queensland. Three aspects of the changing relationships are examined: divesting police of extraneous duties; responsibility for all government agencies to consider the law enforcement impact of their policies; and the moves for police to work alongside and play a key role in a broad range of policy and program development.

The Historical Position

Since 1989 most papers on policing and the justice system coming out of Queensland start with a reference to or quote from Fitzgerald. This paper is no exception. In his report on the "Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct", one of the most comprehensive reports on policing and criminal justice reform in recent history, Fitzgerald noted (1989, p. 185) that the funding for the Police Department was determined in the context of overall government policies, rather than with reference to the amount needed for effective law enforcement; and "the capacity of the Force to take on more work is disregarded, while at the same time its role is continually expanded". He stated:

> Ordinarily, little or no reference is made to the already inadequate resources in the criminal justice system, especially in the Police Force. There is usually no attention paid to its inability to cope with additional burdens without diverting resources from other tasks, and there is no attempt to allocate priorities. It seems to have been implicitly assumed that a virtually unlimited number of laws could be enacted and left to the police to enforce and that there was no need to assess the desirability of legislation by reference to the laws or the resources available for their enforcement.

It was noted in the Fitzgerald report (1989, p. 219) that aside from the criminal law under the Criminal Code and the *Vagrants Gaming and other Offences Act 1931*, the police had responsibility for law enforcement and administrative duties under approximately eighty pieces of criminal or quasi criminal legislation and another thirty-six Acts could require some police attention.

It also recorded (1989, p. 220) that police officers attended to a range of duties carried out principally on behalf of other government departments. Quoting from the 1988 Police Department *Annual Report*, it was noted that police officers could be appointed as an Acting Clerk of the Court, Acting Inspector of Stock, Flood Warning Officer, Ration Issuing Officer, Fire Warden, Assistant Mining Registrar, Explosives Officer, Inspector of Stamp Duties, Main Roads Collector, District Officer for Community Services, Acting Land Agent, Commonwealth Electoral Officer, Receiver of Social Security, Gauge Observer, Acting Harbour Master, Acting Shipping Inspector, an Agent for Suncorp Insurance, and an Authorised Customs Officer. In rural locations police could be expected to be most of these things.

In addition, police officers by virtue of their position were also Disaster Coordinators, Fisheries Inspectors, Fauna Officers, Officers under the *Animal Protection Act 1925* (Qld), Licensing Inspectors for the Liquor Act, Authorised Officers under the Migration Act, Inspectors under the Brands Act and Shipping Inspectors.

As well, the report lists a number of duties regularly performed for other departments including inquiries, supply of information, service of summons and so on, on behalf of nineteen State, Federal and local government departments. The list of possible appointments and tasks is lengthy to say the least.

This situation, however, is not unique to Queensland. Reports on policing and future directions in other Australian States have listed the matter of extraneous duties as a matter which must be resolved. These reports include the 1985 *Committee of Inquiry—Victoria Police Force*; the Northern Territory Police: *A Blueprint for the Future*; and the South Australian Police Department *Review of Policing*. There are other aspects of the relationship between the police and other government departments which have mitigated against the police capacity to argue for alternative means of delivering these services to the community, including little distinction between criminal law enforcement and regulatory enforcement activity, so that many simple offences are subject to criminal sanction, where a regulation, with pecuniary penalty and civil enforcement processes might have sufficed. Consequently, departments, by assuming that police resources are at their disposal for enforcement purposes, fail to fully recognise the costs of regulatory activity and to weigh those costs against the benefits expected to flow from the new laws. This may also result in over-criminalisation of some regulatory offences.

Police themselves, have not generally seen their role as including playing an active part of implementing government policy other than in the strict law enforcement sense. Thus participation in inter-agency forums on major policy issues has not, in the past, been prevalent. Police, as the enforcement arm of government, have been seen as somehow different from other government agencies, and in some cases, it is believed that it is inappropriate for police to be active in policy making, rather being the impartial enforcers of parliamentary decisions. As a consequence, while police may be consulted on strict criminal justice issues, there has traditionally been only minimal police input into, or consultation on the policy and legislative development of other

agencies, resulting in provisions which require police enforcement without adequate consideration of policing realities or resources.

The Role Of Police

The result of pressures to "do more with less" has been to force policing organisations to re-examine their role and determine what are the core policing functions. This core must then be compared to the variety of functions currently being undertaken and decisions made about what future activities and directions can be supported.

The role of police has, to date, primarily been an internal matter which police agencies themselves have developed and articulated in annual reports and in recent years in corporate planning documentation. The statements have relied primarily on the "traditional role of police" which was seen as the prevention of crime and then the detection and punishment of offenders, the security of the person and property and the preservation of public tranquillity (Milte & Weber 1977). Fitzgerald stated (1989, p. 218):

> The purpose of a police force is to preserve order, prevent crime and detect and apprehend offenders against order and criminal laws. Its role traditionally encompasses the protection of life and property, not only from criminals, but in natural disasters and emergencies.

Avery (1981) described the role as three distinct functions—enforcers of the law, keepers of the peace, and "broad catch all" service providers. There is in general a dearth of literature and discussion of the role of police in our society. Milte and Weber (1977, p. 2) noted that:

> There has not been any systematic articulation by governments of the function of police in our "democratic" society, nor has any universal philosophy of policing been developed and applied.

This means of definition has led, therefore, to broad function statements which do nothing to discourage government agencies from seeing police as the enforcers of all laws. For example, in Queensland the legislative function statement goes a great deal broader than the simple statement made in the *Fitzgerald Report*. Besides the traditional statements about prevention, detection of crime and the preservation of peace and good order, the *Police Service Administration Act 1990* (section 2.3(f)-(g)), sets out the following function statements:

- administration, in a responsible, fair and efficient manner and subject to the due process of law and directions of the Commissioner, of:
  - the provisions of the Criminal Code;
  - the provisions of all other Acts or laws for the time being committed to the responsibility of the Service;
  - the powers, duties and discretions prescribed for officers by any Act.

- provision of such services, and the rendering of such assistance, in situations of emergency or otherwise, as are required of officers by lawful authority or the reasonable expectations of the community, or as are reasonably sought of officers by members of the community.

Thus even though the *Fitzgerald Report* noted the need for a re-assessment of the role of police in the broad law enforcement sphere, the legislation, rather than assessing core functions, has developed a framework which encompasses anything police will ever be called upon to do. Basically the police have, under these provisions, a legislative obligation to be all things to all people, and for all agencies. There is currently a review of this piece of legislation, and it is intended that these issues and this functional base be discussed in that context.

It is not the intention of this paper to enter deeply into the debate about the core roles of police, which is a topic which is deserving of a full paper in itself. I have merely sought to highlight that in the past, and this continues today, police organisations have been seen as agents to deliver a broad range of government and community services. In moving to consider how they can survive in times of escalating crime and shrinking resources, police management must enter the debate and seek clarification of the expectations placed upon them from government and the community.

The debate should clearly articulate where the boundaries for police involvement in non-criminal law enforcement should be; what functions which do not require the exercise of police authorities it is appropriate to remain with police; and to what extent can police be expected to provide non-law enforcement services to the community, as opposed to developing a referral role for the range of inquires which are directed to police. In a recent article on the "Future direction of policing in Australia", Etter (1993, p. 46) notes:

> What is essential is that the future role of policing be defined so that valuable resources can be focused on those areas which the community perceives as a priority and that come within the capability of the police and their resources.

This framework should not be couched in terms which include everything which a police officer might ever do, either often or rarely, because they happen to be available, but should clearly link functions to those activities which police alone have a mandate for and that demand their specialist skills and judgment.

Extraneous Duties

Having explored the historical reasons for the plethora of functions undertaken by police, the discussion will now turn to examine more closely the question of extraneous duties and the attempts being made in Queensland to resolve some of the matters referred to in the earlier discussion.

As discussed in the opening of this paper, Fitzgerald noted that police in Queensland had responsibility under eighty Acts and potential responsibility

for another thirty-six. In addition, they were appointed as agents, inspectors, and registrars and collectors for a range of government agencies. With a small number of exceptions, this position remains the same in 1993.

From a whole of government perspective it is easy to see how and why police have become the multi-agent in many areas throughout the State. They provide an accessible statewide network of people and facilities and these are available on a twenty-four hour basis. No other State government department, other than perhaps education through the schools system, has a system which can equal it. It is, therefore, from a government perspective, easier to impose an additional duty on an existing network, rather than develop alternative means of maintaining the plethora of services required through other mechanisms. There must come a stage, however, where a small additional extraneous duty breaks the back of policing. There are limits to the number of seemingly minor additional tasks that can be imposed on an organisation while it is still expected to met its primary goals and objectives. In addition, an assessment must be made of the cost of utilising police resources for these tasks. Police officers are an expensive commodity—they represent considerable investments in the form of training, uniforms, equipment and facilities. They may not, therefore, be the "cheap" option they have always been considered to be.

As a result of the police service itself recognising that the extent of resources tied up in extraneous duties was limiting the organisation's ability to meet other priorities, a project has been established in Queensland, as in many other police organisations around Australia, to work toward resolving the issues of extraneous duties. The project divided extraneous duties into two main categories, shopfront tasks and enforcement tasks. Shopfront service referred to personal service to public on all non-police matters, including inquiries, issue of licences and permits, inspections and so on, which do not require police powers and which are performed on behalf of other government agencies. Enforcement tasks include the legislative or regulatory requirements for police to supply personnel to undertake investigative and enforcement activity on behalf of another government agency. Many of these acts provide, to various extents, specific inspectorial powers to the authorised officer.

A survey undertaken in 1990 of tasks being performed primarily on behalf of other government agencies estimated that in excess of 200,000 hours per year were spent on these tasks. At one small station it was estimated that 1,000 hours, or nearly one-third of the two officers' time was spent on carrying out functions for other agencies. While transport issues such as vehicle registration and driver's licensing was a major component, it also included issuing explosives permits, registration forms for the Electoral Office, issuing liquor licensing documentation, checking up truancy reports, and issuing permits for stock movement. Duties at other stations included preparing wills, issuing burning off permits, issue of hay permits and rail concession passes, conveyancing, collection of Housing Commission rents, processing insurance claims, and meteorological readings.

When looking at the resources involved it is understandable why other government agencies have used police for these tasks and why they are

generally reluctant to enter into discussions to enable police to divest themselves of these functions. The main options on how to proceed on the extraneous duties are:

- police can continue to undertake the tasks, but request that their base funding recognise the additional requirements on their resources;

- police can divest themselves of inappropriate functions thereby requiring other government departments to use their own resources to undertake the tasks;

- police can institute a "user pays" system which fully reflects the costs of providing the services via a police organisation on behalf of that paying agency;

- police can work alongside agencies to develop alternative strategies for the delivery of services to the community, for example, use of accredited garages to undertake registration services or defective vehicle inspections which police have in the past undertaken on behalf of the Department of Transport.

The Police Service has entered into discussion with a number of the agencies concerned, with a view to reaching arrangement on these functions. Not surprisingly, the degree of success has, thus far, been minimal. While most departments are willing to agree in principle that they should be responsible for a number of the functions police do on their behalf, they argue that they do not have the resources to take on the functions in the near future. The discussion then gets tied up in issues such as priority areas for additional funding, and the need to amend legislation which can take some time. In some limited cases it has been possible to negotiate the removal of functions in the major urban centres where the departments have staffing and resources which will allow them to carry out their own functions. The rural police officer, however, remains the jack of all trades.

While the issues have been raised with central agencies to enable a whole of government approach to some of the major issues, their hands are also tied. Therefore, while officers are willing to agree that using police resources may not be the most appropriate in terms of lost opportunity costs and the high cost of police as a resource, the alternative of finding additional funds for the responsible agency to take on the role may be less attractive. If police are already providing the service at no additional cost to government there is little incentive to pay someone else to do it, or impose a user pays policy which will be unpopular in the community.

The debate has been joined by another player in Queensland, the Rural Communities Policy Unit. This Unit has indicated strongly that it is unfair for rural communities to be disadvantaged by their location in relation to either the availability or cost of government services. This policy means that departments must find mechanisms for statewide delivery of services without imposing any user costs and are therefore even more reluctant to discuss the withdrawal of police services.

There has, however, been one positive development in this arena. It is called QGAPP—Queensland Government Agent Pilot Project. This two-year pilot project, coordinated through the Rural Communities Policy Unit, is seeking to test a new way of delivering State Government information and agency services to small and medium-sized rural communities. It sees the creation of a "one-stop government shop" in eleven towns throughout Queensland. The Government Agent Office is to be an information centre for local people about all State government departments, and will conduct specific business transactions such as applications for public housing, preparation of wills, registration of vehicles, and issuing of liquor permits. Many of the functions/tasks are currently, or were historically, being undertaken by police. QGAPP is based on user pays: for example, the department pays based on the number of transactions relating to their agency and the project is testing three models—a government agency taking on the agency role; local government taking on the agency role; or the agency role contracted out to a local person or business. Police were able to successfully argue that one of the models should not include using local police for delivery.

If successful, and then widely implemented, the program has major implications for police being able to divest themselves of a broad range of the "shop front" tasks currently listed as extraneous duties.

In addition, the Police Service is carefully scrutinising all new legislation to ensure that additional inappropriate tasks are not placed on police. In this we have the cooperation of the Parliamentary Counsel who ensures that the Police Service is consulted on legislation being drafted which includes police as part of the enforcement process. This process has allowed the Service to argue to be excluded from some intended functions and in other cases to agree to a limited enforcement role in rural areas only in specific circumstances and on a user pays basis.

On the other more difficult task for the future, divestment of tasks long undertaken by police, the Service will continue to argue, negotiate, and if necessary coax for the functions to be removed to allow the core policing functions to be addressed in line with community expectation.

The Responsibilities of Other Departments

The second aspect of police relationships with other agencies which this paper seeks to examine relates to a number of responsibilities to the criminal justice system which all departments should bear in mind when developing policy and programs, but which unfortunately are often overlooked or ignored.

It is contended that all departments should be required to examine the impact of their policies on crime and the criminal justice system to ensure that they do not inadvertently increase burdens on the system or contribute to crime problems. This is not to imply that if a negative impact is determined that a policy or program should not proceed, rather that these issues should be recognised and conscious decisions made taking into account all aspects, and, if possible, actions taken should seek to minimise any such impacts.

The discussion can be focused in two areas: impact on the system, and impact on crime. A precedence for impact assessment for the system exists in the form of the Litigation Reform Commission, a function developed by government to examine the impact of policy and legislative development on the courts' process. This paper argues that the concept should be broadened to the whole criminal justice system, not necessarily through such a formal process as this Commission, or even through impact assessment papers. It would be a step in the right direction if departments consciously turned their consideration to these issues, in a similar way to which they have to examine the impact on finance, personnel, legislation, and the impact of regulations on business.

The assessment of the impact would be relatively obvious in the cases outlined in the extraneous duties segment. Any additional duty or function which was sought to be imposed on police should be assessed for its resource impact not just necessarily in terms of the actual resource commitment but within the overall scheme of policing functions and where policing priorities appropriately lie. Similarly, this task should apply where there is major reform of existing policies or legislation to ensure that past inappropriate practices are not perpetuated on the basis that this is the way it has always been done. To assist this process there must be a willingness by police to work with agencies to develop this assessment and to put forward alternative means of achieving the policy goals.

It may, at first, be difficult for departments who are not strictly part of the "criminal justice system" to comprehend the need for this type of assessment, particularly if they are unfamiliar with the issues and processes impacting on that system. In addition, officers developing policy and legislation within such departments may not be aware of the distinctions between criminal enforcement and regulatory enforcement mechanisms. By discussion of the policy goals to be achieved and a close examination of the alternatives, less intrusive and less costly options may emerge.

It is submitted, therefore, that the decision to introduce a new offence and penalty should be thought through to the impact on police, on courts and in the end, on the corrections system. Departments should be assisted in making these assessments by the departments affected and by the responsible central agencies of government. The government will thus be in a position to make informed decisions on the alternatives.

The second issue which departments should be required to assess is the impact on policy and programs on crime. At a time of escalating crime, there has been much discussion of the responsibility of the community to be involved in crime prevention and there has been considerable liaison with the private sector, including banks, retailers, and so on, to convince them of their responsibilities to reduce, or at least not encourage crime through their policies. An example of this is asking department stores to re-examine their "money back no questions asked" guarantee which provides ample opportunities for shoplifters to get cash for their efforts.

There has not been, however, in Queensland, a strong focus on government departments and agencies to consider the impact of their policies on crime. Some of the policies instituted may seemingly have little

relationship to crime, yet a broader focus on the issues could ensure preventative steps could be taken with, at times, little additional burden to the process. It is now recognised that the physical environment can contribute to crime and disorder in a number of ways (Solicitor General Canada 1990, p. 31). For example, the planning and housing sectors are key players. Too often in the past we have seen the development of housing estates, major office and shopping complexes and public recreation places being based primarily on aesthetics with little consideration being given to the potential for crime and personal safety of users from a crime perspective. In addition, unused, or apparently abandoned buildings and streets, signs of vandalism and a generally "uncared for" look are other means by which the state of the physical environment can create opportunities and temptations. It is pleasing to note the emergence of a better understanding of these, and early indications that in future these aspects of planning will be given a greater priority. The planning and housing areas are situations where the Service strongly believes that a form of safety/crime impact statement is warranted, and representations of this nature have been made to various planning authorities in Queensland.

The recently issued paper from the Federal Justice Office, *Creating A Safer Community* (1992, pp. 46-7) clearly expressed the need for action by government in this arena by:

> . . . encourag[ing] much higher degree of consultation and cooperation between government agencies in the development of major policy initiatives, in order to minimise their adverse consequences. Many crime prevention experts have advocated crime impact statements as an integral element of major policy design. There are many practical difficulties with this approach, not least of which is the impossibility of accurately forecasting consequences which may take years to emerge. Nonetheless, it is clear that major policy proposals need to take into account, at least indicatively, the range of possible adverse consequences—whether they be the creation of new criminal opportunities or the exacerbation of existing ones. During their implementation, major policy initiatives need constant evaluation of their specific objectives and their broader social consequences.

A more difficult aspect is considering such issues in broader policies which at first glance may appear to have no obvious relevance, but which may have a crucial impact on the nature and incidence of crime. It is widely recognised that social deprivation, alienation, economic hardship, poor education, inadequate housing, racism and other inequities are all related in complex but important ways to the occurrence of crime and disorder (Weatherburn 1992).

The Federal Justice Office paper (1992, p. 23) noted that government economic and social policies have a central bearing on these matters. Another example can be seen in the cost-cutting programs in the area of public transport; in particular the cutting down or elimination of staff at a number of suburban rail stations. Some time ago, I had a conversation with a railway official and suggested to him that the staff cuts created opportunity for crime and raised concerns for personal safety of users, particularly women who

may need to use such transport late afternoons and evenings. The response was that personal safety was really a police problem, not the railways and that police should be developing programs to assist such travellers. He has missed the point. Similarly, educational facilities must recognise that their policies and practices, be it closing the facility for a day, security policies, lack of student supervision, or inaction on truancy, may have an impact on public order and crime not just within the school environs but within the broader community as well.

Government authorities and agencies must be prepared to take responsibility for dealing with the outcomes, or work alongside police to deal with the consequences of their policies. It is pleasing to note that considerable debate nationally over the last year or so has focused on the need for there to be a multi-agency approach to crime prevention, and the inappropriateness of expecting police to be able to deal with these issues in isolation. It is contended, however, that this awareness and cooperativeness must go that additional step—not just a willingness of all agencies to become involved in crime prevention programs, but a willingness also to look critically at policy development and to recognise the potential problems that may flow from such policies.

Police¾ Participants in Government Policy

The third and final aspect of police relationships which this paper explores is that of police participation in broad government policy development.

In recent times, police, as part of the government infrastructure have begun to recognise that they have a key role to play and expertise to offer in the development of government policy in a number of areas. Thus, over the past two years police have fully participated, and are continuing to contribute to the Government development of broad policies on youth, aged, ethnic communities, directions for disability services, violence against women, responses to the Royal Commission into Aboriginal Deaths in Custody and mediation/diversionary programs.

The Police Service has also recognised that in its role of service provision, there is an obligation to ensure that the government's principles of social justice—equity, access and participation—are built into the service delivery mode. At a recent conference in Brisbane on "Perspectives on Justice" the Acting Commissioner outlined the Service's programs and policies which demonstrated the Service commitment to these principles. He stated:

> In practice, applying social justice principles means ensuring that all persons are treated equally and fairly, regardless of gender, race, disability, language, cultural or socioeconomic disadvantage. It means meeting the special needs of particular groups that may be more vulnerable or in greater need of some services provided by police; for example women are often the targets of specific types of violence, children are vulnerable to a range of abuses, people with disability are often preyed upon by the unscrupulous or fraudulent, and the elderly have high levels of fear of crime.

> Applying social justice principles also means taking steps to reduce and minimise the disadvantage that can arise in interacting with police for reasons including ethnicity or cultural difference, intellectual disability, illness or age, whether as victim, suspect, offender, witness, or member of the community requesting assistance of any kind.

The point that has to follow this type of statement, however, is that the Police Service alone cannot achieve these social justice goals. It is imperative that police are working with experts in the various fields to develop appropriate policies and practices and ensuring that the services to back up police action are available and accessible.

One area that is particularly highlighted is that of the Queensland Police Service Women Safety Project, which demonstrates the commitment of the Service to work alongside other government agencies to achieve policy goals. The Women's Safety Project was established in 1990 to enhance the safety of women in Queensland. The project, which heralded the first time in Australia that police have undertaken such an initiative, has undertaken extensive consultation with the community, government departments, media and police. The major priority of the Project in the first two years has been the production of a series of nine brochures titled "Step Ahead: Safety Information for Women" which include information jointly developed with a range of agencies, on public transport, safety around the home, safety out and about, safety in the car and information for teenagers. These brochures are backed up by a lecture kit and package for use by police lecturing on this topic, and a video which is currently in production.

The second priority was a safety audit program which was piloted in one metropolitan police division. Based on the successful Toronto model, the program was developed jointly with the Brisbane City Council and with the strong cooperation and input of a number of government agencies, including transport, railways, planning, housing, electricity supply and Telecom. As a result of this successful trial the program was recently launched statewide and the Government has established a unit to oversight a grants program for community groups and coordinate the outcomes.

The Project is now working with other government agencies, coordinated through the Women's Health Policy Unit, to develop protocols for dealing with survivors of rape and sexual assault, and through the Women's Policy Unit to develop training packages on issues relating to violence against women, and with the Department of Family Services to improve programs and services and protection for victims of domestic violence.

Conclusion

In summing up, it is clear that the relationship between police and other government agencies has shifted in recent years. What is required for the future is the development of strategic partnerships which, while adopting a whole-of-government approach, can clearly express the rights and obligations

of each party. In addition, such partnerships must respect the other's points of view and different philosophical base; seek to work together to achieve common goals, without imposing inappropriate burdens on the resources of other agencies.

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STRATEGIC PLANNING AND PERFORMANCE EVALUATION FOR OPERATIONAL POLICING

Jim Hann and Bruce Mortimer

LIKE MANY PUBLIC SECTOR ORGANISATIONS, POLICE SERVICES HAVE HAD to pay increasing attention to strategic planning in recent years. This has been precipitated by community and government calls for improved accountability, and the accelerating pace of reform within police services.

In responding to this need, police services are experiencing many of the problems familiar to large organisations which have grappled with planning. Obstacles such as poor training, inappropriate planning methods, inadequate communication, lack of information, and resistance to change are limiting the ability of police to develop and implement effective plans.

This paper reviews modern approaches to planning and evaluation, and summarises the key elements of planning in large organisations similar to police services. These elements include the top-down communication of corporate vision, goals and core values, and the involvement of operational staff in planning and evaluation at the business unit level. Operational staff have a particularly important role because they are well positioned to assess the needs of customers, and their expected reactions to new corporate directions. They are also well placed to evaluate the impact of altered services or products.

A simple model to help operational police with their planning responsibilities is proposed in this paper. The model utilises the existing skills of operational police in observing, interviewing, and collecting and interpreting information. It guides police through all stages of the planning cycle, and suggests how to build commitment for strategic plans with local communities and the police service itself.

Modern Planning and Evaluation Practices in Large Organisations

Approaches to business planning and evaluation are often described as "top-down" or "bottom-up". In a purely top-down approach, planning and evaluation strategies are determined by the executive of the organisation, sometimes in consultation with senior management, planning staff and external advisers (consultants). Managers at the operational level, and their subordinate staff, may be called upon to provide information, but they do not participate in the formulation of strategies. While this approach produces plans which are corporate in scope, it fails to build employee commitment to the plans, and it allows grandiose leaps of vision without reality testing for internal capability, marketplace credibility, or cultural fit (Eigerman 1988).

"Bottom-up" and "top-down" approaches

In the bottom-up approach, individual operating units are responsible for the development of their own planning and evaluation strategies, consistent with some general guidelines set at the corporate level. This approach taps the creativity of staff, generates ownership of the strategies and usually ensures that plans are consistent with customer needs and expectations (Viljoen 1992). However, bottom-up approaches have some serious disadvantages. They allow the corporate business directions to be substantially influenced by people who are inexperienced in management and unaware of the internal and external business environments. The large number of working hours spent in planning do not justify the results, and corporate strategy is limited to the sum of business unit plans. "In a purely bottom-up system, the integration of strategy across units is achieved with a stapler" (Eigerman 1988).

With these obvious limitations, it is not surprising that contemporary approaches to planning and evaluation are not purely top-down or bottom-up. They generally combine the advantages of top-down corporate strategy development with bottom-up advice and local business unit planning. This facilitates alignment of business plans with corporate strategy, integration of the activities of separate business units, and cooperation and commitment from employees. It also results in plans which are realistic, and more likely to produce the intended outcomes (Gummer 1992; Cross & Lynch 1992; Gilreath 1989; Gates 1989; Kazemek 1991).

Eastern planning methods

An important stimulus for the increased attention on planning methods has been the comparative studies of Japanese and Western cultures, and the impact of these cultures on their business practices (Boznak 1991; Crump 1989; Schneider 1989). Japanese businesses have been able to achieve significant competitive advantage over their Western counterparts through innovative cost-cutting and quality enhancement practices.

Western cultures promote and reward individualism, while Eastern cultures emphasise "oneness" or harmony within a group or organisation.

This ability to achieve harmony and synergy within the workforce of an organisation has been a major contributing factor to the success of Japanese industry.

To achieve harmony and synergy, the Japanese pay special attention to communicating their vision throughout the organisation. It is not unusual to communicate a vision for a new product or service through an expression of feelings rather than a technical description, as might occur in Western organisations. This suggests that communicating an intended outcome (such as a service or product) in terms of feelings may result in a more consistent understanding of the outcome amongst a diverse group of people, than communicating the outcome in terms of a set of detailed specifications. The importance of carefully and exhaustively articulating a vision for an outcome should never be underestimated.

Employee empowerment

Employee empowerment is a term which features in many new planning methods emphasising bottom-up processes. This term underlines the changing attitude towards the value of employees to an organisation and their responsibilities to the organisation. Employee empowerment schemes are used to tap the creativity of staff and their intimate knowledge of business-customer relationships. Employees develop planning and evaluation strategies for their own business units, and they accept responsibility and accountability for the outcomes of their work (Townshend 1990; Nichols 1989; Doyle 1990; Hamson et al. 1989).

There are a number of pitfalls, though, with empowerment schemes. Commitments from employees are of limited use without reciprocal commitments from top management (Eigerman 1988). Effective empowerment schemes depend critically on good horizontal and vertical communication practices in the organisation (Gingrich & Metz 1990). A recent study by Ernst & Young also suggests that employee empowerment activities are beneficial only within higher performing organisations (Miller 1992).

A recent review (Allaire & Firsirotu 1990) suggests that many organisations select inappropriate planning methods because they do not understand the relationship between planning methods and organisational characteristics. The authors identify five commonly used approaches to planning and evaluation:

- Leader driven;
- Culture driven;
- Line driven;
- Numbers driven; and
- Staff driven.

The leader driven method works best in an organisation where the chief executive has a thorough knowledge of *all* aspects of the organisation's business. Notable examples are Marriott and Toys-R-Us. Formally documented plans are often absent (and unnecessary) in these organisations, since most of the planning and evaluation is done by the leader.

The culture driven method relies on all employees having a good understanding of (and commitment to) the organisation's goals, skills, values, and management principles. These organisations make substantial investments to establish a functional culture which they support and reinforce in every possible way, from promotion policies to symbolic and monetary rewards. Plans are simple, short and action oriented, since it is unnecessary to express what is known by all. Examples are McDonalds, 3M, and IBM.

Line driven methods are most suitable in large multidivisional organisations with diverse business functions, which have a relatively mobile work force and which have not developed an elaborate culture infrastructure similar to that described above. In these organisations, effective planning is based on clear corporate strategic directions set by the executive, involvement of staff at all levels in planning relevant to their business units, and good information sharing ("networking") practices throughout the whole organisation.

Numbers driven and staff driven planning methods are considered inappropriate in every situation. Numbers driven planning occurs when managers rely disproportionately on quantitative information for planning. This can arise when an organisation undergoes rapid diversification or geographical dispersement, or when executives with key business knowledge leave the organisation.

Staff driven planning is also unreliable. In this approach, organisations delegate planning and evaluation to specialist planners. This can result in planning and evaluation strategies being driven by the planners, rather than by the executive and staff in business units.

Police services in Australia

Police services are currently large, functionally diverse and geographically dispersed organisations. While there are strong elements of culture in these organisations, they are undergoing significant cultural reform, and new philosophies and values are being established. The line driven planning approach described by Allaire & Firsirotu (1990), therefore, appears to be the most suitable option. The key elements of this method are:

- a clearly articulated and widely communicated corporate vision for the organisation;
- a wide appreciation of a small set of core values;
- executives and line managers at all levels who actively engage in effective information sharing ("networking") practices;

- adaptive and flexible incentive schemes linked to key strategic indicators; and
- strategic thinking and implementation skills at all levels.

Allaire & Firsirotu's emphasis on executive responsibility for communicating a vision, gaining corporate acceptance of a small set of core values, and networking, is clearly consistent with the Japanese approach to achieving harmony and synergy in an organisation. The recommended incentive schemes and application of strategic planning at all levels of the organisation are consistent with contemporary interest in bottom-up planning and employee empowerment.

Current Trends in Planning and Evaluation in Police Services

Some recent community policing initiatives have been remarkably successful. In an address to the National Press Club in Canberra last year, Reuben Greenberg, Police Chief, Charleston (USA), reported a 40 per cent reduction in the crime rate for the period 1982-89 against a national (USA) trend of rising crime. He attributed this to a very visible police presence on the streets and active liaison between police and the community. Police in Charleston are empowered to develop and implement local strategies which enlist the support and involvement of the community in policing.

Police Commissioner Lee Brown used a similar approach to address crime problems in New York City (Webber 1991). Operational police were trained and empowered to solve problems, rather than to merely respond to incidents repeatedly. Training, evaluation and reward systems were changed to support local community policing initiatives.

Both Greenberg and Brown had very clear visions for their police services. These visions were promoted vigorously in their organisations, and also in the public arena. They engaged operational police in bottom-up planning, consistent with their vision, and instituted incentive schemes linked to key strategic indicators. The similarity with Allaire's line driven planning method is obvious.

Another police service which has adopted a similar approach to planning and evaluation is the Cambridgeshire Constabulary (Keogh 1990). Each year, the Chief Constable in Cambridgeshire produces a Force Policy Statement. This statement, and local situational analyses, guide the formulation of local objectives, strategies, and action plans by operational police. Operational police also develop their own evaluation plans and performance indicators, although they are encouraged to draw from a corporate set of indicators. The rationale for using common performance indicators is to maximise quality of performance information and enable direct comparisons of performance between different police units.

There are some disadvantages in having a corporate set of performance indicators. While quantitative corporate-wide performance information can be important in assessing corporate strategies, there is always a danger that over-reliance on these indicators may allow planning to degenerate into an

ineffective numbers driven process. Also, operational police may be inclined to choose performance indicators which do not exactly suit their local strategies.

Planning and Evaluation in the Queensland Police Service

In 1990, the Queensland Police Service developed a corporate plan to assist with the Fitzgerald reform process. While the Service did have a corporate plan in line with Treasury requirements, at that time, it had not been distributed widely in the organisation, and a centralised approach had been used in its development.

The 1990 plan, which introduced a fully coordinated approach to planning throughout the whole organisation, included:

- a definition of long term organisational goals and strategies;
- the development of short-term objectives and actions at all levels of the service;
- the implementation of actions via action plans, project plans and personal plans.

One of the purposes of the plan was to increase the level of participation and discretion used by operational police, as an approach consistent with the philosophy of community based policing (Bayley 1988).

Strategic planning can be associated with some of the successful reforms in the Queensland Police Service during the last five years. In particular, it is clear that planning has contributed to an increasingly open police culture and greater opportunity for external scrutiny of police strategies (Dalgleish & Lewis 1992).

However, there have been several impediments to full implementation of the planning model. The most pertinent evidence for this has been the strategic planning documents themselves. Plans developed by operational police at divisional level typically duplicated those prepared by senior officers at district and regional levels. In some cases, the name of a district had been simply "whited out" and replaced by the divisional name. Clearly, planning had been adapted to maintain the top-down management style rather than enhance the implementation of a more participative, community-based, locally-responsive approach.

Interviews with operational police managers around the State revealed four obstacles to implementing the strategic planning method:

- lack of up-front training in planning for operational managers;
- reluctance to "let go" of control by middle and senior managers;
- aspects of the processes for planning and evaluation did not match police skills, knowledge, and activities; and

- good planning models (or exemplars of "best practice") were not readily available to operational police.

The issues of training and delegation for planning are being addressed by the Service. A model of planning and evaluation for operational police is provided below. It describes the major elements of planning and outlines how police can use their existing skills (interviewing, investigation, analysis and reporting) to simplify the planning process, and ensure that their plans are directly relevant to local community needs. The model provides for alignment of local plans with corporate strategic directions, and it emphasises the essential bottom-up element of planning provided by operational police.

The Model: Planning and Evaluation by Operational Police

Definitions of some common planning terms

The proposed planning model requires operational police to understand a small number of planning terms—objectives, actions and performance indicators. The model also uses terms for referring to time frames.

Objectives

Objectives have been defined by the Commonwealth Department of Finance (Australia) as follows:

> An objective is a concise statement of what a program . . . aims to achieve. Good objectives are outcome oriented i.e. they reflect the projected benefits to the community . . .

This focus on "community benefit" should be made very explicit for policing objectives. The definition currently being applied in the Queensland Police Service emphasises that good objectives should specify the client, and refer to the outcomes which are desired (Queensland Police Service 1992).

Actions

Actions indicate what the police establishment intends to do in order to achieve the identified objectives. Action plans help managers and officers assign tasks and allocate resources.

Performance indicators

Performance indicators are items of information which are used to assess progress towards the achievement of objectives. When information provided by performance indicators is analysed, it becomes *performance information.* This does not need to be numerical (quantitative) to be useful; some of the most valuable information available to managers is descriptive (qualitative). There should always be obvious links between statements of objectives and performance information.

Time frames

Long-term is defined as longer than five years (and up to about ten years). Medium-term is defined as three to five years (corresponding to a corporate planning cycle). Short-term is defined as up to one year (implying an annual strategic planning cycle).

Operational Planning and Evaluation in the Context of Organisational Processes

Figure 1 illustrates the interdependency of top-down and bottom-up processes. Senior management should be responsible for the organisation's broad directions. Operational management should have the discretion to set objectives and adopt tactics to meet local needs.

The capacity of operational police to successfully plan in a way which maximises the vertical and horizontal linkages in the organisation is dependent on the clarity and appropriateness of the corporate mission, vision and core values.

The mission should clearly indicate the difference which policing will make in the community, for example, a safe, secure and more cohesive community.

The vision provides a sketch of the organisation in an ideal future. It describes what police and their organisations should be and how they should be regarded. Contemporary vision statements tend to emphasise police professionalism and organisational accountability.

The core values are a small group of statements which provide the philosophical context for police activity. Core values should be different from a statement of ethics. In modern policing they will tend to include partnerships with communities and adhering to social justice principles.

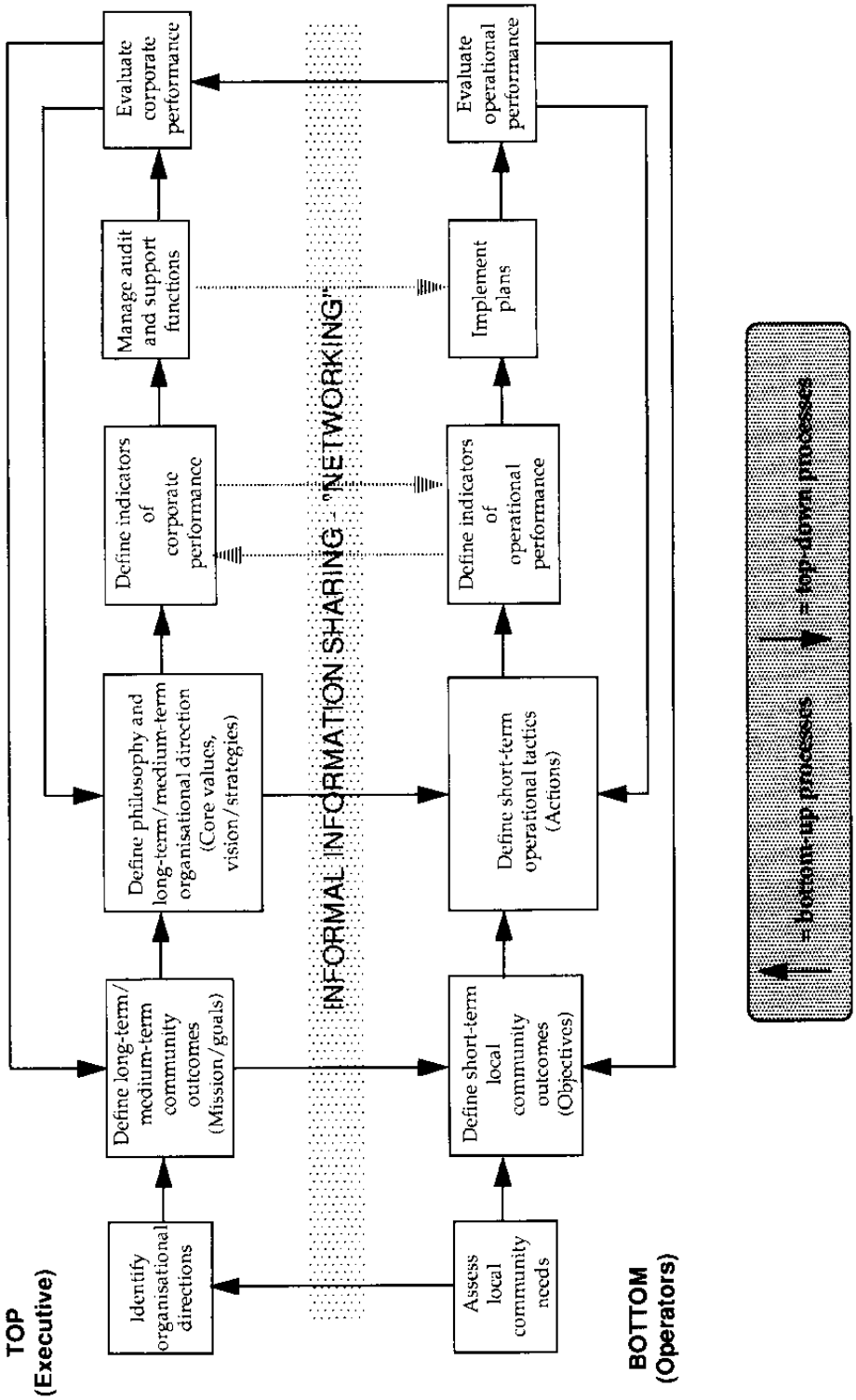
It is essential that the mission, vision and core values are statements which clearly communicate the leadership's direction. They must become integral to the rhetoric of senior officers and be understood and supported by operational managers.

One of the critical elements of the model is that evaluation should be a "bottom-up" process. Enhanced individual and team development in operational policing requires police to take a greater role in collecting, analysing and sharing relevant local information. Corporate learning is also significantly enriched by the qualitative and contextual information reported by operational police.

Operational police can successfully plan, implement and evaluate their operations according to this model if they are supported by appropriate processes and given significant discretion in decision-making at the local level.

Figure 1

Top-down and Bottom-up Processes for Strategic Planning



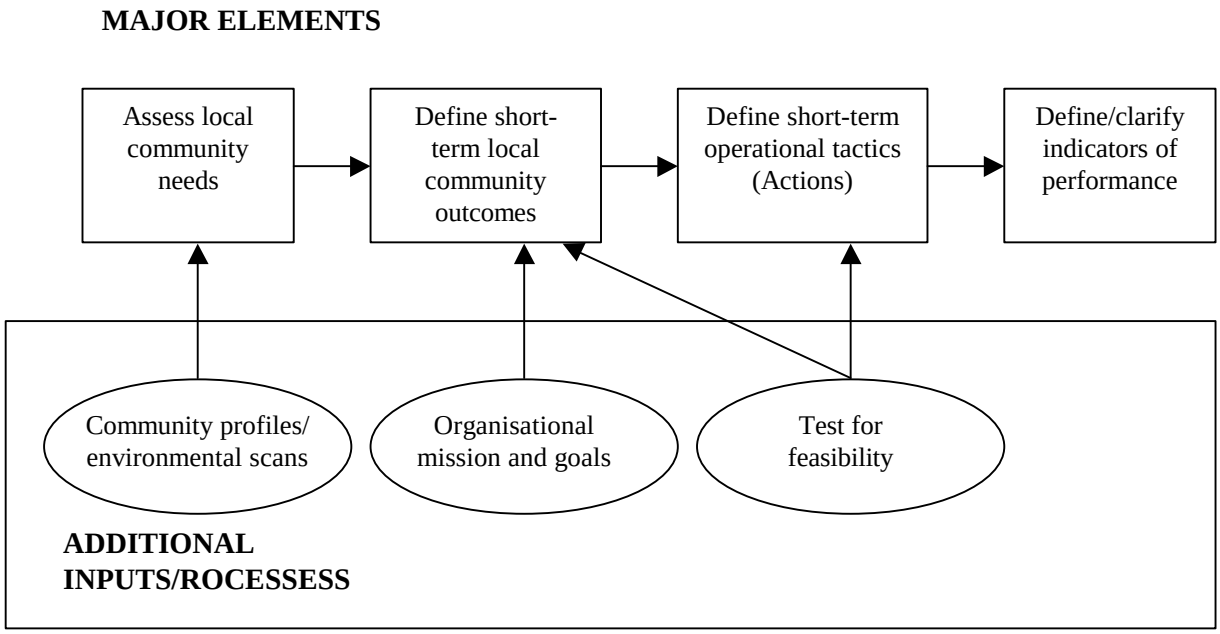
Planning

To be effective in developing strategic plans which can contribute to the bottom-up flow of information and decisions, operational police need a process which is quick, effective and, more importantly, consistent with police skills and activities. This is crucial if operational management is to seize the distinct strategic advantage of being able to use local community and police resources to support responsive and targeted decision-making rather than relying on slower, less focussed centralised processes.

The social planning discipline offers a number of techniques which involve local communities and operational officers in identifying priority needs and choosing appropriate responses. The advantage of these techniques is that they rely heavily on interpersonal (as opposed to technical) procedures which are more consistent with police skills, experience and activities (Whitaker 1982).

Figure 2

Process for Strategic Planning at the Operational Level



For example, police are generally skilled in collecting information about criminal offences from witnesses. The conscious processes used are designed to establish whether specific offences have occurred as defined by the Criminal Code or other legislation. It is a relatively simple step for police to apply similar techniques to planning with the intention of increasing their understanding of strategic issues.

Day-to-day police activity usually involves high levels of mobility within a community. This provides excellent opportunities to use structured, semi-structured and non-structured interview processes and other interactive information gathering and planning methods.

These skills can be applied to each element of the planning process (identified as bottom-up processes in Figure 1) including key inputs such as environmental scans and feasibility testing (added in Figure 2).

Community profiles/environmental scans

Community profiles (or environmental scans) use demographic, social and economic information about a community to build a model of what the community is like now, and how it has become like this. They typically involve the collation of census data and other information readily available from local sources.

Within the policing context, community profiles largely consist of information on demographic and policing trends. This information can be quickly and relatively cheaply collated. Other relevant information such as trends in health, education, emergency services and economic development can often be obtained from other local resources.

Community profiles provide a body of reference information which can inform planning decisions. However, other processes are required to identify priority needs.

Assessment of local community needs

"Needs assessment" is the term commonly used in social planning to identify community needs relevant to an organisation or service (Delbecq et al. 1975). Two social planning techniques which have proven records in needs assessment are Delphi and Nominal Group Technique (NGT). Both these methods require simple, iterative processes which achieve consensus and commitment to priority issues.

The advantage for police in using techniques such as these, is that they depend on skills of interpersonal consultation, interviewing, observing, collating and interpreting —all of which are consistent with police work. These techniques provide a framework for police to translate these skills from criminal investigation to public consultation.

To identify community needs using techniques like NGT, a police manager would facilitate a community meeting—either an open invitation to community members or invitees representing a cross-section of community interests. Operational police should also participate in the forum.

The workshop facilitator might ask participants to answer a small number of questions such as, "What are your main law, order and safety concerns?"; "What should police be doing about these?"; and, "What should other agencies and the community be doing?". This process will result in the generation of a large number of issues and ideas. However, through small group discussions and simple voting procedures, issues will be clarified, and priorities will emerge.

Based on experience, police are fairly reluctant to involve members of the public and representatives of other agencies in their planning. However, the major item of police feedback from workshops where some token outside involvement has been insisted on, has been that the external input was vital and that there should have been more of it.

The advantages of this form of needs assessment are:

- it is relatively easy for operational police to manage;
- it is more consistent with existing police skills than, say, structured and unstructured surveys, which are often of limited value unless appropriate expertise is involved;
- it enhances the development of a team approach to policing consistent with successful elements of Japanese management;
- in terms of useful results, these techniques are as valid, and arguably more valid (Cochran 1979) than many quantitative approaches; and
- it provides additional tangible benefits of encouraging joint community/police ownership of problems and enhancing community understanding of police concerns.

Once understood, consultative methods such as these are easily adapted for other planning and evaluation processes, some of which have been applied successfully within the Queensland Police Service (Queensland Treasury 1992).

Developing strategic objectives, actions and performance indicators

Group processes involving operational police and members of local communities are also ideal for developing objectives, strategies and performance indicators, being readily carried out in the same forum as that used for needs assessment.

The first step should be to focus participants on a preferable future for their community—one in which the identified needs have been met. Two possible approaches to this have been successfully used in strategic planning workshops.

One method is to start by generating outcome-based performance indicators. Questions such as: "What will it look/feel like to succeed?" or "How will you know if you have a win?" stimulate participants to think creatively. (This is similar to the approach used by Japanese industry.) Once

responses have been collated and prioritised, statements of objectives can be readily generated.

A second method is to use the needs assessment results to clearly identify key client groups (for example, children near the school, teenage road users, elderly pedestrians, unemployed youth). Objectives can then be formed by identifying the projected benefits to these particular client groups.

Good objectives are fundamental to successful strategic planning at the operational level. Consultative planning forums involving community representatives provide opportunities to gain widespread commitment to priority concerns. Police managers must ensure that the process of clarification and prioritisation is undertaken. They must also ensure that objectives reflect the organisation's direction (that is mission, vision and core values).

Similar methods can be used for developing performance indicators. There should be direct and obvious links between indicators and relevant objectives/actions. If it is difficult to define a good indicator, it is likely that the objective or action needs clarification.

Testing for feasibility

Visioning, needs assessment and planning exercises can be exciting experiences. Not only do they help identify community needs, but they also generate creative (and, at times, irresistible) ideas for improvement in the community. However, plans must be realistic and achievable. Local police managers are responsible for ensuring that plans are consistent with corporate directions, and achievable within existing resource constraints. High risk or resource intensive initiatives may need to be modified or delayed. Ideally, feasibility testing should be carried out in consultation with all stakeholders (the community, operational police and other relevant business units in the police service).

The planning process outlined in this section should result in a high level of commitment to the plan amongst the community and operational police. Managers should build on this commitment by advertising and circulating the plan widely, through the media and other forums. The plan is fundamentally about police activities. However, its success will be more likely if there is also a sense of ownership within the whole community.

Implementation

A number of mechanisms are available to managers for implementing plans. Action plans can be used to define the specific tasks to be undertaken to complete key actions. These plans identify tasks to be completed, who will do them, with what resources, to what quality/standard and by when.

Project planning is a useful tool for groups of actions which represent a defined outcome. Mechanisms of accountability, performance measurement, coordination and quality control can be built into project plans.

Personal performance planning is now required in most public sector organisations. While this process has many flaws (Burton 1992), it can be useful for aligning strategic directions with personal objectives.

Managers should continue to use consultative processes. Major initiatives and achievements should be advertised through the media. Ongoing consultation through formal police consultative committees or other forums should also occur. Managers must appreciate that consultative processes build up positive expectations within communities. There is always a danger that confidence can decline if expectations are not met.

Evaluation

The objectives of evaluation are:

- that decision-makers, particularly at operational levels, make better decisions;
- that coordinators of operations allocate resources and develop policies which are more equitable and strategically aligned; and

- that clients and police executives can judge the efficiency and effectiveness of police services.

In the management cycle (planning, implementing and evaluating), evaluating provides much of the needs assessment for the next cycle. Hence the techniques of evaluation can be very similar to those used for needs assessment.

Relationship between evaluation at the operational and organisational levels

An important feature of the strategic planning model (Figure 1) is that evaluation is a bottom-up process. Fundamentally, performance information must be a living resource supporting group learning processes in operational teams (Stacey 1993). The empowerment of police which will occur through the planning processes advocated in this model must be reinforced by the management of evaluation.

This bottom-up approach to evaluation will also enrich the value of information at ascending levels of the organisation by providing qualitative details including direct community input. It will reinforce understanding of the diversity of policing environments, enhancing the likelihood of a more flexible policy response.

There is a danger that police organisations will choose top-down approaches to evaluation through:

- an emphasis on centralised collection, analysis and reporting systems based on a suite of organisation-wide performance indicators (numbers driven method); and/or

- the employment of large groups of evaluation experts, either at central or regional levels, who manage performance information and thereby the decision-making process (staff driven method).

Both these approaches have been dismissed by Allaire & Firsirotu (1990) as ineffective.

Under the numbers driven method senior police may have numerical information based on a number of organisational indicators. However, operational police will continue to control the crucial, enriching, qualitative information vital for a true understanding of the situation. Moreover, decisions are likely to be made on the basis of the central tendency of data rather than on an appreciation of the complexity of the environment.

The staff driven model would be equally ineffective. The organisation's "experts" would be in central planning and evaluation units. Equally, their advice would tend to be based on central tendencies.

It is likely that both these options would result in significant disempowerment of operational police and their communities by limiting the role of line managers in the decision-making process. Moreover, they are costly in terms of information systems development and personnel. By contrast, the model advocated in this paper, requires minimal cost because the processes are appropriately integrated with operational tasks. Indeed, planning and evaluation has the capacity to significantly enrich operational work.

The implication of this for centralised planning and evaluation units is that they should be small, and focussed on processes rather than content. Their primary role should be to teach, support and inspect. They should define their success by the quality of planning and evaluation undertaken by operational police.

Implementing a process for evaluation

Evaluation must be allocated resources and integrated with other tasks being implemented. Otherwise it becomes a useless exercise in meeting reporting deadlines rather than an essential input into decision making.

The first step in implementing a process for evaluation is to review the performance indicators included in the strategic plan. It is better to have good, cost-effective information based on a few, critical indicators than poor, costly information based on an elaborate suite of indicators. Integrating evaluation into operational policing requires that collecting, analysing and reporting are included as tasks in action plans and personal performance agreements.

Police already undertake many evaluation tasks on a daily basis. For example, they:

- gain feedback from members of the community;
- liaise with community groups;
- monitor media coverage of policing;
- take complaints; and
- observe trends in community development.

Managing evaluation involves focussing these tasks on issues of strategic significance and ensuring that information is collated and reported.

Managers must continue to use community resources such as the media to ensure that performance information is made available to local clients of the service.

To help operational police apply the model proposed in this paper, a summary of the key steps in planning and evaluation has been provided (Figure 3). This summary could be used to prompt consideration of the major steps in assessing local needs, developing a strategic plan, implementing the plan and evaluating the effectiveness of the plan.

Figure 3

Key Steps in Planning and Evaluation for Operational Police

A. Needs Assessment

Steps	*Comments*
Environmental Scans and Community Profiles.	Collect readily available information on demographic, social, economic and policing trends.
Delphi Survey.	Use Delphi process to survey a small number of "expert" advisers.
Hold joint public/operational police meetings using Nominal Group Technique (NGT).	Either call an open public meeting or invite representatives of a cross-section of the community. Identify priority law, order and safety needs and preferred police/community responses.
Relate local needs to organisational direction.	Compare identified community needs with organisational directions (e.g. conforming to values of social justice, etc).
Seek community/police agreement on priority needs.	Use voting procedures or other techniques to gain consensus on priorities.
Advertise priority needs through police bulletins and media.	Seek widespread ownership of priority needs identified by police and community.

Figure 3 (cont.)

B. Strategic Planning

Steps	*Comments*
Develop outcome, client focussed objectives in response to identified community needs.	Use joint community/police workshops and ask questions such as "What will success look/feel like?"
Quality check objectives against organisational mission and goals.	The manager should ensure that objectives are achievable and within the corporate framework.
Use group processes to brainstorm and prioritise possible police/community responses to objectives (actions).	Creative solutions to needs are sought. Managers need information about perceived priorities of various options.
Quality check actions against resource constraints and consistency with organisational vision, core values, strategies.	Managers must "reality test" proposed actions, ensuring that organisational direction is embraced.
Develop performance indicators for each objective and action.	There must be a clear link between objectives and outcome indicators and also between actions and output/process indicators. Objectives and actions may need to be modified.
Finalise plan.	Gain commitment from community members and operational police.
Promote plan through police media bulletins and local media.	The direction and details of the plan should become part of the manager's rhetoric.

C. Implementation

Steps	*Comments*
Develop action plans.	Identify tasks, who is doing them and when. Action plans should be realistic and achievable within resource constraints.

Plan projects.	Groups of actions may be delegated to subordinate officers as projects. Submit project plans for central coordination and monitoring.
Update personal plans.	Ensure that the direction of the strategic plan, including key tasks, are taken up in personal performance plans.
Develop mechanisms for monitoring tasks.	Ensure tasks are delegated, with full responsibility for monitoring and reporting.

Figure 3 (cont.)

D. Evaluation

Steps	*Comments*
Develop evaluation plan.	Tasks of information collection, collating and reporting should be identified, preferably using methods consistent with police work.
Integrate evaluation tasks with action plans and personal plans.	Each officer should be responsible for evaluating their own performance and also for contributing to group learning.
Develop simple processes for collecting and analysing information.	Using scrap books, team meetings, etc., to ensure that information is circulated.
Report progress to community and superiors.	Use media, etc. to promote police successes and problems.
Review objectives and actions in the light of information.	Regular review of directions is important.

Conclusion

Large organisations are described as being managed according to "top-down" or "bottom-up" principles. In reality, most large organisations practise a combination of both approaches, depending on their culture and structure. Successful organisations adopt processes which balance their need to have a single, unifying, strategically sound direction, while empowering operational staff to make decisions which are responsive to their particular clients. For diverse organisations such as police services, a line driven model of management is appropriate, characterised by clearly and widely understood corporate vision and core values, information sharing based around a structure of line managers who are responsible for planning and evaluation within their portfolios, and, the promotion of strategic thinking and implementation skills at all levels (Allaire & Firsirotu 1990).

Police organisations need to enhance their bottom-up processes if they are to successfully operate within this framework. Fortunately, operational police have skills in information collection, analysis and reporting which can be readily adapted to participative strategic planning and evaluation. By involving local community members, police can add significant value to their plans and performance information. Locally-developed responses to problems are also more likely to involve the effective

coordination of police and community resources directed at priority needs than strategies developed by senior management.

Senior police managers should resist the temptation to rely on centralised planning and performance management systems. The lesson from other large

organisations is that these approaches reduce organisational effectiveness by limiting the role of operational managers in decision making. Centralised units should be small and focussed on enhancing processes for planning, evaluation and inspection.

Processes based in the social planning discipline can be readily adapted for operational police in a way which empowers them to be creative and innovative within the framework of the organisation's corporate directions. These processes have the potential to enrich the quality of information available to all levels of the organisation. It is suggested that the organisational dynamics associated with these processes are likely to strengthen cooperative team approaches to policing problems while not limiting control necessarily exercised by senior executives.

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DEVELOPING A NATIONAL CRIME PREVENTION AND COMMUNITY SAFETY POLICY[1]

Grant Wardlaw & Gillian O'Malley

AS AUSTRALIA APPROACHES THE TWENTY-FIRST CENTURY IT IS AT A crossroads in its national crime prevention effort. Like many other industrialised and industrialising countries, Australia experiences unacceptable levels of crime. We spend more than $4 billion each year on the criminal justice system across the nation. At this crossroads, governments could choose to reallocate their budget priorities and spend even more money on law enforcement. Or, they could look for new ways of tackling the crime problem.

Without a new approach to crime prevention and community safety, increased spending would do little more than exacerbate the frustrations currently felt by our law enforcement agencies, and do little to reduce the fear of crime existing in many sections of our community. Australian police services themselves acknowledge that traditional reactive policing methods alone cannot succeed in substantially reducing crime rates and have adopted instead proactive community policing.

Why Have a National Crime Prevention and Community Safety Policy?

We need to recognise that crime is a quality of life issue affecting the entire nation. It is an Australian problem. Accordingly, crime must be addressed nationally. This paper suggests that the community must move away from an over reliance on police and other law enforcement and regulatory bodies in its attempt to control crime. All sectors of the community must be encouraged to define and accept their roles in crime prevention. This in no sense diminishes the role of police services. Indeed, it will provide a real boost to our national policing efforts, through the development of more effective partnerships with the community.

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1. This paper has been developed from a larger Issues Paper, *Creating a Safer Community: Crime Prevention and Community Safety in the 21st Century* prepared by the Federal Justice Office, Commonwealth Attorney-General's Department, 1992.

This paper proposes a series of steps to enable the community to meet its responsibilities. These centre on a more participative approach to the design and implementation of social programs which impact on the crime environment, whereby agencies deal more interactively with each other in and between all spheres of government and seek wider community participation in their programs. A more integrated approach addressing the personal and social causes of crime will provide the crucial power for the community to prevent crime and enhance its safety.

A national policy can serve a number of purposes. It can articulate a vision and serve as a rationale to broaden the type and number of individuals and organisations that play an active role in reducing crime in Australia. It can act as a focus for implementation of agreed measures to overcome the present obstacles to effective crime prevention. A national policy can provide a framework for change by giving a higher profile to crime prevention initiatives. A national policy would prevent the "ad hoc" approach of addressing crime problems with fragmented programs and projects. It would address the need for a unified approach to the crime problem which has been called for by police (Murphy 1992), crime prevention advocates (Hogan 1992), and those dealing with juvenile offenders (Sidoti 1993).

It is suggested that the development of the policy should rest on a number of strategic principles relating to vision, values, political leadership, responsibility, coordination and integration of policy, and evaluation. This paper also identifies various strategic actors including community organisations; governments; public administrations; police; the corporate sector; professional organisations; and the media amongst others, whose active participation is necessary for the successful development and implementation of a community safety and crime prevention policy.

For crime prevention and control policies to be effective there must be integration and coordination. This needs to occur across all three spheres of government, and within and between non-government organisations and government departmental elements. At present, however, most agencies not assigned a specific crime control function either do not realise, do not acknowledge, or do not place a high priority on the impact of their activities on crime. This situation can be improved by making all parts of public administration aware of the role they play in creating the conditions for, facilitating or implicitly condoning criminal behaviour.

Australia is part of an increasingly interrelated international environment. Some criminal organisations operate in several States and Territories. Significant crime in Australia is increasingly trans-jurisdictional. Due to varying legislation, police powers, rules of evidence and extradition of suspects, law enforcement agencies face significant problems in combating criminals who operate cross border and trans-nationally. By ensuring developments in law reform, legislation and legal rules are consistent across the States, Territories and the Commonwealth, many of these difficulties could be overcome. Whilst various Ministerial Councils are currently reviewing many of these topics, a national policy could encourage State, Territory and federal policy makers to consider the crime implications of

their policies and the impact of all other policies on jurisdictions other than their own. Only after such consideration should new policies be implemented. This will require a new way of thinking, outside policy makers' traditional area of responsibilities. A national policy would provide a structure for change in that direction.

An innovative national crime prevention policy will recognise that exclusively relying on law enforcement to prevent crime is unrealistic. A strategic approach focuses on proactive activity, rather than responding to crises as they eventuate. Historically, crime prevention has been part of the policing mandate, but police have been unable to coherently engage all parts of government, their departments and other law enforcement agencies to act in concordance (Sutton 1992).

Law enforcement interests are often not the primary concern in government decision-making. A national policy would provide a more extensive effort towards achieving community safety and assist the community in developing a consistent view of its responsibilities. It will articulate the principles which support crime prevention and community safety endeavours.

A national approach to community safety and crime prevention builds upon a number of programs developed within the law enforcement arena since the early 1980s. Australian police services have increasingly adopted community policing strategies not only through program development but across all aspects of policing. The wider community is a vital part of this community policing initiative. As it became obvious that increasing police numbers produced little in the way of reducing crime statistics some State and Territory Governments have developed or are developing major crime prevention strategies in partnership with their communities. These initiatives would benefit from integrating with efforts in other jurisdictions, other portfolios and community organisations. A national policy is a major factor in achieving this integration.

The Federal Government holds the primary responsibility for national economic and social policies. As a result, it has a crucial role in addressing the environment in which criminal activity exists. It is important that a national problem be tackled by all parts of the Australian community. It is only through the integration of federal, State, Territory and local government initiatives, combined with community efforts, that the most effective avenues for tackling crime can be developed.

Towards a National Crime Prevention and Community Safety Policy

Developing such a policy through the involvement of all parts of society—communities and their individual members—combining to reduce crime, depends on certain elements. It requires people who are able to see new relationships and partnerships, moving beyond established views and practices and developing new possibilities; the policy relies on innovative ways of achieving long-term objectives; it needs to recognise that the criminal justice system is not as effective as it could be and that all spheres of government need to become more committed to crime prevention; it

acknowledges the current criminal justice system is not coping as well as it could be; it recognises the effects of social, economic and cultural forces in creating opportunities for crime; and it moves away from our present over reliance on a government focus for crime prevention, to one with a wider range of institutions and organisations, communities and individuals influencing the social environment in which crime occurs.

The Australian community needs to take responsibility for its own security. The government could be seen as limiting the opportunity for crime by considering the implications of all policy under its control, while those agencies with direct law enforcement responsibilities will create partnerships with those most able to influence crime where it occurs: the particular community in which the crime problem exists.

Fundamental Principles

The principles fundamental to this policy might include:

- A Vision—to develop a more just and safe society through integration of all government policy such that all sectors of the community are involved through consultation and the development of partnerships.

- Values—identify the central values of the Australian community, so these can be met through programs and policy development.

- Political Leadership—seek bipartisan support to reduce the opportunities for crime by consideration of crime impact across all areas of policy-making.

- Responsibility—crime control is the responsibility of all members of our society.

- Coordination and Integration—the interaction between policies sometimes has unintended consequences leading to crime opportunities. By being aware of these consequences, policy makers can be more effective in pursuing common objectives.

- Evaluation—of crime prevention policies and strategies enables models of best practice to be acknowledged and shared to assist in their wider implementation.

Integral Participants

The community

- The community should be encouraged to take the initiative on crime prevention by becoming central in decision-making and

responsibility. Government bodies should consult widely with the community and not impose their solutions.

- Peak community bodies may lead their communities to identify crime problems affecting them and generate solutions.

- Education will play a major role in this approach to crime prevention, not only through the schooling system, but across a wide range of communities; from business and corporate sectors; through higher education; public administration and the political spheres. This education will impart values and identify actions which may lead to a safer community.

- The community consider issues of criminalisation versus legalisation of some criminal behaviour. This will assist political responses to reflect community attitudes and needs; assess whether the illegal economy is a reflection of declining respect for the law or the law lagging behind community attitudes.

It is vital the community become integral to the development of crime prevention strategies on all levels, are involved in the decision-making process concerning programs and services, and actively participate and take responsibility for crime prevention measures.

Government

The Federal Government can crystallise a vision of Australian society and provide leadership to achieve that goal. By establishing a strategic plan and a central information pool (disseminating and evaluating information on crime prevention programs, projects and policies), governments can encourage the community to develop and deliver the most appropriate crime prevention plans for their own local communities.

There are various ways governments may meet these roles which include:

- Government agencies and departments to liaise widely on the development of policy initiatives to minimise adverse crime implications.

- Establishment of various government committees to consider crime problems from a broad perspective across social policy considerations, with support from government research bodies thus establishing government priority for crime prevention objectives.

- Continual legislative review to ensure community standards being met in government documents, legislative standardisation and consistency to assist the community to locate and understand the law nationally.

- Ensure crime prevention issues remain on the public agenda by regularly addressing them, possibly through the forum of a National Convention.

Through such fora as the Australasian Police Ministers' Council (APMC), involvement at various community conferences, release of the Issues Paper (Federal Justice Office 1992) and promotion of the establishment of the Australian Community Safety Council (ACSC), the Commonwealth Government has taken steps to raise community awareness about crime prevention. It needs to continue promoting this widely throughout Australian society.

Public administration

Public administration has a key role, directly and indirectly, in assisting the community to achieve its vision of a safe and secure environment.

- Government bureaucracy can assist through integrated policy development and program delivery.

- Municipal and local councils, as local service and program providers already undertake many crime prevention initiatives. This should continue in conjunction with regular evaluation of crime implications of policies and programs.

- Public sector employees need to interact across horizontal and vertical levels of government policy development and program delivery, and to look more broadly to non-government sectors and the wider community to achieve crime prevention objectives.

- For the community to support its public sector, clear policies on ethical behaviour need to continue developing and be adhered to within government departments. The public sector has made significant advances in this area by reducing corruption and raising awareness. This needs to expand as a priority to establish government efforts towards crime prevention.

Policing

- The focus of policing into the twenty-first century will be the maintenance of peaceful public behaviour most visibly through operational police work. This will be achieved through the wholehearted embrace of the community policing ethos.

- Recent and continuing professionalism of the police occupation is being developed by initiatives of the Commissioners of Police and the APMC. This is evident in police recruiting and training practices which will assist police and the community to jointly develop policies to address community crime concerns.

- Police will remain a focal point for community crime prevention as they continue to hold a mandate to protect public security. Due to this authority, their organisational structure and geographic distribution, they have the capability to react promptly, where required. Police develop community links and can recognise social breakdown and as such, play a vital role in identifying and contributing to solving social problems.

- Police share the crime prevention role with other agencies, organisations and the wider community. They will also need to place more emphasis generally on a crime prevention approach, so it becomes central to the police structure, operations and ethics.

- Police should encourage the community to take some of the responsibility for crime prevention, state its views on the seriousness of crimes through their response to certain antisocial behaviour, and thus encourage official change.

Policing initiatives in various stages of development include: the expansion of community policing as integral to police services; the continual increased professionalism in policing; establishing national training to national standards to enable interstate mobility of staff based on need; and viewing police as leaders and facilitators in the crime prevention field.

Corporate sector

- As "good corporate citizens", the business and corporate sectors, both legally and morally, have a responsibility to contribute to community life by ensuring the protection of employees, customers and clients and the security of their products.

- Businesses have a responsibility to practice crime prevention by limiting the possibility of fraud and other corruption within the work environment and assisting law enforcement agencies in their activities.

- By upholding a high ethical standard in their business practice, the corporate sector, held in high regard by much of the community, continue to influence public attitudes to crime.

- The corporate sector may assist crime prevention efforts and the wider community through funding and involvement in crime prevention activities.

Professional organisations

- Professional organisations have a similar role to play as the corporate sector; by upholding a high ethical standard, this group can influence public attitudes to crime and the role of crime prevention.

The media

- The media, widely defined, are extremely influential in determining ways in which we view society, learn about and conceptualise its problems and define its solutions (Federal Justice Office 1992). The media represents the world through images and reflect citizens' attitudes and opinions and this influences general social attitudes and beliefs. As a result, the media have a responsibility to exercise their power objectively and reliably. Media self-regulation is an issue currently being discussed by law enforcement agencies, the media and other government representatives; the objective being the development of clearer guidelines and a code of conduct for media reporting. A solid partnership between these parties and crime prevention efforts will continue to be a necessary element in any major crime prevention policy.

Conclusion

There is a clear need to reorient our crime prevention efforts to address the causes of crime and to recognise that crime prevention is fundamentally a community responsibility. Attempts to reduce the costs of crime need to be more widely targeted than at present. While it is important to improve the capabilities of our law enforcement agencies, it is also important to seek ways of dealing more effectively with crime outside the criminal justice system. This is best done by empowering institutions closer to the source of the problem in the community to play a more active part. It is also important that economic and social policies be developed and implemented with an eye to their potential to influence the conditions which might reduce criminal opportunities and behaviour. A national policy, as part of a broader national strategy on crime prevention and community safety will contribute to achieving a safer and more secure Australian society.

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THE PROPER ROLE OF CRIMINAL LAW IN ROAD SAFETY

John Willis

THIS PAPER SEEKS TO EXAMINE THE MANNER IN WHICH DRINK-DRIVING and certain speeding offences are dealt with in the criminal justice system. This analysis will use Victorian legislation; however many of the features of Victorian legislation have equivalents in other jurisdictions. The focus will be on interference with driving licences. This is one of the most common sanctions employed and one which raises important issues of fairness and efficiency.

In an effort to control traffic accidents, a range of policy approaches has been adopted, one of the most important of which has been law enforcement. The term law enforcement involves the creation of driving offences by legislatures, and the enforcement of these laws by police and the courts. The law enforcement approach is essentially based on deterrence theory that persons can be deterred from acting in certain forbidden ways if there is "certainty, severity and celerity of punishment". In the area of drink-driving and speeding offences, policies which combine all three elements have been employed: random breath-testing and speed detection cameras, severe penalties, immediate and/or virtual automatic loss of licence. These policies need to be evaluated at two distinct levels. Firstly, are they effective in producing at the lowest cost the desired outcome of safer driving and less accidents? Secondly, are they defensible in terms of sentencing principles of proportionality and consistency.

As far as effectiveness is concerned, the empirical evidence in the area of drink-driving suggests that certainty of punishment is important in deterring potential offenders, but that severity of punishment has very little impact on behaviour if the perceived risk of apprehension and punishment is low (Ross 1984, pp. 102-4). Recent evidence suggests that celerity of punishment, if combined with certainty, may well add to the deterrent impact of the law (Ross 1984, pp. 121-3).

Increased severity of punishment also raises questions of sentencing principle. The basic sentencing principle is that of proportionality: the punishment should reflect the gravity of the offender's conduct (*see Veen v. R*

(No. 2) 77 ALR 385). In Australian jurisdictions, the most common penalties for drink-driving offences are fines together with interference with a defendant's licence. While there has developed a body of sentencing principles dealing with fines, there has been comparatively little discussion or analysis of licence suspension or disqualification as a sentencing disposition.

Another set of issues involving principle and policy relate to the status which should be accorded to traffic offences. These offences generally have not been perceived as truly criminal. They are committed frequently, by otherwise law-abiding members of the community, and they carry little stigma (Homel 1986, p. 6). Drink-driving offences are to some extent an exception to this general rule. There is considerable community disapproval of drink-driving, and drink-drivers are widely seen as anti-social in their preparedness to risk the safety of other people. Nevertheless there remains considerable ambiguity in the way drink-driving offences are viewed. The number of persons who commit drink-driving offences and their spread across the social spectrum militates against the classification of such offences as fully criminal. Drink-driving offences are found in legislation regulating motor traffic, not in the relevant *Crimes Act*, and it is likely that considerably less stigma attaches to a drink-driving offence than to a dishonesty offence. Thus, while drink-driving offences have a special status, they still remain driving offences—breaches of that body of rules concerned with the efficient and safe regulation of traffic flow.

Drink-driving offences can thus be viewed from two perspectives—first, as a serious offence meriting severe punishment and second, as part of the rules designed to manage traffic. These two perspectives have clear procedural consequences. Criminal offences require proof beyond reasonable doubt in open court; breaches of rules regulating traffic can be managed administratively through informal, out-of-court procedures such as infringement notices and on-the-spot fines. There is an obvious danger that these quite different procedural approaches will be mingled and intertwined in inappropriate ways with aspects of the administrative approach being grafted on to criminal offences and aspects of the criminal approach being grafted on to administrative processes.

This discussion has, so far, focussed on drink-driving offences. A similar analysis applies also to other driving offences deemed to be of special seriousness because of their perceived potential for causing accidents. In particular, there has been a growing emphasis on the part played by excessive speed in accidents with increased penalties provided for breaching speed limits.

Loss of Driving Licence

For many people, loss of driving licence is a severe punishment. For those for whom driving is an essential part of their occupation (for example, taxi drivers, truck drivers) it means loss of employment; for persons in the country with large distances to travel and no realistic public transport it can mean social isolation; and for young people it often means substantial interference with normal social behaviour. However, despite the frequency of

its use, there has been little discussion or analysis of cancellation or suspension of licence as a sentencing disposition. The Victorian Sentencing Act 1991 which states as one of its purposes "to have within the one Act all general provisions dealing with the powers of courts to sentence offenders" (s. 1(b)), makes only slight reference to interference with licence. The major provisions dealing with licences are in the *Road Safety Act 1986* which not only gives the court a wide discretion to interfere with licences for driving offences but also provides specific cancellation provisions for various offences.

There has been little research done in evaluating community perceptions of the seriousness of loss of licence as a punishment. Homel in a survey asked respondents which of the following penalties they would find harsher—two weeks in prison or six months' disqualification from driving. There were thirty-eight respondents who had at the time of the survey a conviction for drink-driving. Of these thirty-eight, three regarded the penalties as of equal severity, eighteen regarded prison as the more severe penalty and seventeen regarded licence disqualification as the more severe penalty. Moreover, the perception of severity correlated significantly with socioeconomic status and need of a car. Of nine professional and white-collar respondents, eight regarded prison as the more severe penalty, while only seven out of twenty-one blue-collar and unemployed respondents made the same choice. Of the nineteen respondents who stated that a car was essential for their work, thirteen regarded disqualification as more severe, compared with only four out of fourteen respondents for whom a car was not essential. These results obtained by Homel were almost identical with results obtained some years earlier by Buikhuisen from a sample of one hundred and seven Dutch drivers with a conviction for drink-driving. These results are based on small, non-random samples, but suggest what seems from experience quite plausible, that licence disqualification is perceived as a very severe penalty (Homel 1988, p. 195).

Loss of licence provisions under the Road Safety Act 1986 (Vic.)

Under the Victorian *Road Safety Act 1986*, a court is given a wide power to cancel or suspend drivers' licences. Section 28(1) provides in part that where:

> a court convicts a person of, or is satisfied that a person is guilty of, an offence against this Act . . . or of any other offence in connection with the driving of a motor vehicle, the court:
>
> (a) . . .
>
> (b) . . . may suspend for such time as it thinks fit or cancel all driver licences and permits held by that person and, whether or not that person holds a driver licence, disqualify him or her from obtaining one for such time (if any) as the court thinks fit.

However, this broad discretionary power is specifically limited in respect of certain driving offences, including speeding and drink-driving. For these offences, there are mandatory licence suspension and cancellation provisions.

Thus, under s. 28(1)(a) of the *Road Safety Act*, the following mandatory minimum licence suspension periods apply for persons found guilty of exceeding the permitted speed limit:

Speed of Vehicle	*Mandatory minimum suspension period*
30 km/h or more, but less than 40 over the speed permitted	1 month
40 km/h or more, but less than 50 over the speed permitted	4 months
50 km/h over the speed permitted	6 months

It should be noted that the penalty is "suspension" not "cancellation". The offender avoids the cost and hassle of having to get a new licence. However, he or she is without a licence for the relevant period. These are *minimum* suspension periods; the court can impose greater suspension periods or cancel licences. They are also *mandatory*: the court has no discretion, but must at least suspend the licence. The result is that a driver found guilty of driving at, say 103 km/h in a 60 km/h zone, must have his or her licence suspended for at least four months. It does not matter if the driver is a nineteen-year-old who can easily walk to work, or a fifty-year-old truck driver with thirty years of driving experience and no previous court appearances who needs his licence to support his family: the minimum penalty for both is four months' licence suspension.

The thrust of the legislation is clear enough. Excessive speed is seen to be a major factor in collisions and the message must be brought home to motorists. In terms of deterrence theory, these provisions provide for certainty of punishment: there are no bonds, no "exceptional circumstances", no sentencing let-outs. The problem is with the general sentencing principle that the penalty should be proportionate to the offence. It is hard to see why exceeding the speed limit by between 40 and 50 km/h generates a mandatory minimum 4 months' suspension, while exceeding it by 50 km/h or more generates six months. It is also difficult to explain how behaviour which did not in fact cause harm, and which would be very unlikely in practical or statistical terms to cause harm should inevitably lead to a penalty (say four months' suspension) which could lead to loss of employment, loss of vehicle and even loss of family home. However, from the bureaucratic point of view, the rigid mandatory minima make the transition to, and acceptance of, routinised administrative penalties much easier.

Drink-driving Offences

There are mandatory minimum licence disqualification periods under Victorian law for persons found guilty of certain drink-driving offences (*Road Safety Act 1986*, s. 50 and schedule 1). It is impossible to set out here all the details of these licence disqualification provisions. In the case of holders of full licences for drink-driving offences involving a specific blood-alcohol

reading, the position is broadly as follows. The court retains a discretion not to interfere with an offender's licence, if the offender has no prior drink-driving offences and the reading is .1 or less. If the reading is .10 or more, the following minimum disqualification periods apply.

Blood alcohol reading	*First offence*	*Subsequent Offence*
.10 or more, but less than 0.11	10 months	20 months
.11 or more, but less than 0.12	11 months	22 months
.12 or more, but less than 0.13	12 months	24 months
.13 or more, but less than 0.14	13 months	26 months
.24 or more,	24 months	48 months

It can be seen that for blood alcohol readings between .10 and .24 the minimum disqualification period for a first offence is a number of months equivalent to the blood alcohol reading, and that for a subsequent offence that minimum disqualification period is doubled. The prior drink-driving offence can have occurred at any time in the past. The nature of the prior drink-driving offence is not relevant to the minimum disqualification period. There is a certain logic about the graduated increase in disqualification periods for first drink-driving offenders in line with the increase in the blood alcohol readings. The same, however, cannot be said about the automatic doubling of minimum penalties for offenders with a prior drink-driving offence, regardless of its age or seriousness: its only apparent virtues are simplicity and ease of calculation.

These penalties have a clear potential to operate very harshly and in a discriminatory way. For offenders living in country areas, loss of licence is generally a harsher penalty than for city offenders who live closer to their work and have access to public transport. There is, however, no provision in the prescribed minima for taking such factors into account. More generally, the use of mandatory minima seems to run counter to the basic principle that like cases should be treated alike and unlike cases treated differently. The minimum period of disqualification for a person with a prior drink-driving offence found guilty of driving with a blood alcohol reading of 0.12 is twenty-four months, regardless of whether the offender is a nineteen-year-old who does not need a licence for work and whose previous offence occurred six months ago and involved a reading of 0.24, or a fifty-year-old truck-driver with dependants whose previous offence occurred over twenty years ago and involved a reading of 0.08. There is no doubt that the severity of the penalties has as its aim the deterrence of drink-drivers—a goal that is obviously praiseworthy. The nature of these penalties raises two important issues. Firstly, do these penalties have a real deterrent impact and could an appropriate deterrent impact be achieved by less severe penalties? Secondly, are the penalties imposed for some traffic offences seen as unfair, and if so, what, if any, effect does that perception have on driving practices?

On the issue of deterrent impact, surprisingly despite the obvious relevance of such research and the existence of much high-quality research on various issues related to drink-driving, there has been virtually no research on this question. However, Professor R. Homel, a leading Australian researcher in the area, has stated:

> For one thing, the evidence from the longitudinal analysis indicates that the deterrent impact of the more severe penalties may have been short-lived. Moreover, despite the significance of perceived penalty severity in one or two analyses, the major predictors of behaviour change were fear of arrest and exposure to police enforcement. Without an increase in the perceived probability of arrest, penalty increases are not likely to have much deterrent impact. Finally, penalties which are too high and too inflexible may simply result in law enforcement officials (police, lawyers, judges) making more efforts to subvert the spirit of the law. If discretion is eliminated or reduced in open court, it may be exercised somewhere else, behind closed doors or on the street . . . Thus traditional penalties consisting of fines of a few hundred dollars and a few months of licence disqualification are quite sufficient, provided the subjective probability of arrest is sufficiently high. A further increase in penalties, either in legislation or in practice, could create more problems than it would solve and is not necessary to achieve deterrence (Homel 1988, p. 264).

If penalties are perceived as unfair, discriminatory and unduly harsh, their deterrent and moral impact may well be significantly weakened. Offenders may well feel less bound by such penalties and more prepared to disobey the prohibition on driving. In an Australia-wide survey conducted in August 1987, of the 1027 respondents 88 per cent thought that the penalties for drink-driving were "about right or too soft", and 71 per cent thought the penalties for speeding were "about right or too soft". However, there was a significant difference between respondents who had had their licence cancelled or suspended or been fined on one or more occasions during the two years prior to the survey and those who had not. The former group "were *significantly* more likely to agree that penalties for speeding were too harsh, but yet not for drink-driving" (Reark Research Pty. Ltd, pp. 31-3).

Smith and Maisey in Western Australia in 1990 sent questionnaires to 3404 drivers who had lost their licence for driving offences. Completed replies were received from 1313 drivers, of whom 35.8 per cent admitted to driving at least once during the period of disqualification. In the questionnaire, respondents were asked whether or not they regarded their licence disqualification as fair. Table 1 sets out the responses to that question according to whether or not the respondent admitted to driving illegally.

Table 1

"In your case, how did you feel about your licence disqualification?" by whether the respondent admitted to illegal driving

Item	*Drove while disqualified*		*Did not drive while disqualified*		*Total*
Very Fair	46	(10.4%)	136	(17.0%)	182
Fair	183	(41.1%)	385	(48.0%)	568
Unsure	40	(9.0%)	55	(6.9%)	95
Unfair	110	(24.7%)	138	(17.2%)	248
Very Unfair	66	(14.8%)	88	(10.9%)	154
Total	445	(100.0%)	802	(100.0%)	1247

$x^2 = 24.848$, d.f. = 4, p. <0.001

Source: Smith & Maisey 1990. p. 42

While over 60 per cent of all respondents considered their licence disqualification "fair" or "very fair", "persons who drove while disqualified were significantly less likely to have seen their licence disqualification as "Very Fair" or "Fair" than the persons who did not drive while disqualified". (Smith & Maisey 1990, p. 14). Interestingly, Smith and Maisey also noted that of the drivers in the survey who had lost their licence because of a drink-driving offence only 30 per cent reported driving while disqualified, compared with nearly 50 per cent of those whose licence had been suspended under the demerits points scheme (Smith & Maisey 1990, p. 14, Table II, p. 44). This evidence is clearly not conclusive, but it does suggest that driving while licence is cancelled or suspended may be more likely if the licence was lost administratively rather than judicially.

Traffic Infringement Notices

The *Road Safety Act 1986* (Vic) provided for the traffic infringement notice (TIN) procedure. Under this procedure, a police officer could serve a TIN for prescribed traffic offences, those prescribed being less serious offences. If a motorist paid the prescribed penalty within the prescribed period (generally about 28 days after the service of the TIN), the legislation provided that:

- the infringement was expiated by the payment
- no further proceedings may be taken with respect to the infringement
- no conviction was recorded for the infringement [s. 89].

However, demerit points could be incurred.

In 1989, however, the traffic infringement notice procedure was widened to include "drink-driving infringements" and "excessive speed infringements". Drink-driving infringement notices can be issued for persons

alleged to be up to 0.15, and excessive speed infringement notices can be issued for drivers alleged to be exceeding the relevant speed limit by 30 km/h or more. A person against whom a drink-driving or excessive speed infringement notice is issued has 28 days from the date of issue to object to the notice. If the person objects within the 28 days, the TIN is cancelled and case can be dealt with only by the issue of a charge and its hearing in open court. If the person does not object within the 28 days, the TIN takes effect 28 days after the date of the notice (s. 89A.(2)). In addition, in the case of a drink-driving infringement, the person's licence is cancelled and he or she is disqualified from obtaining a licence for a period broadly in accord with the mandatory minimum period prescribed for drink-driving offences heard in open court; in the case of an excessive speed infringement, the person's licence is suspended for the same period as is prescribed as a mandatory minimum for speeding cases heard in open court. There is provision in the legislation for a person who claims not to have been aware of the drink-driving or excessive speed infringement notice before it came into effect as a conviction to apply to the Magistrates' Court within 7 days of becoming aware of the notice for an extension of time in order to be able to object to the TIN. The court must not grant an extension of time "unless it is satisfied that the person was not in fact aware, before the infringement notice took effect as a conviction, that it had been issued" (s. 89B(2)). The onus of proof has been placed on the person to establish the circumstances which would enable the case to be heard in open court.

The drink-driving and excessive speed TINs are in marked contrast to other TINs. For the other TINs, failure to pay within the prescribed time results in the case proceeding in open court. For drink-driving and excessive speed TINs failure to object within the prescribed time results in loss of the right to have the case heard and determined in open court. Administrative, not judicial, disposition has become the norm. For other TINs the administrative procedure has the obvious attractions to a defendant of avoiding conviction and a court hearing. Moreover, the essentially administrative, non-judicial nature of the process provides justification for the non-imposition of a conviction. The situation is significantly different for drink-driving and excessive speed TINs. Conviction and loss of licence are specifically attached to the TIN. Indeed, the issue of a drink-driving or excessive speed TIN is effectively a sentence involving conviction, fine and loss of licence imposed by the police officer issuing the TIN. Section 89A(2) states in part that:

> a traffic infringement notice that is issued in respect of a drink-driving infringement notice or excessive speed infringement takes effect, 28 days after the date of the notice, as a conviction for the offence specified in the notice, unless the person objects . . .

There is, moreover, little trade-off in the penalties imposed under a drink-driving or excessive speed TIN. The prescribed periods of licence disqualification and suspension are effectively the same as for cases heard in open court. However, in certain cases the prescribed period is quite likely to be more severe than if the case were heard in open court. Thus for persons on

full licences with no prior drink-driving offence, whose reading is over 0.05 but not over 0.1, a court has a discretion not to interfere with the licence and this discretion is frequently exercised in a defendant's favour. However, under a drink-driving TIN, the prescribed disqualification periods are six months for readings greater than 0.05 and less than 0.10, and 10 months for a reading of 0.10 (s. 89C).

This preparedness to have licences cancelled or suspended by out-of-court action is in strong contrast with the provisions of what was called the "alternative procedure". Under the alternative procedure, which applied for certain less serious offences, a defendant was given a choice as to whether or not he or she wanted the case heard in open court. If the defendant did not elect to have the case heard in open court, the matter could be disposed of in chambers by a magistrate relying on the written sworn statement of the informant. However, the legislation specifically provided that defendants with full licences could not have their licences cancelled by a magistrate in chambers and that a magistrate contemplating such action had to adjourn the matter for hearing in open court. The alternative procedure was available until 14 June 1990. (For the "alternative procedure", *see Magistrates (Summary Proceedings) Act 1975*, s. 84; *Magistrates' Court Act 1989*, s. 52 and schedule 3).

In administrative terms, a distinction should be made between drink-driving TINs and excessive speed TINs. Both kinds of offence when heard in open court are generally disposed of by a guilty plea without the need of the presence of the charging police officer and without the consumption of much court time. However, in the investigation and establishing of each offence there is a considerable difference in time and resources involved. A drink-driving offence will generally involve a preliminary breath test, the transfer of the driver to a police station, and a breathalyser test (or two) by an authorised breath-analysis operator, while an excessive speed offence will generally involve the observations of a police officer and/or the reading of a speed-measuring device. Thus, in processing of a drink-driving offence, a considerable part of the total resources used is involved in the investigation; but this is not the case with most excessive speed offences. The administrative rationale of saving time and resources does not seem to apply with much force to drink-driving TINs.

The use of TINs for drink-driving and excessive speed offences raises other concerns. The use of the term "traffic infringement" to describe drink-driving and excessive speed offences sends a message that these are not really serious offences. There is no public, authoritative statement that a drivers' licence is now cancelled or suspended, simply a notice stating that the licence is to be cancelled on a certain date. There is an obvious lack of immediacy and impact and perhaps a tendency to treat such a cancellation as less binding than a cancellation or suspension ordered in open court to operate immediately.

Immediate Suspension Of Drivers' Licences

If a person is charged with certain drink-driving offences, a police officer has the power to suspend that person's licence from the time of charging until the

case is decided in court. The offences for which a licence can be immediately suspended include:

- drink-driving offences where the prescribed concentration of alcohol is alleged to be 0.15 or more;
- refusing a breath test;
- any drink-driving offence, if the person charged has committed a previous drink-driving offence.

There is provision for appealing to the Magistrates' Court against the immediate suspension of licence, but the legislation provides that on the hearing of the appeal, the Magistrates' Court is not to make an order cancelling a notice of suspension unless "satisfied that exceptional circumstances exist which justify the making of such an order" (Road Safety Act, s. 51).

This provision covers drink-driving offences that are not able to be dealt with by drink-driving TINs. This includes persons charged with a second drink-driving offence, regardless of the nature or antiquity of the previous drink-driving offence or the seriousness of the instant offence. A probationary driver with a prior drink-driving offence who has a reading of 0.03 could have his or her licence immediately suspended. It should be noted that the legislation gives the police a discretion in the matter, but the fact remains that they have the power of immediate suspension for such cases.

The aim of the legislation is to keep high-risk drivers off the road between detection and court hearing. It is not obvious that all of the categories chosen correlate closely with high risk drivers. Moreover, if a driver is so irresponsible and reckless, it may be doubted that immediate suspension of that person's licence will deter him or her from driving.

In addition, the method chosen makes the police officer investigator and sentencer, with any trial quite probably occurring considerably later and after the punishment of licence suspension has been in place for months. Punishment has been imposed apart from and before the court hearing. And, of course, the presumption of innocence has been set at nought. Moreover, given that the decision to plead "not guilty" generally means added delay, a defendant may well forego his or her right to contest the case on the ground that the contest will be a pointless extravagance because of the time of licence suspension already endured. For the defendant who successfully defends a case after, say, 12 months' licence suspension, it may well appear a Pyrrhic victory. If there were concerns about delays in drink-driving cases, there were surely less drastic and more principled ways to address the problem—for example by giving such cases priority in listing or requiring that they be heard within a certain period, say 3 months.

The drink-driving infringement notices and the immediate suspension provisions effectively cover the drink-driving field. In both instances, the police have been given powers that are tantamount to sentencing. It is by no means obvious that such powers are either necessary or desirable.

Driving While Disqualified Or While Licence Is Suspended

If loss of licence is to have real impact, there must be means to ensure that persons who have lost their licence do not drive. The offence of driving during a period of licence suspension or disqualification is the major criminal sanction designed to achieve that end.

Penalties prescribed for the offence have always been severe. However, the variation in these penalties is of interest. Under the *Motor Car Act 1958*, the maximum penalty for a first offence was imprisonment for one month and for a subsequent offence imprisonment for not less than one month and not more than three months. In 1967, the power to fine instead of imposing a sentence of imprisonment for a first offence was removed. In 1978, there were substantial changes to the penalties:

- the power to fine for a first offence was reinstated;
- The maximum term of imprisonment for a first offence was increased to six months, and for a subsequent offence to two years;
- the court was given the power to order the forfeiture
  - of the number plates of the motor car used in the offence; and
  - of any motor-car owned by the offender.

The present maximum penalties under the Road Safety Act 1986 are

- for a first offence, a fine of $3000 or imprisonment for four months;
- for subsequent offences, imprisonment for not less than one month and not more than two years (s. 30).

The forfeiture powers have been removed, but the power to fine for a first offence retained. It is of interest that the penalties for drink-driving offences are considerably less than for driving during a period of licence suspension or disqualification. For the typical drink-driving offences of exceeding the prescribed concentration of alcohol, there is no gaol term for a first offence but only a maximum fine of $1,200, and for subsequent offences the maximum term of imprisonment is three months.

The available evidence suggests that a significant number of motorists drive while their licence is suspended or disqualified. Of the 1313 respondents to the Smith and Maisey questionnaire in Western Australia in 1990, 35.8 per cent admitted to driving at least once during the period of disqualification and a significant number stated that they drove more than 100 times. Smith and Maisey further stated that cross-tabulation of the replies to the questionnaires indicated that these figures understated the amount of illegal driving (Smith & Maisey 1990, p. (i)). Dr Robinson in a submission to the Social Development Committee of the Parliament of Victoria in 1987 reported that almost 30 per cent of drink-driving offenders drive while disqualified and stated that:

> Many offenders drove frequently to satisfy all of their transport needs, while others who drove apparently stayed at home more than they would have when licensed and drove only to meet commitments (Parliament of Victoria Social Development Committee 1988, p. 113).

In December 1987, the Social Development Committee conducted a phone-in to gauge community attitudes to drink-driving. There were 700 respondents to the phone-in, of whom 35 per cent stated that they had at some time lost their licence because of a drink-driving conviction. Of these, "almost 4 in every 10 (38%) . . . openly admitted to driving at some time while under suspension", and "approximately one in seven (14%) admitted to driving while suspended all the time. (Parliament of Victoria Social Development Committee 1988, pp. 99-101; p. 107). Smith and Maisey also noted that "many of the Western Australian respondents [to their survey] who admitted to driving while disqualified apparently made special efforts to drive as little as possible or in a safe, law abiding manner" (Smith & Maisey 1990, p. 20).

Police data for Victoria tend to confirm the incidence of driving while disqualified or suspended. In the calendar years 1991 and 1992, 4758 and 4796 offences respectively were detected of driving while licence was cancelled, suspended or disqualified (Victoria Police 1992, p. 1). Moreover, offenders found guilty of driving while their licence is suspended or disqualified in fact receive severe penalties. For the years 1990 to 1992, some 22 per cent of persons convicted of the offence received custodial sentences. For the calendar year 1992, of 2779 offenders, 619 were sentenced to gaol and a further three to a Youth Training Centre. In addition, a further 491 were given suspended sentences, and 41 received intensive correction orders (ICO). The figure of 619 persons imprisoned constitutes a significant proportion of the 4583 persons gaoled by the Magistrates' Court in Victoria in 1992, with only the offences of theft (965 persons) and burglary (766 persons) having more persons gaoled. The 619 persons gaoled for driving while disqualified constitutes a significant demand on prison resources and doubtless a substantial dislocation for the offenders and their families. It is obviously of importance to determine what, if anything, can be done to lessen this figure.

Regrettably, there has been little research in Australia on persons convicted of this offence and the nature of their offences (for example, repeat offence; driving after licence cancellation or suspension; licence lost by court order, TIN, demerit points system). Smith and Maisey noted in 1989 that:

> in view of the importance of drivers' licence disqualification as a penalty, it is surprising that in Australia apparently only two studies have been conducted on the topic. Both of these projects were conducted more than 13 years ago, and involved restricted samples (Smith & Maisey 1990, p. 1).

What evidence there is paints a rather unclear picture. There was evidence from Robinsons' work in Victoria "that those suspended for longer periods were more likely to drive" (Smith & Maisey 1990, p. 4). However, Homel in his study of 1000 drink-drivers convicted in 1972 in New South

Wales of exceeding the prescribed concentration of alcohol found no relationship between length of disqualification period and likelihood of driving while disqualified (Homel 1988, p. 221). In their research in Western Australia, Smith and Maisey found no significant relationship between length of disqualification and admitting to driving while disqualified. However, they noted that persons with disqualification periods of up to three months or more than six months admitted to driving more than those with a four to six months' disqualification period. They also noted that of the drivers in the survey who had lost their licence because of a drink-driving offence only 30 per cent reported driving while disqualified, compared with nearly 50 per cent of those whose licence had been suspended under the demerit points scheme (Smith & Maisey 1990, pp. 14-15). It is plausible that persons whose licence is cancelled or suspended administratively without the immediacy of an open court order may feel less bound by the prohibition. Be that as it may, there is ample need and scope for research in this area to investigate the reasons for driving while disqualified or suspended.

Conclusion

For drink-driving and speeding offences the role of the courts is being substantially diminished. Of those cases which come to court, sentencers are given very little discretion with respect to interference with licence, and the major discretion which remains is to increase the period of loss of licence. Further, the TIN procedure for these offences is designed to remove cases from the courts altogether, and police power of immediate suspension effectively means that a substantial punishment is achieved before and independent of any court hearing or adjudication. These developments clearly need public discussion and analysis.

Any policy must seek to accommodate as far as possible the often competing goals of justice and efficiency. This is very obviously the case with the use of criminal sanctions (including loss of licence) in the regulation of traffic. Considerations of justice demand due process, fairness and penalties that reflect the seriousness of the offence. Administrative efficiency demands the optimal use of scarce resources. Maintaining a proper balance between the demands of justice and efficiency often requires fine and careful judgment. In the area of drink-driving there must be considerable doubt if this is occurring. The tendency to retain serious criminal offences for drink-driving but remove them in large measure from the courts raises large questions of principle. Moreover, evidence is lacking about the optimal length of licence disqualification for reducing unsafe driving practices without offending sentencing principles of proportionality and possibly leading to disrespect for and disregard of the law (for example, by driving during disqualification or suspension period, or simply driving unlicensed). It may be that administrative practices such as drink-driving traffic infringement notices are not only dubious in terms of justice but administratively inefficient, if not counterproductive, in lowering the perception of drink-driving as a serious offence and generating a more casual attitude towards driving while disqualified.

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EVALUATING FAMILY GROUP CONFERENCES[1]

David Moore

THE FAMILY GROUP CONFERENCE HAS BEEN MUCH DISCUSSED SINCE 1989, when legislation made the process a key part of the New Zealand juvenile justice system. The process was adopted in Australia in 1991, when police in the New South Wales city of Wagga Wagga began to use family group conferences as part of their "effective juvenile cautioning scheme". The relative merits of the two schemes—one national, the other local—were subsequently debated at a memorable conference on juvenile justice held in Adelaide late in 1992. It was clear by this stage that the family group conference was a very powerful process. It also represented a radical break with traditional practice in juvenile justice for two fundamental reasons. First, in the family group conference, problems caused by offending behaviours of young people are dealt with collectively rather than by targeting isolated individuals. Secondly, these problems of juvenile offending are dealt with not only at the level of rational debate but also at the level of the emotions. The conference process engages both the head and the heart. Despite some significant procedural differences between the use of the family group conference in New Zealand and its use in Wagga Wagga, proponents of the two models remain in agreement on these two points. The family group conference deals with juvenile offending as a collective problem and it engages the emotions of those seeking a collective solution.

Because the process represents such a radical break with existing criminal justice systems in general, and juvenile justice systems in particular, it is open to criticisms from defenders of these systems. The chief legal concern is that the family group conference represents a potential threat to the individual rights of young offenders by undermining due process. Critics of a more utilitarian bent question the efficiency of the process. How do we know it works? Addressing these criticisms requires two separate approaches. First, a normative model is required, a model that justifies a collective and emotional

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approach to offending from those who have been most affected by an offence. Secondly, an adequate explanatory model is required, a model that accounts for both the individual and the collective dynamics of a family group conference. In summary, one needs to explain why the use of a collective approach is legitimate and why such an approach should be effective. Only then can a juvenile justice system that uses the family group conference process be properly evaluated.

In New Zealand, important evaluative work on the new juvenile justice model has already been done by Gabrielle Maxwell and Allison Morris, working for Victoria University's Institute of Criminology (Maxwell & Morris 1992). In Wagga Wagga, an evaluation of the effective cautioning scheme is being conducted under the auspices of Charles Sturt University's Centre for Rural Social Research, with the help of a grant from the Criminology Research Council. Police of the Wagga Wagga District Patrol have kept basic statistics on the number and type of interventions since the new cautioning scheme was introduced in 1991. They have also kept statistics on the incidence of repeat offending and on the amount of material reparation achieved under the new scheme. In addition, students of social work from Charles Sturt University carried out a series of short surveys of the scheme during 1992. These surveys were designed to measure the degree of victim satisfaction with the new scheme. They found that it had achieved a consistently high level of victim satisfaction.

What questions could a more detailed longitudinal study seek to answer? Rates of recidivism are being monitored by police. Victim satisfaction has been confirmed. These basic questions are being answered without the need for detailed qualitative study. Conversely, a qualitative study over two years in only the one small city could not hope to answer broader questions about significant long-term changes in the rate of predatory crime committed by adolescents and young adults. To answer such questions would require research projects that ran over many years and that used very large samples (*see* Farrington & West 1990; Magnusson 1988; Rutter 1988).

Despite such concerns, there are some very important questions that researchers with the Centre for Rural Social Research can ask. These questions fall into two categories. First, what procedures make for a successful family group conference? Under what conditions is the most satisfactory outcome likely to be achieved for all those in attendance?

The second category of questions relates to the aftermath of a conference. To what extent does a change in perceptions within the family group conference prompt a subsequent change in behaviour?

The Research Program

For any group of people who attend a conference, then, the research program involves two stages. The first stage of research occurs during the family group conference itself. The researcher, with the agreement of those present, sits at the back of the conference room throughout the proceedings and makes as detailed observations as possible on the sequence of events. The most telling aspect of the conference process is in the link between linguistic

communication and gestural or affective communication. Some of the most significant information in the conference is conveyed not with words but with facial expressions, gestures and physical posture. At the conclusion of the conference, the researcher and the coordinating police sergeant compare notes. For the sake of efficiency and consistency, all of this work has been done, to date, by the same two people—David Moore and Terry O'Connell. A small library of notes on the way in which subtle prompts from the conference coordinator can encourage more constructive engagement from conference participants is being established.

The second stage of research consists of interviews, held at least several weeks after the family group conference, with individual conference participants. People are under no obligation to be interviewed, are guaranteed complete anonymity and are told only that their assistance will enhance our understanding of the cautioning scheme.

After only a few months of detailed study, it had already become clear that the conference process itself achieves far more than originally anticipated (O'Connell & Moore 1992). The social reintegration of victim and offender was indeed occurring in just the manner predicted by John Braithwaite's theory of reintegrative shaming (Braithwaite 1989). However, evaluation revealed that conferences were having a powerful emotional effect, not only on victims and offenders, but on all of those present. In order to account for this we needed a psychological theory to match Braithwaite's essentially sociological theory.

The so-called affect system theory fits the empirical evidence from family group conferences. It is a theory that provides a sophisticated psychological counterpart to the theory of reintegrative shaming; it helps to explain why the role of shame in family group conferences is positive and constructive rather than oppressive. The theory is not new, having been developed over a period of some forty years by the American experimental psychologist Silvan Tomkins. More recently, it has been elaborated by the psychiatrist Donald Nathanson, who has placed a greater emphasis on the role of shame as perhaps one of the two or three most important human affects. This is the specific point at which affect theory meets the theory of reintegrative shaming, producing an explanatory model that fits the empirical evidence from family group conferences.

Reintegrative Shaming in Theory and Practice

In its simplest form, Braithwaite's theory of reintegrative shaming argues that shame affects social control at two levels—the internal and the external. Social disapproval deters offending behaviour with the external threat of a loss of status and affection. Pangs of conscience deter offending behaviour with a corresponding internal threat (Braithwaite 1989, ch. 5). Both social disapproval and pangs of conscience generate feelings of shame. But the shame generated by social disapproval differs from the shame generated by conscience. Social disapproval produces what Carl Schneider has called "disgrace shame", a shame that is "painful, unexpected and disorienting" (Schneider 1977, p. 22). Pangs of conscience, in contrast, can be called "discretion shame". This is less painful and is not normally disorientating.

Discretion shame is thus preferable to disgrace shame. Most people avoid the latter by exercising the former; they avoid disgrace by exercising discretion.

Braithwaite's theory includes an impressive analysis of existing social mechanisms for informal shaming. It does not attempt, however, to explain the psychological processes that strengthen the capacity for discretion shame. Nevertheless, if we are to understand fully what can and cannot be achieved in family group conferences, we need to understand just what is occurring at the individual level as well as at the collective level.

The analysis of the conference process should begin at the collective level; the dynamics of a family group conference vary according to where the conference is used within the juvenile justice system and what the objectives are of those who convened the conference. A family group conference held as an adjunct to children's court proceedings and focussing on the individual offender will have very different dynamics to a family group conference held as an alternative to court and focussing on the collective impact of the offence. Since we are dealing here with the evaluation of effective juvenile cautioning in Wagga Wagga, this analysis will focus on the dynamics of family group conferences operating within that scheme. At least six basic features distinguish the scheme from its counterparts.

First, the conference is convened at the initial point of contact with the justice system by a police officer. Were it to be convened by officials from the two other bureaucracies with an interest in this area—the Children's Court or the Department of Community Services—the conference would fit more neatly into the traditional model of juvenile justice.

Secondly, the conference is convened at a police station. This lends gravity to the proceedings but, more importantly, it provides relatively neutral ground. The police station is the home territory of neither the victim nor the offender.

Holding the conference on "neutral ground" emphasises a third difference between this scheme and related schemes. The effective cautioning scheme focuses neither on the offender nor on the victim. It focuses, instead, on the offence. Consequently, it does not foster egocentricity or self-obsession on the part of the offender, as so many other schemes—"formal" or "informal"—tend to do.

A fourth distinguishing feature of this scheme is that its focus on the offence guards against the temptation to "save the offender's soul". A rough numerical balance between those who are there to support the victim and those who have come to support the offender serves to symbolise the fact that the coordinating police officer is there as an umpire and should not become a player in the process.

Fifthly, because the conference is convened at the first point of contact with the justice system, it can be truly diversionary. If it is successful, a young offender will be subject to neither welfare nor punishment by state professionals. A successful conference represents an exercise in collective public education and reparation; a young offender is a participant in the exercise.

Sixthly, the juvenile cautioning scheme in Wagga Wagga has been based on social theory from the outset. It provides an opportunity to test, modify

and develop that theory which, in turn, might then be used to inform future social practice.

Now according to the theory of reintegrative shaming, a ritual of shaming will be most effective: if it involves the experience of shame in the eyes of intimates; if it avoids stigmatisation; if it combines shame and repentance; if it generalises familiar principle in unfamiliar contexts, if it is not excessively confrontational and if a collectivity as well as an individual is shamed (Braithwaite 1989, ch. 5). The effective juvenile cautioning scheme meets all of these requirements.

The predictive power of the theory is confirmed by a remarkable similarity between conferences, regardless of the nature of the offence being discussed. With very few exceptions, participants move through the same sequence of emotions during a family group conference. The general mood at the start of a conference is a mix of trepidation and indignation. The nature of this indignation, otherwise called righteous anger, varies according to the role played in the conference by the person experiencing that righteous anger. The victim feels a particular form of righteous anger. It is focussed on the offender and is generally called resentment. The offender feels a righteous anger that is self-directed. We call this guilt. Other participants at the conference feel a more general indignation at the violation of community norms (Strawson 1968).

Less than an hour later, the indignation has dissipated. The offender has displayed remorse and has been "liberated . . . from the effects of the victim's moral hatred" through the act of forgiveness (Murphy & Hampton 1988, ch. 2). There are clear signs of relief on the faces of those present. Any remaining business, such as agreement on the technicalities of material reparation, is discussed in an entirely different, sometimes almost light-hearted mood. We need to understand why. But externalist accounts of human motivation that see ethical behaviour reinforced primarily by the threat of external sanctions—are hard pressed to explain why victims are keen to forgive offenders when they confront them in the context of a family group conference. Externalist accounts also find apology to be a baffling phenomenon. Why do many young people who have committed an offence find it difficult to apologise but look so relieved when they finally do apologise?

The Sociology of Reconciliation

A recent study of apology and reconciliation, Nicholas Tavuchis' *Mea Culpa,* attempts to analyse the phenomenon of apology. He finds evidence of an abiding commitment to the act of apology and yet is struck by the paradoxical nature of the phenomenon. For Tavuchis, the act of apology is paradoxical because it "cannot undo what has been done [and yet] in a mysterious way . . . this is precisely what it manages to do" (Tavuchis 1991, p. 6).

This observation accords with our experience and with that of British researchers who have studied meditation programs (Wright 1991, p. 113). Most victims are far more concerned to achieve the symbolic reparation of a genuine apology than they are to receive material reparation for property loss or to receive some other kind of reparation following an offence that has not

involved the loss or damage of property. The most effective form of symbolic reparation seems to be a genuine apology from the offender.

A genuine apology must express sorrow or remorse. Furthermore, in offering an apology, the offender must drop all defences, including the defence of being "child-like" (Tavuchis 1991, pp. 41-2). An offender who employs the defence of being "child-like" has thereby claimed to lack moral responsibility. But moral responsibility is a precondition for membership of the moral community. Moral responsibility for an offence must, therefore, be acknowledged. If this acknowledgment is clearly conveyed to the victim and to the victim's supporters, the offender's apology will be perceived as genuine. This is a crucial moment in the family group conference, the turning point after which forgiveness is possible. The way is then open for the symbolic social reintegration of both the victim and the offender.

Occasionally, however, victims are not satisfied with the offender's apology. This is not because the victims are unforgiving or vengeful but because the apology is not considered to be genuine. The offender has not renounced all defences. The offender's defiance is conveyed with gestures rather than words. And in a setting where people's sensitivity to gestures is heightened, defiant gestures speak louder than the words that contradict those gestures.

The revealing gesture itself is a familiar one. It occurs when people "force themselves into direct gaze by tipping the head back, jutting the chin forward and adopting a disdainful look through which they seem to be observing us as a lower form of life" (Nathanson 1992, p. 148). We generally call this expression "a look of contempt". The superficial contempt, however, is of less significance than the affect that contempt disguises. The direct gaze of contempt is a disguise against chronic shame. Those few young offenders who maintain this direct gaze throughout a family group conference are almost certainly the most likely to re-offend. Their shame is not the "disgrace shame" engendered by social disapproval of the offence that has prompted the conference. Nor is it the less painful "discretion shame". Instead of feeling consciously ashamed, as occurs in discretion shame and disgrace shame, the person experiencing chronic or bypassed shame experiences the affect of shame at a subconscious level and without respite.

Shame manifests physically in facial expressions and in physical posture seen in this case. The father of one young offender had himself been put through prison. He attended the conference and showed the bearing of a man who had been regularly subjected to humiliation. Unlike his son, he did not show the gaze of contempt but in all other respects his physical expressions were uncannily similar. He expressed bewilderment that the external discipline he saw as eventually having worked for him did not seem to be working for his son.

In fact, following the conference, the young offender resumed school and began to receive surprisingly high grades for six months. He then committed a second offence in the company of the same partner with whom he had committed the first offence. The second time around was a case of theft rather than assault—which represented an improvement of sorts. It was decided to deal with this second case in a conference for the sake of the young victims,

who had been traumatised by the nocturnal theft of a trail bike from their property. In so far as the victims came to the conference in tears and left with the familiar smiles of relief, the conference was a success. The conference also made them empathise with at least one of the offenders. It transpired during the course of the conference that the theft had been committed a few days after the second offender's birthday. He had likewise returned to school after the first conference and was also receiving higher grades than usual. Then on his birthday he had "gone strange", according to his grandparents. He had not been the same since. It transpired that the boy's father, who had recently moved interstate with a new partner, had failed to phone him on or since his birthday. This information was not proffered as an excuse or justification, nor was he looking for his behaviour to be condoned. The information was revealed in passing but the accompanying gestures made it clear to all just how significant his father's neglect was for him, how ashamed it made him. Nevertheless, his apology seemed genuine; he did not wear the mask of contempt.

In this and other cases, the results were less obviously impressive than in the majority of family group conferences. The victims were justly concerned that they may not have "got through" to the young offenders, but they likewise saw that social circumstances conspired against offenders and contributed to their behaviour. The ritual of apology and forgiveness was less than complete and yet the victims felt considerably relieved after the experience of the conference.

The sources of victims' relief are complex but we can identify a number of particularly important contributing factors. One is that victims are relieved to see and feel how other people share their anger, their humiliation at having been demeaned by an offence. Like the offender, in other words, they are relieved to see the shame of others. It tells them that they do not have to feel ashamed of being ashamed. A second factor contributing to the victim's sense of relief is that, in this context of shared emotions, victim and offender achieve a sort of empathy. This may not make the victim feel particularly positive about the offender but it does make the offender seem more normal, less malevolent.

The process seems to teach an important lesson, a lesson that most conference participants apparently learn by intuition rather than logic. This is the lesson that feelings of spite, malice or vindictiveness towards the offender are actually self-defeating. Such feelings imply a system of human worth in which people battle for position in a hierarchy. In such a system, an individual's worth can only be determined relative to that of other people. But if this is the case, and if the offender has lowered the victim's position relative to the offender in this hierarchy of human worth, then punishing the offender will further demean not only the victim but all those other participants who feel they have been demeaned by the original offence. Everyone will be dragged down together.

Our early impression has been that people in a conference avoid this sort of moral system altogether. By the end of the conference, if not always at the beginning, they have adopted intuitively an egalitarian and non-competitive view of intrinsic human worth. In doing so, they have avoided the burden of

feeling malice, spite and hatred towards the offender (*see* Murphy & Hampton 1988, ch. 2; Reiman 1990, chs. 2-3). This view of intrinsic human worth is a third factor contributing to the sense of relief felt by victims and their supporters at the conclusion of a family group conference.

Still Seeking a Theory

The effective cautioning scheme using family group conferences that has been described thus far could well have been designed at the point where contemporary debates in various disciplines are in agreement. There are important areas of overlap between the purportedly explanatory disciplines of criminology and social psychology and the purportedly normative disciplines of political theory and moral philosophy. Consider the following points made by contributors to the recent four-volume summary of *Advances in Criminological Theory.*

We need a theory "that acknowledges the ability of society to control crime without fundamental reconstruction of itself or the individuals within it" (Gottfredson & Hirschi 1989, p. 58); we must distinguish between crime and criminality (ibid.); "we need to learn more about motivation in general and motivation that leads to crime" (McCord 1989, p. 140); we need to avoid both the "ecological fallacy" and the "individualistic fallacy" in seeking to account for social disorganisation. In between these extremes of sociology and psychology is an explanation at the level of local communities that takes account of the available "social capital", the networks of friendship and acquaintanceship and the rates of local participation in formal and voluntary organisations (Sampson 1992; Coleman 1990); we need to develop "different ways of conceptualising the relationship between the individual and the community", and we need to explore "the different social contexts in which such reasoning takes place" (Cohn & White 1992, p. 111). More importantly, we need to understand that role-taking can promote legal reasoning which, in turn, "creates a link between one's sense of self and group norms" (ibid., p. 109); "claims that all behaviour is egoistic, that crime requires no explanation, and that beliefs are irrelevant to criminal action have been a disservice to criminological theory" (McCord 1992, p. 126). And on it goes.

Rowell Huesmann and Leonard Eron proposed a "comprehensive model of the psychological processes that underlie the development of both normal social behaviour and aberrant antisocial behaviour" (Huesmann & Eron 1992, p. 138). Several other researchers criticise existing theories for ignoring "the continuity between offending and other types of antisocial behaviour", for ignoring "the continuity in antisocial behaviour from childhood to adulthood" and for excluding biological and psychological factors from theory (Farrington 1992, pp. 253-4). Jeffrey Fagan argues that we must understand better the reciprocity between legal control and effective social control (Fagan 1993). Finally, and more succinctly than all of these contributions, David Garland argues that the ultimate social goals sought by criminologists cannot be achieved within the present criminal justice system: "A policy which intends to promote disciplined conduct and social control will concentrate not upon punishing offenders but upon socialising and integrating young

citizens". And this is "a work of social justice and moral education rather than penal policy" (Garland 1990, p. 292).

Interestingly, when we turn from criminology to social justice theory and moral philosophy, we find support for Garland's line of thinking. Some of the sophisticated conclusions reached through rational debate among professionals are the same as those reached intuitively by "amateurs" within the setting of the family group conference. The fact that people adopt what the philosophers call a "Kantian" position of intrinsic human worth and reject a non-egalitarian, competitive view of human worth has already been mentioned. Several other "lessons" of contemporary political and moral theory seem likewise to be learned by participants at a successful conference. These lessons seem perhaps trite when expressed in their simplest form. But their power is in their simplicity and in the fact that they seem to be learned with the heart as well as the head. Thus, a successful conference appears to teach that justice is not just about the rights of individuals but about the rights and obligations of social individuals (Taylor 1990). A successful conference also appears to teach that there is "a kind of minimal and universal moral code" that applies to all citizens of a just community and in all spheres of life (Walzer 1987, p. 24). Any form of violence, any attempt to undermine the dominion of others, is therefore as unacceptable within the "private sphere" of the family as it is anywhere else (Braithwaite & Pettit 1990). Following this lesson, conferences frequently appear to provide a mandate for members of an extended family to intervene where a violent family environment is contributing to the problems of a young offender.

To the extent that a successful conference teaches these lessons of public morality, it does so because moral understanding involves neither reason alone, nor passion alone, but an interplay between the two (Pritchard 1991). And in one discipline after another, shame is being recognised as the key passion, the "moral feeling *par excellence",* the "emotional aspect of disconnection between persons", the central "emotion of self assessment" and the "most social of all emotions" (Heller 1985, p. 6; Scheff & Retzinger 1991, p. 27; Taylor 1985; Retzinger 1991, p. 38). But if shame really is the key to understanding the dynamics of family group conferences—and there seems little doubt that it is—we still require an explanation of how shame operates within individuals.

Externalist accounts of how shame operates are obviously useful. They tell us a great deal about the role of social disapproval and the importance of bonds between people. If it is true, however, that the most troubled and troublesome young offenders already harbour a great deal of chronic shame—and again there seems little doubt that this is the case—then might it not be dangerous to evoke more shame? Might the situation not be exacerbated if a young person who has been made angry and ashamed by their personal experiences and circumstances is made to feel more shame within the intimate setting of the family group conference? On the basis of our evaluation of the effective cautioning scheme to date, we think not. Furthermore, we now think we have a theory that can explain why the evocation of shame in family group conferences is so powerful but also so positive, even where young offenders already experience chronic shame.

The psychological theory of the affect system appears to fill the gaps left by political theory, moral philosophy and a sociologically oriented criminology. An amalgam of the most convincing criminological theories available provides a thorough externalist explanatory model. Political theory and moral philosophy provide supportive normative models that favour, respectively, externalist and internalist accounts of human motivation. Psychology offers to complete the picture with an internalist explanatory model of human motivation. Until fairly recently, however, psychology has not been able to fulfil this promise. Most major schools within psychology have remained hampered by the legacy of Freud's flawed theory that sexual drive is the fundamental human motivating force.

A Psychology of Reintegrative Shaming?

Drive theory, the basis of Freud's model of human behaviour, is now widely seen to be outdated. Nevertheless, aspects of Freud's legacy continue to exercise a significant influence on both academic theory and popular wisdom. The common categorisation of emotions as either pleasant or unpleasant is one such continuing influence. Another lasting influence is the notion that feelings of anxiety result primarily from thwarted sexual drive. This is the key intellectual reason why Freud paid so much attention to fear and guilt, close relatives of anxiety, rather than to the more social emotion of shame *(see* Taylor 1985, ch. 4; Broucek 1991, ch. 2).

Freud's model of human development was constructed largely by projecting backwards the experiences of his patients. In projecting back the narcissism of his patients onto his ideal model infant, Freud popularised a view of human development in which a range of antisocial character traits are innate rather than the result of socialisation. The intellectual influence of this view has been enormous.

While a more sociable view of the typical individual was proposed early by several independent schools of thought, a challenge to Freud's basic view of interpersonal relations was not proposed from within the Freudian tradition until after the Second World War *(see* for example, Mead 1934; Fromm 1956). Experimental child psychology has subsequently developed a view of human development based on the observation of children, rather than on a back projection of adult psychopathology. In this revised view of human development, sociability and the capacity for empathy are innate; aggression is not innate; the capacity for basic moral judgment develops very early; children experience the affect of shame even before they are fully capable of self-reflection (Pritchard 1991; Retzinger 1991, ch. 2; Selznick 1992, ch. 6; Nathanson 1992, chs. 10 & 15).

Research findings thus underline an emerging theoretical consensus that sociability is indeed a universal human trait and that it is regulated in some way by shame. Research supports a model that sees shame working to maintain a balance between excessive togetherness and excessive separateness (Retzinger 1991, p. 35). Such a view accords with the theory of reintegrative shaming. Here shame is used as a mechanism for restoring interpersonal connectedness to socially isolated individuals. If shame is used

widely and effectively, as the positive alternative to stigmatisation, it may also restore a sense of solidarity to disorganised anomie communities (ibid.). However, whilst the theory of reintegrative shaming, as it has been discussed thus far, appears to have strong predictive powers, its explanatory power applies mainly at the level of social relations. The theory does not explain why shame causes individual behavioural change; it does not explain shame as an emotional phenomenon. It can thus account reasonably well for the overt and consciously experienced feelings of "disgrace shame" and "discretion shame", otherwise called social disapproval and conscience. It cannot account for the more disturbing phenomenon of chronic or bypassed shame. Only a theory that can explain shame as a central phenomenon of both individual and social experience can account for shame's far-reaching influence.

As far as we are aware, the only fully developed psychological theory that accounts for shame in this way is the theory of the affect system. As developed by Silvan Tomkins and elaborated by Donald Nathanson, the theory makes a very clear distinction between affects, feelings, emotions and moods. Affects are genetically reprogramed responses to certain stimuli. The function of an affect is to amplify whatever stimulus triggered it. According to Tomkins, there are nine of these basic affects; all of them cause visible temporary physiological changes to the face, the skin, the circulatory system and other parts of the body. Of the nine affects, two are experienced as positive, one is neutral and the remaining six are negative. Most have been given a double name in order to distinguish between their mild and intense form. The positive affects have been called *interest—excitement* and *enjoyment—joy*. The neutral affect has been called *surprise—startle.* The negative affects are *fear—terror, distress—anguish, anger—rage, dissmell, disgust and shame—humiliation* (Tomkins 1962, 1963, 1991; Nathanson 1987, 1992). For the sake of convenience these affects will be referred to hereafter by the single noun that represents the mild state of each.

Nathanson identifies five components of the affect system. Of these five, the only familiar component will be that of *sites of action.* These are the sites—such as the face—where affects manifest physically and are recognised as feelings. The other four components of the affect system are *structural effectors*—nerves that relay messages to sites of action, *mediators*—chemicals that operate at sites of action, *receptors*—mechanisms for registering affects and relaying further information back to the affect system, and *organisers.* In Nathanson's reworking of Tomkins' theory, the organisers or innate affects amplify good and bad stimuli and then influence the way one responds to similar stimuli in future. Each affect experience is organised into a coherent script that will influence subsequent actions. The affect system is thus a key to understanding human motivation.

This theory represents a fundamental challenge to common wisdom about the link between reason and passion. As Nathanson puts it: "We were brought up to understand emotion as some sort of climate that interfered with or only hindered intellectual function. We have been so charmed by our own ability to store and retrieve memory or to handle numbers that we have overlooked the fact that our affects were what gave these attributes

importance" (Nathanson 1992, p. 60). Affects are thus not only the basis of feelings, emotions and moods; they also influence cognition.

According to this revisionist theory, feelings occur when one becomes aware of an affect. Thus, fear, anger, interest or disgust produce four visibly different responses at various sites of action such as the eyes, the mouth and the skin. As one becomes aware of the physical response to an affect, one then feels fearful, angry, interested or disgusted, depending on the nature of the original stimulus and on the amplification of that stimulus by the relevant affect(s).

Emotions are more complex than feelings. Emotions occur when a current sequence of stimulus, affect and feeling triggers memories of previous feelings. Emotions are thus about the past as well as the present (and thus, by implication, about the future as well). Emotions raise the idea of the "biographical self" (Basch 1988). They remind us that we are "self-interpreting animals" (Taylor 1990).

More complex still than emotions are moods. These occur, according to Nathanson's definition, when the memories triggered by feelings do not subside. An emotion or series of emotions will thereby drift into a more persistent state of memory recall, which in turn may trigger new cycles of affect, feeling and emotion. For example, the state we call happiness occurs when the positive affect of joy produces a feeling of pleasure, a pleasant emotion and a lasting mood of contentment (Nathanson 1992, ch. 2).

This, then, is the first and fundamental part of the theory of the affect system. Affects work to amplify external stimuli but the physical experience of these amplified stimuli then enters into consciousness as feelings; feelings trigger memories of past feelings to create emotions; layers of emotion and feeling produce moods. Using a computer analogy, Nathanson has identified the affect system, together with its counterpart the drive system, as part of a person's *firmware*. The affect and drive systems mediate between the *hardware* of the body—the bones, organs, muscles, nerves and chemical systems—and the *software* of experience and conditioning (Nathanson 1992, p. 27). If it is correct, the theory has enormous implications for social theory and practice. It offers new perspectives on our understanding of the link between cognition and affects and new perspectives on our understanding of the learning process.

For those with an interest in the theory and practice of reintegrative shaming, it is the next part of the theory of the affect system that holds most promise. This is the part of the theory of the affect system that offers an explanation for empathy, pride and shame. Understanding these three motivators and regulators of social life holds the key to understanding the power of the family group conference.

Nathanson's explanation of empathy has been influenced heavily by the work of his colleague, Michael Basch, who proposes a physiological basis for the phenomenon of empathy. Using a metaphor drawn from electronics, Basch argues that empathy occurs very early in human development, as infants share their experience of positive affects with those around them. They *broadcast* interest and enjoyment and those around them *resonate* with this broadcast affect. The power of the broadcast affect is so great that it needs

to be carefully regulated in adult life. Nathanson proposes the idea of an "empathic wall" that modulates affective resonance and thus guards against either excessive togetherness or excessive separateness (Nathanson 1992, ch. 7). Note, however, that several of the other plausible theories discussed above ascribe this role of interpersonal and social regulation not to some metaphoric empathic wall but to the very real affect and feeling of shame.

The contradiction here is apparent rather than real. To understand how these two positions can be reconciled requires an understanding of the role of shame within the affect system. According to the theory, shame plays a fundamentally different role to all the other affects. Superficially, the role of shame is similar to that of two other negative affects, dissmell and disgust. These two affects are believed originally to have been auxiliaries to the mechanism of hunger, which is part of the drive system. They subsequently evolved into affects in their own right and now belong to the affect system. In evolutionary terms, shame is a far more recent and more sophisticated phenomenon. It appears to have developed not as an auxiliary to the drive system but, rather, as an auxiliary to the affect system. It has subsequently developed into an affect in its own right. Shame works to modulate the two positive affects of interest and enjoyment, those two affects which, when broadcast, create such strong empathic resonance between people (Nathanson 1992, ch. 10). Shame, of course, is also broadcast and also creates empathic response. This explains the common observation that shame is contagious.

Shame may be triggered by any sudden impediment to the positive affects. It will be triggered if the impediment to interest or enjoyment reflects badly on the self. According to Tomkins, shame occurs whenever "desire outruns fulfilment" (Nathanson 1992, p. 138; Tomkins 1963). Shame can thus be observed in infants as they are confronted by the limits of their abilities. Consequently, shame plays a vital role in the development of a sense of self; it is used to recognise and define one's personal limits. This is why shame is so important in personal development. Like the other affects, it amplifies a stimulus. In this case the stimulus is failure, an impediment to the positive affects of interest and enjoyment. Shame is thus a restraint; it protects against the potential physical and social dangers caused by an excess of excitement and joy (Nathanson 1992, ch. 16). However, this protective mechanism can itself be dangerous. If shame is not counter-balanced by pride, then regular temporary feelings of shame can develop into a more general state of shame. The person experiencing shame feels weak, inattentive, defective, lacking in control, degraded and exposed (Wurmser 1981). Persistent experience of overt disgrace shame can develop into covert chronic shame.

Nathanson sees shame and pride as two points on an axis. Successful personal development requires a dialectic between pride and shame.

> [Unless something interferes with the process] pride is attached to the acquisition of each moiety of normal growth and development and shame is attached to any failures along the way. As each way station on the road to maturity is reached, it soon loses its power to trigger pride; while at all stages in development reminders of one's previous (and therefore more primitive) status remain capable of activating shame (Nathanson, 1992, p. 16).

If more attention is to be paid to shame, then an equal amount of attention must also be paid to pride, its polar opposite. Memories of pride are formed in much the same way as are memories of shame, through a five-stage sequence of wish, plan, affect, action and affect. Pride results from a sequence in which the plan succeeds, the wish is fulfilled and the affect of joy becomes a feeling and an emotion. If the plan fails, the wish is thwarted and the result is shame. Any opportunities to experience pride will counterbalance shame. This dialectic of pride and shame becomes particularly significant during adolescence when the sexual drive begins to take its adult form, prompting a range of behaviours that are designed to avoid embarrassment (Nathanson 1992, chs. 20 & 21).

The third part of the theory of affects helps to explain the turbulence of adolescence. It offers an explanation of the link between shame and the three basic types of love—sexual love, filial love and the love between good friends for which we borrow the Greek word *agape*. This is an important part of the theory which explains in detail the relationship between learned behaviour and in biological mechanisms in adult sexuality (ibid.). But it is the fourth part of the theory of affects as developed by Nathanson that has direct practical application. It suggests ways to manage shame in a ceremony such as the family group conference, a ceremony where shame is used to achieve the best outcomes for young offenders, their victims, the families of both and other members of the community of people who have been made indignant by an act of incivility.

In the fourth part of the theory, Nathanson proposes a four-point "compass of shame". Each of the points of the compass represents a mechanism by which people defend themselves against shame. People will have various reasons for doing so. But in defending themselves against shame, they miss the lessons taught by the affect of shame. If shame is avoided rather than accepted, its developmental role is lost. The dialectic between shame and pride cannot operate. A person in a state of chronic shame cannot experience further personal development until that bypassed shame is made overt and dealt with in some conscious way. It cannot be over-emphasised, however, that this aspect of the theory does not lend support to "the culturally disastrous notion that freedom from shame . . . is the mark of the healthy personality" (Broucek 1991). Rather, the theory shows how important it is to distinguish between constructive shame and damaging shame. The four methods of shame avoidance all lead to some form of damage, both for the individual dealing with shame, and for the community in which that individual lives.

The first method of defending against shame is withdrawal from the immediate situation and from personal relations. Nathanson describes how withdrawal from shame is dealt with in psychotherapy: one takes an empathic stance towards the patient, indicates that one shares their pain and avoids "sundering the interpersonal bridge". In this way the patient is "pulled out of humiliation". This, of course, could be a description of an effective family group conference. But the family group conference is democratic and collective rather than autocratic and individualistic.

There are many people in attendance who not only feel the indignation and the righteous anger of the offender. They also share the offender's overt shame. Indeed the shame felt by friends and close relatives is, in part, a vicarious shame. It demonstrates their bonds with the offender, their shared "interpersonal bridge" (Scheff & Retzinger 1991, ch. 2; Nathanson 1992, ch. 23). These are the social bonds between people in intimate communities, not the professional bond between therapist and patient.

This explanation accounts for the relative ease with which most young offenders and their victims are "pulled out of humiliation" in the setting of a family group conference. Withdrawal is a common defence against shame and the easiest defence with which to deal. In a context where one does not have to feel ashamed of shame and where social bonds are manifest in supportive emotional display, shaming is followed with ease by counter-shaming and by symbolic social reintegration.

The other three defences against shame are more problematic. The mode of defence called "avoidance" is similar to what traditional psychoanalysis has called denial or disavowal. Rather than withdrawing from shame, one fails entirely to feel the affect of shame at a conscious level. It is entirely bypassed or "internalised" (Kaufman 1989). Nathanson identifies the most common symptom or "style" of shame avoidance as aggressive acquisition, either of trophies or of publicly visible competencies and wealth (Nathanson 1992, ch. 25). This is a fascinating social phenomenon no doubt, but those who are led by strategies of shame avoidance to transgress laws are more likely to be dealt with by securities commissions rather than in family group conferences.

The third mode of defence against shame is also a significant social problem but not one likely to encourage predatory crime. Nathanson calls this the "attack self" mode. The chronic form of this state is more commonly known as masochism which works according to the simple emotional logic that it is less painful to attack oneself than to endure the attacks of others. While affect theory might be able to suggest better mechanisms for dealing with people whose bypassed shame leads them to attack themselves, the family group conference is unlikely to be one of these mechanisms.

The fourth and final mode of defence against shame does foster predatory crime. This is the "attack other" mode, the chronic form of which is more commonly known as sadism. This mode of defence is most dangerous when the person who uses it learns to shift from shame to rage. Normally, shame will protect against rage. The trigger for turning shame into rage must be learned and it is best learned in an environment where empathy is scarce, violence is used as a solution to problems and collective self-respect is scarce (Nathanson 1992, ch. 26). Indeed in her detailed study of *The Creation of Dangerous Violent Criminals,* Lonnie Athens has described four clear stages through which every one of her subjects passed on their way to the virulent form of the attack other mode. The first stage of brutalisation consists of three sub-stages: violent subjugation, personal horrification and violent coaching. The next stage on the path to dangerous violence is belligerency, followed by violent performance and, finally, virulence. People who have reached this stage "seem to take a perverse interest and pleasure in violence" (Athens 1989,

p. 72). In terms of the theory of the affect system, these two positive affects of interest and pleasure might be better understood as pride, a counterpart to and defence against the offender's chronic bypassed shame.

Fortunately, only a small proportion of juvenile offenders are likely to have experienced the sort of brutalisation that can drive them towards virulent forms of the attack other mode. For those who have been thus brutalised, however, our traditional social responses have been woefully inadequate. Psychology has concentrated on the innate traits that predispose some young people to violence. Juvenile courts can usually intervene only when the process leading to virulence is well advanced and then can only offer not social reintegration but incarceration.

It is our belief that a theoretical model capable of explaining both the sociological and the psychological factors that lead to violent predatory crime is a theory that can also suggest effective ways of addressing the problem. This psychosocial theory of reintegrative shaming suggests that early intervention and effective diversionary cautioning using the family group conference can deal not only with most "normal" juvenile offending against victims but may also be an effective means of helping to prevent the creation of dangerous violent offenders.

Conclusion

At the end of its first year of operation, the new effective cautioning scheme run by police in Wagga Wagga could show some impressive results. The rate of uncoerced agreement to make reparation for material damage was around 95 per cent. The proportion of young people who had offended within six months of a family conference appeared to be around one-third of the rate one would normally expect. But those closest to the scheme were not keen to trumpet these results.

One reason for lying low with figures such as these has been to avoid the early attentions of those who feed on methodological laxity and statistical flaws. There is, however, a second and far more important reason for focusing on issues other than material reparation and lowered rates of recidivism. Whilst these results are important, they are also distracting. They fit too easily within the traditional intellectual framework of the criminal justice system. This is a world view in which autonomous individuals make a rational decision to offend and, having done the crime, pay the time. There is, of course, an element of truth in this view and so, like most half-baked ideas, it has a good deal of staying power. Furthermore, our whole liberal legal system is built around this same idea of the autonomous rational individual. And since the liberal legal system is an essential guarantor of individual rights, one must deal very warily with any challenge to its basic principles.

The political and social theory underlying Wagga's effective cautioning scheme using family group conferences is not a theory that offers a challenge to liberal legal and political theory. Rather, it argues that this theory is incomplete. The world is comprised not of independent people who interact only at the level of rationality. It is comprised of interdependent people who interact emotionally as well as rationally. Our political and legal systems

should take better account of this fact. Adopting the family group conference model from New Zealand represents one attempt to do just that.

The model encourages the search for collective solutions to social problems; it seeks collective solutions that engage the emotions. To emphasise this break with traditional thinking and practice, the Wagga model places great importance on dealing with the issue of juvenile offending at the first point of contact with the justice system. It focuses on neither the offender nor the victim but on the social consequences of the offence. It assumes that ultimate solutions to social problems lie in strengthening civil society rather than in building a larger, more powerful state.

The first stage of the scheme's detailed evaluation began early in 1993. The program of evaluation is confirming the predictive power of the theory of reintegrative shaming. However, careful observation of the dynamics at work in a properly constituted family group conference has led us to seek a more detailed explanatory model of the psychological processes that occur during reintegrative shaming.

We have now found what appears to be an adequate psychological counterpart to the sociological theory of reintegrative shaming. Affect theory seems to provide considerable new insights into the processes at work in a family group conference. If the theory is correct, it confirms our intuition that early intervention and diversion, using the effective cautioning scheme, should be the favoured model of juvenile justice.

Where it deals with the symptoms of social disorganisation, the model represents a mechanism to strengthen or rebuild some sense of social solidarity. Where it deals with young people who might not otherwise have reoffended, it seems to do no harm while offering a collective lesson in civility, empathy, apology and forgiveness. However, in those relatively rare cases where a young offender might otherwise have developed a pattern of violent predatory crime, the theory explains how an effective family group conference, with effective follow-up, may offer our best hope yet of breaking the cycle of violence.

Confirmation or criticism of the integrated psychosocial model of reintegrative shaming that has been discussed here will have to wait until the second stage of the evaluation is further advanced. The second stage of the evaluation should provide extensive and detailed qualitative material on the thoughts and feelings of people who have attended conferences. We are particularly keen to know whether, for most people, the experience of the conference closed the issue or whether they feel that the lessons of the conference are having an ongoing influence. We are also keen to determine whether there has been some cumulative influence of the effective cautioning scheme on levels of social disorganisation in local communities. Answers to these questions should tell us a good deal about the validity of the elaborated theory of reintegrative shaming. As always, the ultimate aim of theory is to understand and improve our social practices. At this stage, we remain confident that the practice of effective cautioning is a substantial improvement on what went before.

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LEGAL AID AND ITS ROLE IN THE REDUCTION OF DELAYS IN CRIMINAL PROCEEDINGS IN VICTORIA[1]

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INCREASINGLY, THE LEGAL AID COMMISSION OF VICTORIA, AND IN particular, the Criminal Law Division, has been faced with the problem of longer delays occurring in the bringing to court of indictable criminal cases. As the legal representatives of some 70 per cent of accused people facing indictable criminal charges within the State, this has caused us concern, both from the point of view of our clients' interests, particularly those in custody, and from the viewpoint of the community, to whom the costs of justice seem to be an ever-increasing burden.

Since 1988, a criminal delay reduction program has been operating in Victoria to try to overcome these problems. This program has been carried out by three committees, the Criminal Delay Reduction Steering Committee and its off-shoots, the Pegasus Task Force and the Long Trials Committee. The Legal Aid Commission, particularly its Criminal Law Division, has been an active participant on all three committees.

Committees

The Steering Committee was formed in 1988 by the Attorney General at the time, Mr Andrew McCutcheon, to review the criminal justice system and to find ways in which delays can be reduced. A number of changes were proposed, but it was estimated that they would cost around $5 million in the first year to implement (Pegasus Task Force Report 1992, p. 1). Due to government budget restraints most of the proposals remained on the drawing

1. The author's thanks go to John McLoughlin for his assistance in the preparation of this paper and for his information regarding the trial of Higgins.

board. Thereafter the committee retained mainly a monitoring role over its two sub-committees.

The Long Trials Committee was formed in November 1991 to address the problems of delays to the court system caused by long trials, and to try to find ways in which the length of such trials can be reduced. The Pegasus Task Force came into being in 1992 at the initiative of the Chief Justice of Victoria, Mr Justice John Phillips, and met continuously for two weeks in April 1992. This was in response to the perceived need for more intensive attention to be focused on delay problems at the committal and County Court level (Pegasus Task Force Report 1992, p. 1). Both committees include representatives of various judicial bodies including the Judiciary, Magistracy, the Victorian Bar, the Office of the Director of Public Prosecutions (DPP), the Legal Aid Commission, the Criminal Listings Directorate, the Victorian Police and others.

Despite recent cutbacks in funding, the Commission has been committed to implementing the recommendations of the committees wherever possible. The importance of this commitment in reducing court delays was emphasised by the Pegasus Task Force when it concluded its 1992 report.

> It is fundamental to the provision of an appropriate [Criminal Justice] system that there be involvement . . . of the . . . Legal Aid Commission post charge and pre committal and thereafter with an appropriate continuity of representation (Pegasus Task Force Report 1992, p. 8).

The result of the Legal Aid Commission's involvement in this process has led to changes in the way in which the Criminal Law Division operates as a criminal law practice, both at pre-committal and pre-trial stage.

At Pre-Committal Stage: The Early Identification Of Pleas

The most recent implementation of the Task Force recommendations has taken place in the committal court at Melbourne. Delays in waiting lists at the Melbourne Magistrates Court and the Melbourne County Court were found by the Task Force to be unacceptably high. On examining the statistics it was found that these delays were not simply due to a "lack of resources", for example, a lack of judges or administrative staff, but were due to inefficiencies in the way the criminal justice system operated.

In particular, the Task Force found that the late identification of pleas was one of the fundamental problems exacerbating delays. For example, it found that during the period 1 July 1990 to 30 June 1991, 45 per cent of accused persons whose cases were prepared as trials by the Office of the Director of Public Prosecutions pleaded guilty after this preparation had been done or substantially done (Pegasus Task Force Report 1992, p. 8). It also found that of 50 per cent of accused persons who reserved their plea at committal proceedings, 81 per cent later pleaded guilty after their cases had been wholly or substantially prepared for trial by the DPP and the Legal Aid Commission (Pegasus Task Force Report 1992, p. 8). This finding, along with statistics indicating that a total of fifty-five accused people reserve their plea at committal each month, led the committee to the conclusion that in order to

create a more efficient criminal justice system, a fairly dramatic attitudinal change on the part of all those involved in the system pre-committal was needed (Pegasus Task Force 1992, p. 8). The committee directed that involvement of the DPP and the defence representatives at this stage was crucial in order that issues which in the past would not have been resolved and thereby would have resulted in a "reserve" plea could now be resolved into a plea of guilty or not guilty following negotiations with the DPP and prior to committal.

Both the Commission and the DPP gave undertakings to the Task Force to become involved in putting this proposal into practice. By November 1992 both organisations have had lawyers present at the Melbourne committal mention court. The duty solicitor from the Criminal Law Division and two representatives from the DPP are at court to negotiate as to which charges in each case are to be proceeded with or withdrawn. The approach taken by the DPP has been that "no reasonable offer put by the defence will be refused".

In addition, the duty lawyer acts on behalf of unrepresented accused who, statistics reveal, in the past would have been committed by way of straight hand-up brief and would have reserved their pleas. Now, the duty lawyer will take instructions and advise the client of his or her rights and assist unrepresented accused to complete an application for legal aid. In more complex cases, an application will be made to the presiding magistrate on behalf of the unrepresented accused for a short adjournment in order that legal aid be confirmed, and that the acting solicitor have sufficient time to read the hand-up brief, take further instructions and commence negotiations with the DPP. Where possible, negotiations will result in the summary disposition of the matter.

The advantage of having the DPP at court is that both representatives can negotiate with a great deal more openness. Previously, discussions with police informants as to whether or not particular charges could be dropped were constrained by the desire of the police not to inhibit the DPP in the potential scope of a presentment. This new approach fulfils the aim of the Task Force to have lawyers focus on the pre-committal stage as the time for serious consideration of cases rather than leaving such decisions to the weeks prior to the County Court hearing. Other advantages are that a plea date can be obtained on the day of the mention hearing thereby assisting in the listing of cases in the County Court. Also, fewer contested committals are listed thereby reducing delays in the Magistrates Court.

The success of the new pre-committal duty lawyer scheme is best assessed by comparing the statistics compiled by our office for October 1992—when neither the Commission nor the DPP were involved on any concerted basis—with those for January 1993 when the duty lawyer scheme was fully operational.

In October 1992, 75 accused were committed to stand trial at the Melbourne Magistrates Court. Of those committed, 26 pleaded guilty, 4 pleaded not guilty and the majority of 45 (or 60 per cent) of those committed, reserve their plea. In January 1993, 59 accused persons were committed to stand trial. Of this number, 38 entered pleas of guilty, 15 (or 20 per cent) reserved their plea and 6 pleaded not guilty.

It is evident from these statistics that our involvement along with that of the DPP at the mention court has been a key to the early identification of pleas of guilty and the subsequent savings in both time and money by the courts and representatives for both parties.

Long Trials: Proposed Reforms

A further significant problem for the Commission in recent times has been the increasing number of long and more complex trials which have required legal aid. These long trials, often involving fraud and drug charges have not only resulted in delays to the criminal justice system but are extremely expensive to conduct.

An example of such a case conducted by the Criminal Law Division is the trial of *R v. Higgins* involving a police officer who had been charged with six counts of perverting the course of justice. The allegations against Higgins were that over a period of approximately four years he and a number of other police had accepted bribes and sexual favours from a brothel owner and a number of his associates in return for protecting them from prosecution, assisting them when they were prosecuted and dealing with competitors stand-over men and recalcitrant employees. On the 26 March of this year the accused was convicted on all but one charge.

The first count on the presentment alleged a single continuous conspiracy extending for approximately four years and involved 30 or so co-conspirators, some criminals and some police. The second count alleged a specific conspiracy to frame a competitor of the brothel owner by falsely charging him with possession of explosives which had in fact been planted by police or with the knowledge of police. This was a highly circumstantial count. Counts 3, 4, and 5 effectively broke up into shorter periods the overall conspiracy alleged in count 1, count 6 alleged a separate conspiracy to protect a different brothel proprietor who was in effect a lessee from the major brothel owner and who, it was alleged, made payments to the accused under a separate arrangement.

The Crown argued and the trial judge held that all of the evidence was admissible in relation to all of the counts. The Crown called in excess of 140 witnesses. In addition, there were 20 or 30 formal witnesses called to establish relevant non-contentious facts. This evidence provided circumstantial support for the accounts of Crown witnesses or established dates for significant events which witnesses had used to assist them in recalling time frames for the events about which they gave evidence.

In mounting the prosecution the Crown was faced with these major problems:

- the credit of almost all the significant civilian witnesses was open to serious question because of their criminal histories;

- there was a significant degree of conflict in the various accounts from witness to witness;

- with very few exceptions no two witnesses describe the same event or if they did they described it radically differently;

- major witnesses gave very sketchy evidence or evidence which was plainly wrong about significant matters.

The trial took 280 sitting days after the jury was empanelled on 1 November 1991. The cost of conducting the trial was substantial both in terms of the resources of the Commission and those of the court.

The problem we are faced with is how to deal with such excessively long cases both from a time and cost point of view while still providing the best representation for our clients. The Long Trials Committee chaired by His Honour Justice G. Hampel was set up to examine such trials and their impact on delays in the court system and to explore all possible ways of reducing their length. The Commission, which is made up of representatives of various bodies involved in the judicial system, including the Commission, was asked to deal with the problem " . . . with imagination and a questioning attitude towards even some of those facets of the adversary form of proceedings" (Long Trial Committee Recommendations, p. 2).

One of the recommendations to date has been the identification of issues in trials at the commencement of proceedings. The committee has recommended that at the end of the prosecutor's opening address, the judge will in the absence of the jury, ask the defence to indicate what its case will be. The judge will then instruct the jury on the issues involved in the trial at the beginning and give directions concerning the conduct of the trial. This will settle the issues to be contested from the outset of the trial rather than the prosecution being unaware of what the defence case actually is and being apprehensive as to whether or not some issues can be left out (Long Trial Committee Recommendations, p. 3).

This proposal is one which, if implemented, could likely compromise the right of the accused to a fair trial. It is a problem which highlights the difficulties faced by the Commission in balancing the interests of its clients with the problem of reducing delays. It is a problem exacerbated by lack of funding sufficient to cover the cost of long trials and also by the recent High Court decision in Dietrich which ruled that legal representation is fundamental to the right to a fair trial.

The Higgins trial shows that in addition to the Committee's recommendations the prosecution should be required to make concessions to the defence on the issue of admissibility of some evidence in the case. The prosecution should also be more forthcoming in disclosing to the defence material relevant to the case which technically it is not required to do in order that delays be reduced. Along with this the defence should be allowed sufficient time to acquaint and familiarise itself with the material prior to a jury being empanelled. It does not assist in the efficient conduct of a trial to have further material emerge during its course. The challenge for the Commission is to resolve these conflicting issues so that reforms to the system can be implemented without the rights of the accused being abolished in the process.

A second recommendation of the committee is that sentencing incentives be introduced for the accused who is prepared to assist in reducing the length of his or her trial. Under this proposal an accused who, for example, may not require the Crown to prove every element of the offence beyond reasonable doubt, may benefit in sentencing as a result of such cooperation in specifying to the court the particular issues which they contest. It is proposed that Section 5 Sub Section 2 of the *Sentencing Act* be amended to incorporate this change (Long Trials Committee Recommendations, p. 4).

In long fraud cases there is often repetition of the offences of which the accused is being charged. This is particularly the case in matters involving numerous financial transactions. The committee has recommended that the prosecution should be required to prove only a sufficient example of the relevant transactions, and the trial judge should be required to instruct the jury as to the additional number which are alleged and the substance of the evidence which could have been called in proof of them (Long Trials Committee Recommendations, p. 5).

Finally, the committee has also recommended that any questions of law which could only be resolved by taking the matter to the full court after a lengthy trial, should now be able to be resolved prior to the accused being arraigned (Long Trials Committee Recommendations, p. 5). The Commission is supportive of these recommendations and endeavours to assist in the promotion of efficiency of justice by identifying issues in trials at the earliest opportunity.

Conclusion

By our involvement in pre-trial discussions and the careful examination of evidence prior to the briefing of Counsel, the Commission is, within its budget constraints, providing the best advice to its clients in addition to assisting in the promotion of an efficient criminal justice system for the community. The challenge of reducing court delays and their subsequent costs is an ongoing commitment for the Commission. It is one which has already begun to reveal that change to the system it is not only possible but can be achieved even in some cases in the absence of legislative change, by broadening our own perspective on the function and purpose of the criminal justice system and its role within the community.

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