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DEVELOPMENTS IN CORRECTIONAL POLICY: MORE PRISONS?

Edited by
Julia Vernon

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Edited by

Julia Vernon

Australian Institute of Criminology
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OVERVIEW

Julia Vernon
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At a time when a majority of Australian Prisons are seriously overcrowded, Victoria stands apart from the other States in maintaining a significantly lower imprisonment rate. Victoria's approach to the problem of prison overcrowding was the focus of a seminar held at the Australian Institute of Criminology on 29 and 30 September 1987. Sessions involved formal papers and informal presentations, both of which are reported below.

In introducing the Victorian approach, the Attorney-General for Victoria, Mr Jim Kennan, indicated that since the state has legislated that imprisonment is to be a sanction of last resort, imprisonment is restricted to people who are obviously dangerous or whose crimes are such that one would reasonably expect them to be separated from the rest of the community. Consequently, Victoria has a hard core of difficult long term dangerous prisoners.

The Attorney-General pointed out that the total prison population is basically dictated by the number of beds in the system. Given the high capital costs of each new bed ($200,000 in a high security institution) and the annual cost of about $33,000 to keep each prisoner, taxpayers are reluctant to pay for building more or better prisons. As a result a filtering process is required to ensure that those in prison are those from whom the community most needs protection. Diversionary programs for the others are therefore very important.

One difficulty faced by any approach to the problem of prison overcrowding is the loss of confidence by the community in the criminal justice system. Victoria has implemented several changes aimed at building up community confidence. These include: the removal of the Office of Corrections' administrative discretion to erode substantial sentences; the scrapping of old rules for calculating sentences; and the tightening of the pre-release scheme. According to Mr Kennan, a sentence should be publicly understood to be a certain period subject to well-defined remissions on clearly established criteria.

But Mr Kennan felt more could be done. He made a strong plea for more research in a number of areas including community attitudes to and expectations of the criminal justice system; real crime rates; the effects of sentencing; and the need for training and education programs in prisons. He emphasised the need for judicial training and informed discussions between jurisdictions in Australia. These calls, particularly the need for research, were echoed by many of the other speakers.

Mr Murray Gerkens, a magistrate, gave a sentencer's perspective on the Victorian approach. In his view, nothing could be more destructive to the object of a criminal justice system than to have an offender's liberty depend upon the resource allocation whims of government. The state of prison overcrowding is not a consideration in determining whether imprisonment should be imposed. Rather, sentencers operate within the legal framework and leave it to the executive to implement.

He noted the sentencers' disillusionment with imprisonment, which is seen as serving little purpose other than to reinforce criminal inclinations and to improve the criminal expertise of the sentenced. Prison conditions overall are so unsatisfactory that sentencers have little difficulty in viewing imprisonment as a punishment of last resort.

Unfortunately prison overcrowding has reached a crisis point at a time when public opinion appears to be calling for more severe penalties for criminals. Implementing such a 'get tough' policy would involve a huge rise in the prison population and enormous cost to the taxpayer. Community education is therefore necessary to provide an understanding of the costs, disadvantages of imprisonment and the benefits of the alternatives.

Mr Gerkens believed that the key to solving overcrowding lies with Parliament. A comprehensive review of legislative penalties is required, as well as the use of alternative schemes to imprisonment for two classes of offenders - fine defaulters and prostitutes.

The practical aspects of the Victorian Government's strategy for controlling prison crowding were considered by Mr Bill Kidston, Director-General of the Office of Corrections, Victoria. He gave a detailed account of Victoria's strategic plan and concluded that it had been successful to date, with the most exciting aspect being the establishment of a highly professional and acceptable community-based corrections program. He acknowledged that Victoria had traditionally had a low imprisonment rate, partly due to the reluctance of the courts to subject people to the appalling conditions which have existed in that State's prisons, but believed that the community-based corrections programs have caused the rate of imprisonment to decline in Victoria at a time when the national rate has substantially

increased. He pointed out that the characteristics of the prisoner population have changed, with a gradual accumulation of prisoners with previous prison experience, serving longer sentences for more serious offences. Prison management difficulties have been compounded by an influx of intellectually disabled and psychiatrically ill prisoners caused by the closure of security institutions, such as psychiatric wards in the major hospitals.

Mr Kidston was optimistic for the future. He believed prison crowding was not an insurmountable problem. It needed to be tackled through an integrated approach spanning the entire criminal justice system - requiring a determination by the legislators, the courts and correctional authorities to deliver programs which maintain a high degree of community acceptance.

In the discussion on these papers, one issue raised was whether Victoria would continue to keep its prison numbers down in view of its capital works and replacement program. Both Mr Kidston and Mr Kennan acknowledged that this might be a problem unless the old facilities were closed. It was also suggested that the state of overcrowding should be communicated to the judges, but there was disagreement on whether this should be an influence on the sentencing decision.

COMMENTARIES ON VICTORIA'S APPROACH

In commenting on the Victorian approach, Mr Alec Lobban, Comptroller-General of Prisons, Queensland, expressed concern that growing public, police and judicial criticism of the present standstill policy of prison intake and construction in Victoria could generate a backlash. Queensland, on the other hand, is constructing three new prisons resulting in an overall gain of cell space. Queensland also has a range of community corrections available and is improving the process of parole. There is regular communication between community corrections, prisons, police and courts to effect changes in policy, practices and attitudes. He warned that policies of reducing prison accommodation could be provocative to other criminal justice agencies and susceptible to shifts in power between governments and administrations. He suggested that moderate prison growth is not only tolerated but expected by the community.

Mr David Hunt, Commissioner of Police, South Australia, presented a Police Perspective on Prison Populations. He examined the South Australian experience where prison overcrowding has sometimes led to circumstances coming dangerously close to violating basic human rights - such as the use of the City Watch House as a police prison in January 1987. He saw part of the problem as the increased number of prisoners on remand, and he felt that less costly alternatives to imprisonment which would greatly alleviate prison overcrowding could be used for short-

term sentences. But he cautioned that extensive use of such alternatives may be seen by the community as providing insufficient retribution. Mr Hunt also mentioned the frustration of both the police and the community with the criminal system, when inadequate penalties are administered or sentences undermined by early release, etc. Legislative reform and other changes to traditional criminal justice practices are only likely to succeed if they have widespread acceptance by the community. So whilst it is acknowledged that many reforms will be necessary to deal with the issue of growing prison populations, care must be taken to ensure that the public is fully conversant with the need for, and benefits to be derived from, such changes.

A senior psychologist from the Victoria Police, Mr Simon Brown-Greaves, considered overcrowding a 'state of mind'. He suggested it is individuals' perceptions of their conditions that are important. A prison's level of overcrowding may exceed an individual prisoner's tolerance without affecting the institution's ability to meet general health care, education, safety and programming needs. However, a prisoner who believes he is 'crowded' may show negative physical or emotional responses. Some factors which may alleviate an affected person's perception of his environment are availability of programs and health services, opportunity for gainful employment, reasonable standards of accommodation and reduction of inmate turnover.

He added that community belief in a relationship between crowding and violence and stress is important, and could be fuelled by media reports. It is invariably at times of high media interest that the system tends to experience other difficulties such as industrial problems among the officers. He contended that much of the public criticism directed at the prison system is a result of poor marketing policies, which have led to some general misconceptions.

Mr George Zdenkowski, Commissioner, Australian Law Reform Commission, strongly supported a reductionist policy throughout Australia (i.e. a moratorium on the building of more prison space and the adoption of policies which will reduce overcrowding). He believed that the policies of cooperation between the various agencies in the Victorian criminal justice system, of providing non-custodial sentencing options and of communicating these policies to the community, have been successful. Although he agreed that imprisonment should be a sanction of last resort he feels that courts should not take prison space into account when sentencing.

Mr Clarrie Briese, Chief Magistrate, New South Wales, suggested that one explanation for the difference in imprisonment rates between Victoria and New South Wales could be differences in the crime rates, there being significantly more serious crime detected and people convicted in New South Wales than in

Victoria. He argued that more imaginative and resourceful alternatives to imprisonment need to be devised to reduce prison numbers in New South Wales. He also suggested that remands and bail need to be reconsidered and that fine defaulters should not be given the option of imprisonment.

THE REALITY OF MANAGING CROWDED PRISONS

Mr Tom Abbott, Director of Prisons, Office of Corrections, Victoria, warned that it may be a mistake to build extra prisons on a large scale stating that 'the only sure thing is that as beds become available, they will be filled'. This view was echoed by other participants. His experience in the United Kingdom indicated that in times of overcrowding, reported infringements in prisons were reduced and both prisoner and staff morale remained good. He attributed this to the fact that a partial lockup reduced the opportunity for prisoner mischief and was easier for staff to handle. One participant agreed that staff morale held up in the short term but felt that as soon as the pressure was lifted the staff collapsed. To raise staff morale in Britain, prison officers' salaries have been increased and work hours reduced, more opportunities have been created for advancement within the system and public education has raised staff esteem.

ELECTRONIC TECHNOLOGY AS AN ALTERNATIVE TO PRISON

The seminar was treated to a display of electronic home detention systems. A passive system, 'On Guard', was demonstrated by Mr Bob Pearce, Sales and Marketing Manager of Telsol Pty Ltd in Victoria; and 'Vitalcall', an active system was demonstrated by Mr Paul Hanley, Managing Director of Vital Communications Pty Ltd, Sydney.

The passive system consists of four components: a wristlet/anklet; the verifier - which is a coded black box inserted in the phone; the phone caller and a PC computer/randomiser. The system works by calling up the detainee through the phone. On hearing the signal the detainee has to insert his wristlet/anklet into the verifier and then verbally report his presence. The advantages of this product include the cost (just under $4 per day if there is an existing phone) and the ability to not only determine whether the offender is present, but also his condition (e.g. sober, etc.) This system could be very intrusive if the detainee were rung up continually, for example, during the night, and thus could be potentially much worse than a gaol sentence.

In the active system of home detention the offender is also required to wear a form of anklet/wristlet, which is connected by electronic beam to the phone. The range of beam usually extends about 60 feet around the phone (though the distance may

be varied). Once the wristlet gets out of range of the electronic signal an alarm sounds and the wearer has 15 seconds to get back within range before the system dials up central control and reports the infringement. The advantage of this system is that the offender doesn't have to do anything except keep within range of the electronic signal. One problem with this system is the existence of dead spots which the beam can't reach. Rental cost for this unit is about $15 per week.

Participants expressed concern that offenders might tamper with the equipment or otherwise avoid the detention. Both systems had basic built-in deterrents to tampering but no one as yet has designed a completely tamper-proof system.

Mr Richard Fox, Reader in Law, Monash University, Victoria, pointed out that it wasn't too serious if the offender tampered with or decamped during the home detention anyway as it was a measure to be used only for non-serious offenders.

After an illuminating history of the home detention system (including Spiderman's contribution), Mr Fox highlighted the legal difficulties of introducing these schemes, such as the legal consequences of a machine reporting a breach, and the practical problems of proving beyond reasonable doubt that a person had in fact breached a condition of an order that subjects them to resentencing. He argued it is a socially cost-effective and economical measure providing it was used for offenders otherwise facing imprisonment.

He believed that the legislative framework for home detention already exists in Australia but as yet no one has considered what applications are reasonable and equitable. It is in the interests of the prison administration and the judges themselves to have some guidelines so there is some consistency in the trade-off between home detention and imprisonment.

REFLECTIONS ON PRISON CROWDING

In discussing New South Wales' overcrowding, Mr David Grant, Deputy Chairman, Corrective Services Commission, New South Wales, emphasised the need for a holistic approach. The Standing Committee on Criminal Justice in New South Wales is examining offences and their relative punishments; the role of police in correctional matters - in particular the area of bail; problems with the operation of courts and their administration and the need for detailed research in a number of areas. Measures to be taken by New South Wales to reduce overcrowding include: legislating to keep fine defaulters out of imprisonment, a program to introduce a home detention scheme and eventually a construction program to provide additional facilities.

The South Australian position as described by Mr Barry Apsey, Director of Operations, Department of Correctional Services, South Australia, ensures that imprisonment is used only when maximum deprivation of liberty is required, and is committed to the appropriate use of community-based correctional programs for the clear purpose of reducing prison numbers and the need to build replacement cell accommodation and to minimise the building of additional cells. He emphasised the need for effective research in certain areas, and the recognition of the futility of confrontations between various arms of government. Rationalisation of existing legislation and removal of outdated and anomalous provisions is also required. Effective integration of agencies within the criminal justice system would achieve consistency. He then outlined South Australia's responses to overcrowding which includes mechanisms for the integration of the criminal justice system, a capital works program and use of diversionary programs.

In the final session, the Chairman requested brief reports from the floor on the positions in the other states.

Mr Bill Harvey, Acting Director of Corrective Services, Tasmania, reported that Tasmania has a burgeoning prison population, though as yet it was not overcrowded, with an occupancy rate of 75 per cent. There had been a decrease in the prison population in 1971 due to the introduction of community service orders and modifications to the parole system. The current increase could only be explained in part by a recent decision to pursue fine defaulters.

Mr Doug Owston, Director, Probation and Parole, Northern Territory, told the seminar that the Northern Territory prison system is overcrowded with a current population of 430 in facilities designed for 360. There is a move towards rural ventures using prisoners to rebuild pastoral stations and to build tourist facilities. A Home Detention Program, to operate at the front-end and targeted at DUI offenders, is to be introduced. An evaluative report on an offender's suitability for the program will be submitted to the sentencer and, if suitable, the offender will receive a suspended prison sentence. The maximum time on the program will be 12 months. Any breach will send the offender automatically to prison with no credit for any home detention served. The Northern Territory has also commenced a program using Aboriginal corrections staff to look after Aboriginal offenders. In January 1986 juvenile justice was moved to corrections in the hope of preventing juveniles graduating to the adult system.

Mr Peter Chivers, Director, ACT Corrective Services, Welfare Services Branch, explained that the ACT is only a small jurisdiction with no obvious overcrowding problem. It does contribute to overcrowding in New South Wales but pays New South

Wales for boarding ACT prisoners. He warned about the need to think twice before going ahead with an ACT prison.

Mr Keith Stewart, Chief Executive Officer, Penal Institutions, Department of Justice, Wellington, New Zealand, stated that New Zealand prisons were operating at about 108 per cent capacity and that all police lockups had been gazetted as prisons. He concluded that the seminar had clearly demonstrated:

- the need for more research in many areas;
- the need to remove imprisonment as a sanction for some offences; and
- the need for communication within the criminal justice system.

WELCOME

David Biles
Deputy Director
Australian Institute of Criminology
Canberra

Distinguished visitors, ladies and gentlemen, it is a great pleasure for me to welcome you to this seminar on the subject of Developments in Correctional Policy: More Prisons?

I would like to give an especially warm welcome to the Hon Jim Kennan, Attorney-General for Victoria and Minister responsible for corrective services in that State. This is about the third or fourth time that Mr Kennan has participated in Institute seminars in the last three or four years, and we look forward very much to hearing his contribution today.

Other distinguished visitors that I would like to welcome personally include a number of representatives of the magistracy - Mr Clarrie Briese from New South Wales, Mr Maurice Gerkens from Victoria and Mr Ron Cahill from the ACT. I am also delighted to welcome a Commissioner of Police, Mr David Hunt, from South Australia.

The largest group of distinguished visitors at this seminar is the correctional administrators. They are, of course, the persons most vitally concerned with the subject of this seminar. Senior correctional administrators that I would like to particularly welcome include Mr Peter Hackett of New South Wales, Mr Bill Kidston of Victoria, Mr Alex Lobban of Queensland, Mr John Dawes of South Australia, Mr Bill Harvey of Tasmania, Mr Doug Owston of the Northern Territory, Mr Peter Chivers of the ACT and Mr Keith Stewart of New Zealand. There are also many experts in corrections and related fields who are here and who will no doubt contribute to the discussions in this seminar.

As far as the topic and the structure of the seminar program is concerned, I would like to acknowledge the assistance and advice of Mr Bill Kidston. Wearing his other hat as a member of the Board of Management of this Institute, Mr Kidston has for several months urged us to conduct a seminar on this topic. We were not hard to persuade as the issue of correctional policy in the face of extremely serious prison overcrowding is obviously one of current concern.

The facts about prison overcrowding are probably well known to most of you here. Put very simply, the Prison Accommodation and Occupancy Survey (Australian Institute of Criminology, April, 1987) showed that all mainland jurisdictions were seriously overcrowded in that they were holding well over the optimum 85 to 90 per cent that is accepted as the maximum occupancy that is tolerable. Only Tasmania had cells to spare. In three jurisdictions the occupancy rates were well over 100 per cent. In New South Wales the rate was 106.8, in Queensland it was 108.1, and in the Northern Territory 127.5. The latest available figures, those for June 1987, are even higher in these jurisdictions and, therefore, unless more cells have been constructed, the current occupancy rates must now be even higher.

The Institute's survey showed that the Victorian occupancy rates for the first quarter of this year were 96.9 per cent, very similar to the rates of Western Australia and South Australia. A rate in the high 90s is certainly not as bad as the others that I have quoted, but it nevertheless causes enormous problems for effective prison management. The unusual thing about the Victorian prison system is not its occupancy rate, but the fact that it has an imprisonment rate which is very significantly lower than all other Australian imprisonment rates, except that of the ACT. The June imprisonment rate for Australia as a whole was 72.7, that is, 72.7 prisoners for every 100,000 of the Australian population. The equivalent rate for Victoria at that time was 47.0.

While the imprisonment rates in nearly all other Australian jurisdictions have increased quite dramatically in recent years, the Victorian rate has always stayed below 50. In contrast, in the last five years, the Queensland rate has increased from 69 to 87 and the rate in New South Wales has moved up from just over 60 to more than 74. The most extreme example of increasing use of imprisonment is to be found in the Northern Territory where in 1983 the rate was around 184, whereas it is currently 311. These figures suggest that in nearly all Australian jurisdictions, with the exception of Victoria, a significant part of the Government response to increasing crime rates has been to build more prisons In Victoria, however, the number of prison beds has remained almost constant at around 2,000.

As I see it, the central issue to be discussed at this seminar is whether or not it is politically and morally feasible for a jurisdiction to place a limit on the number of prisoners that it will house, regardless of the pressures that come from the courts, from the police and from the public. We will be hearing a very strong defence of the Victorian position from our first group of speakers and we will also hear commentaries from representatives of jurisdictions that have taken different approaches to dealing with the problems of overcrowding.

Later in this seminar we will be devoting some time to various options that may be pursued to keep prison numbers down, and these options will include a consideration of the use of electronic technology as an aid to home detention or other alternatives to imprisonment. On that question, it seems to me that the major issue will be one of trying to identify the types of offenders to whom this technology could be applied. I have heard suggestions in recent weeks that electronic bracelets which indicate the offender's location would be ideal for use with prisoners who fail to pay fines, such as parking fines. On the other hand, I have also heard suggestions that electronic surveillance should only be used for those offenders who have been convicted of extremely serious crimes and would otherwise be an unacceptably high risk to the community. For example, it has been suggested that persons who have served long terms of imprisonment and for whom parole is to be denied, that liberty with electronic surveillance might be appropriate. Here we have two diametrically opposed views. I do hope that this seminar can assist in the clarification of that particular issue.

It remains for me to introduce the first panel of speakers who will be addressing the issue, controlling prison overcrowding - the Victorian approach. The first of these speakers is the Hon Jim Kennan who will specifically address himself to the political imperative.

THE POLITICAL IMPERATIVE

The Hon Jim Kennan
Attorney-General and
Minister for Corrective Services
Victoria

'The political imperative' is survival, and that applies to us all one way or another.

Prison overcrowding is a common problem. The outlook is for greater rather than less crowding and, while there are no answers at present, the aim here is to share experiences and suggest how answers might evolve. From the perspective of an Attorney-General and a Minister for Corrections, what seems to be needed is a dialogue both here and in the community about what is desired from our criminal justice system. In the last ten years or so, practitioners have been driven to a fairly low common denominator and have been very much influenced by the Martinson principle. What has evolved in each jurisdiction has come by way of practice in tackling issues of crime control and prevention rather than by following any underlying cohesive theory of imprisonment.

IMPRISONMENT - A SANCTION OF LAST RESORT

In Victoria, the Penalties and Sentences Act 1985 legislates that imprisonment is to be a sanction of last resort. The Act has not defined 'last resort', but in practice it is understood by sentencers, the community and by Parliament to include those people whose crimes or criminal pattern are so obviously dangerous by community standards that the community would reasonably expect them to be imprisoned. Imprisonment in Victoria is thus restricted to violent offenders, recidivists and so on.

In Victoria this approach has led to a larger and harder core of difficult prisoners, long-term prisoners and dangerous prisoners comprising a greater percentage of the prison population than in other jurisdictions which have substantially larger prison populations measured on a per capita basis. This raises problems about how to manage prisons with a hard core prison population.

This evolution reflects not only the influence of community opinion on the judicial system, but also the appalling state of parts of Victorian prison facilities. In practice the Victorian

judiciary has treated imprisonment as a sanction of last resort - to lock someone up in an antiquated system, however briefly, is a very severe punishment. Both the judiciary (including magistrates) and those lawyers in a position to influence the legal culture in Victoria have viewed imprisonment as a very serious punishment. In addition, there have been fairly enlightened approaches by the Victorian Police to diversion. The Four Corners program on an aboriginal death in custody in New South Wales showed circumstances in both the health and criminal justice systems that would be unlikely to happen in most parts of Victoria. The Victoria police have a positive policy not to lock up Aboriginal people who are suffering in that way, but rather to release them back into their community, wherever facilities are available, without arrest, without imprisonment or being taken into custody at all. This is an example of the persuasive influence of the legal culture broadly defined, which covers the legal profession, the judiciary, the Office of Corrections and the police force.

DIVERSION

Diversionary programs are very important, as is the way in which people are handled right through the system. It is important that all those circumstances be taken into account. One suspects, that part of the reason for the high Western Australian imprisonment rate is because there are cultural problems there which are reflected in the criminal justice and health systems. Many people imprisoned in Western Australia would simply have no chance of getting into the prison system in Victoria due to different attitudes, commencing with the attitudes in the police force and working right through the criminal justice system. These attitudes are not the result of government policies or legislation alone, but rather a persuasive change over a considerable number of years by everyone involved. This is not to say that there are no problems in Victoria, or that we cannot learn from other jurisdictions in Australia.

The Victorian prison system is overcrowded, but the occupancy rate is below 100 per cent and is less than in some other places. We are endeavouring to renew our prison facilities. One disincentive to imprisonment in Victoria has been the appalling conditions of the remand yards. Judges are on record as stating that they would not remand someone in custody given the nature of the remand yards at the Coburg Prison Complex, though were a decent facility available they would. It is ironic that next year when an excellent new remand facility (built for 240 prisoners) is opened it will overflow immediately. One suspects that the opening of other better prison facilities (two other prisons for 250 due to open in 1989 are currently being

built) will also result in an expansion of the prison population. Sentencers are very aware of the institutions that they are sending people to. If these institutions are Dickensian and unsafe from the point of view of the personal integrity and security of the individual, this quite properly operates as a relevant consideration in the mind of the sentencing magistrate or judge. This has been the position for about the last fifteen years in Victoria because it is well-known that the Victorian remand yards are bad and dangerous places.

This may seem a rather pragmatic and somewhat cynical view of one of the reasons for our low prison population, but it ought not be underestimated. Not that it will necessarily lead to a imprisonment rate of 70 or 80, rather than in the high 40s, but it is a factor and is part of the rationalisation for the use of imprisonment as a sanction of last resort.

IMPRISONMENT - ALLOCATION OF RESOURCES

The size of the prison population is still basically dictated by the number of beds in the system. While this may seem a shocking theory to some, the community is entitled to expect that sentencers, magistrates and judges take note that they are allocating taxpayers' money when they send someone to prison. In Victoria it costs about $33,000 a year to keep a person in prison in most facilities, and about $200,000 per bed in capital costs in a high security institution.

When a person is sent to gaol, an allocation of resources is being made, and that choice must be made on a needs basis. With limited beds in the system, a filtering process is required to see that only those who most need to be put in prison to protect the community get in there. Community debate and dialogue is needed (though it is very hard to get this in an intelligent and rational manner), on what is really expected of the criminal justice and prison systems.

Communities by and large do not want to pay more taxes to build more or better prisons. If the community were asked what they wanted on an informed basis, I believe they would want a secure prison system that was just big enough to hold those who really need to be in prison.

COMMUNITY CONFIDENCE IN AND ATTITUDES TO THE CRIMINAL JUSTICE SYSTEM

At present there is a concern about loss of community confidence in the way sentences are shortened by various forms of administrative action or discretion.

In Victoria we have endeavoured to address this by getting rid of the Office of Corrections' administrative discretions which erode sentences. A number of old rules such as the sentence dating back to the first day of the month in which the judge was sitting and so on, have been scrapped so that the sentence handed out by a judge or magistrate can be understood publicly as the period that a person will serve, subject to well defined remissions given on clearly established criteria. As part of this exercise, the pre-release scheme has been tightened and reduced from twelve to six months. This has partly led to our present overcrowding problem, although it has not led to a significant statistical increase in the prison population.

Not enough is known about community attitudes and expectations in relation to the criminal justice system. Gallup polls are conducted from time to time which ask such questions as 'Do you think gaol sentences should be longer or shorter for violent offenders or sex offenders?' It is hardly surprising when 80 per cent reply 'longer'. The Institute of Criminology has done a much more sophisticated survey which asked whether or not a person should get death, imprisonment, fine, etc, for a range of different offences which were phrased in considerable detail. It showed that the sentences expected by the informed community were close to the sentences given by the courts. The Institute also asked how people judged various criminal or quasi-criminal acts. Two of the questions related to industrial negligence. One was pollution causing the death of a person and the other was an industrial accident causing loss of a limb. Both cases rated above assault or robbery and other cases for which there are often calls for tougher sentencing, and only below serious sexual assault, murder and drug trafficking (AIC, 1986).

If surveys sought to determine informed community opinion, as distinct from testing community opinion through fairly simplistic questions, the results may not be as different from what we are currently trying to achieve as we are sometimes led to believe.

There needs to be more thorough work in a range of areas. We have to step back and see if we can set up systems which establish a more scientific or more rational basis for a lot of our practices. We need more surveys of community opinion so that information is available to everyone in the criminal justice system allowing them to reflect community opinion. It is very easy to pontificate about what we think is community opinion. Politicians are as guilty of that as anyone. Sometimes politicians are in the worst position to try to judge community opinion, since they tend to hear the vocal minority rather than the silent majority and tend to listen to what they like to hear and ignore things they do not like. What is needed is some independent and rationally researched bases of community opinion to act as a guide.

CRIME RATES

Much more information about crime rates is also needed. Some very important work has been done on this (Mukherjee, et al, 1987), but such work needs to be better co-ordinated across Australia, so that there are uniform crime statistics. Hopefully, in the next year or so, some victim surveys will be conducted.

In the United States, surveys of victims indicate that while the underlying crime rate may not be rising much at all in a particular place, the index of reported crimes, may be rising dramatically. This is an indication that more crime is being reported rather than an increase in crimes actually being carried out.

In Australia our statistics are based on reported crime rates and no detailed work has been done to sbe what the real crime rate is. We all suspect and all believe that crime in general, and particularly serious crime, is rising. But is it in fact rising or is it just being better detected and prosecuted? One major problem is that we now have 'new' categories of crimes that would have existed fifteen and twenty years ago, but were not then routinely investigated and prosecuted. Directors of Public Prosecutions, police and Corporate Affairs officers have a more sophisticated approach to commercial and white collar crime, drug trafficking etc., and are now detecting, investigating and prosecuting those crimes. If an index using convictions for various sorts of crimes were constructed and its value now was compared with that of fifteen or twenty years ago, one might be led to believe that a whole new class of crime has suddenly arisen in Australia and is rampantly increasing, when, in fact, it might well have been there fifteen or twenty years ago, but was not being investigated and prosecuted in the same systematic way as it is now. Careful research is therefore necessary on these statistics, to avoid quick and erroneous judgements.

SENTENCING

Another great difficulty is the effect of sentencing. The Starke Committee was set up in Victoria to look at sentencing and it will report early in 1988. It has issued a very important discussion paper that canvasses just about every issue imaginable in sentencing. It appears to be heading in the direction of less administrative discretion with the sentences handed down in courts being closer to the sentences actually served. But we are not working in any systematic or detailed way to see what the effects of sentences are. For instance, it is not known whether the community is better protected by someone being on a community based order for two years under supervision and undergoing courses rather than being put in prison for twelve months. We do

not know whether the community is better protected by imprisoning someone for five years rather than three years, or ten years rather than five years. We cling to the notion that heavier sentences better protect the community. Careful research should be done in this area, rather than just relying on what I think are basically 'seat of the pants' judgements. There is no shortage of data available to be analysed, particularly with the increasing use of computerisation of records. The corrections and criminal justice systems retain sufficient records to determine what happens to various people, their recidivism rates etc, to enable this to be done. Given the overcrowding of prisons, nothing could be more basic than research done in Australian jurisdictions as to the effect of different sources of sentences, comparisons of sentence of varying lengths and various treatment regimes in prison.

TRAINING PROGRAMS

Similarly, we are all striving for more education in prisons, more prison industries, and so on, because we are driven by the notion that it is better for people to be given educational and industrial training opportunities in prison, rather than sitting around idle. But there is no research to suggest that this in fact does affect recidivism rates. We assert as a matter of conscience, that we will make greater efforts in these areas, but it would be interesting to know what effect they have and if there are alternative prison regimes which should be undertaken in this area. However we are so concerned with the day-to-day problems, so concerned with overcrowding and ever-growing numbers, so concerned with incremental increases in our existing programs, that none of us have the time or the luxury of sitting back and making those broader judgements. Now it is time for this to happen.

I want to close with reference to the work of the Australian Institute of Judicial Administration in Melbourne. The question of judicial training is a vexing one. The Australian Institute of Judicial Administration is primarily made up of judges and magistrates, together with lawyers and some Attorneys-General, working on judicial training. It has a full-time director of professorial status. Recently the AIJA held the first in-house sentencing conference for judges from all round Australia, and it was thought to be excellent. Seminars not only on sentencing, but also other matters of judicial administration will be expanded by the AIJA. This is enormously important because there needs to be excellent communication between the people who decide sentences and administrators. It is important that judges and magistrates know what sort of facilities are being offered. Many have taken a keen personal interest in these areas, but this work done through the AIJA offers new opportunities for dialogue between the various levels and branches of the criminal justice

system that have not hitherto existed in Australia. It also provides the important opportunity for informed discussions between jurisdictions, rather than just within each jurisdiction in Australia.

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SENTENCERS' REACTIONS

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It is surprising that people often suggest that judges and magistrates should take the availability or not of prison places into account when exercising the sentencing function. In operating a 'criminal justice system', nothing could be more destructive of the object than to have an offender's liberty depend upon the resources allocation whims of the executive arm of government.

Personal experience and discussion with colleagues, indicates that in practice the state of the prison population is not a consideration in determining whether a term of imprisonment should be imposed. Sentencers operate within common law principles and the legislative strictures of Parliament. Implicit in the system is an assumption by sentencers that, provided sentences be within the confines of that framework, the executive will accept responsibility for implementing them. It is the prerogative of Parliament to decide both whether a particular offence is serious enough to warrant imprisonment and whether the courts should be provided with a range of alternatives to imprisonment.

Recently there has been a steady rise in prison populations in Victoria and elsewhere at a time of diminishing budgets and despite increasing recognition of the shortcomings of imprisonment as a sentencing option. As far back as 1979, Tomasic and Dobinson in their book <u>The Failure of Imprisonment</u> put that recognition succinctly:

> The failure of imprisonment has been one of the most noticeable features of the current crisis in criminal justice systems in advanced industrial or post-industrial societies such as Australia, Britain, Canada and the United States. One justification after another advanced in favour of the use of imprisonment has been shown to be misconceived. At best, prisons are able to provide

> of offenders into society. Furthermore, the heavy reliance upon prisons...has led to an inordinate drain upon the overall resources devoted to the criminal justice area...It seems clear to most disinterested observers that prisons as we know them now have failed disastrously as humane and effective means of dealing with those persons who offend against the dominant legal and moral order of any society (Tomasic and Dobinson, 1979, p.1).

In Victoria, Section 11 of the Penalties and Sentences Act 1985 embodies the principle that imprisonment is a punishment of last resort. The Act, furthermore, provides a range of specific discretionary alternatives where the sentencer has decided imprisonment is warranted but undesirable in the circumstances.

As an alternative to imprisonment, an offender may be admitted to a community based order under Section 28. This order is supervisory in nature and the court may attach conditions requiring the offender to perform unpaid community work, to undergo drug/alcohol/medical/psychiatric assessment and treatment, to undertake educational courses and to comply with any other special condition the court thinks appropriate.

Under Section 21 where a court decides to actually impose a sentence of twelve months or less, it may suspend the whole or part of the sentence. In such cases, an operational period not exceeding twelve months must be fixed. To avoid serving the sentence, the offender must not commit further offences punishable by imprisonment during that period. The effect of course, is a salutary reminder to behave.

Section 13 of the Alcohol and Drug Dependent Persons Act 1968 (Vic.) is a further provision allowing for a suspended sentence. This kind of disposition is heavily oriented towards treatment in government-operated treatment centres.

Disillusionment with the concept of imprisonment as an effective sentencing disposition has spread to the judiciary. It has become apparent that imprisonment serves little purpose other than to reinforce the criminal inclinations of the sentenced and to improve his or her criminal expertise. It can be argued that it serves the purposes of retribution and deterrence and that, at least while the offender is in custody, he is unable to re-offend. But, 'At what cost to the individual and, in the long term, the community?'

Unfortunately, despite preventive measures taken by authorities, large groups of prisoners will resolve themselves into the strong and the weak. Inevitably the weak, who are generally younger and more impressionable, live under the threat of violence,

intimidation and bestial attack. The effect is a community where there are two alternative governments; the official prison government and the underground government of the stronger inmates. Drugs are available to those who want them and payment is often exacted by way of promises to become involved in planned criminal enterprises upon release.

Another factor is the physical condition of most of our prisons which are universally viewed as unsatisfactory.

These points illustrate the reasons why judicial officers needed little legislative encouragement to treat imprisonment as a punishment of last resort and to make appropriate use of the alternative dispositions provided. Unhappily, the prison population continues to grow apace.

As well as providing alternatives to the courts, Parliament has seen fit to entrust its penal authorities with considerable discretionary authority to interfere with the length of sentences imposed by the courts. The devices used are remissions for good behaviour, parole and pre-release. These powers are provided ostensibly for the purpose of promoting good order and discipline in prisons. They no doubt contain the prison population within manageable limits as well.

It is for Parliament to decide whether the community benefits from a system whereby the sentence actually served bears little relationship to the sentence publicly pronounced in court. The danger is that the community may perceive itself the subject of a confidence trick which operates in favour of criminals. There is no doubt that the penal authorities have a very real management problem and that the dispensatory powers they enjoy contribute significantly to good order and discipline. There have been recent government initiatives designed to rationalise the non-judicial release mechanisms and obviate these problems.

Unfortunately for our legislators, the problem of overcrowded prisons has reached crisis proportions at a time when public opinion appears to be moving in the direction of dealing more severely with criminals.

Ashworth (National Association for the Care & Resettlement of Offenders, 1983, p.8) criticises the tendency to attack or defend sentencing policies by reference to public opinion. He concludes that the criteria for determining public opinion is generally selective, partial and imperfectly informed. Public opinion is, of course, a rather ephemeral concept and what appears to be public opinion is very often that of only a vocal minority. Nevertheless, it seems that there is a crisis of public confidence in the criminal justice system. The average citizen tends to think that the courts are soft on criminals to the

detriment of the public good. It does not matter that this view is uninformed and, in effect, a 'knee-jerk reaction' to the increasing lawlessness engendered by a growing drug problem. The perception exists and demands a considered and balanced response.

There is no conception of the enormous rise in prison population which will surely follow a 'get tough on criminals' sentencing policy. The community would be called upon to accommodate upwards of three times the present prison population. The very reason for this seminar is that our prisons are currently overcrowded and under-resourced. The strain on the public purse would be enormous. To illustrate, on 1984 estimates, the initial capital cost of establishing each prison space is $150,000 to $180,000. In the 1986-87 financial year, New South Wales is expected to bill the Commonwealth $112 per day for each federal offender accommodated in its prisons, i.e. $40,880 per annum per prisoner[1].

Strenuous efforts are required to educate the community in an effort to ensure that public opinion on the subjects of sentencing and penology is at least informed. There must be some understanding of the disadvantages and cost of imprisonment and the benefits of the alternatives.

The key to a solution or, at least, melioration of the prison population crisis seems to be in the hands of Parliament. A comprehensive review of legislative penalties is long overdue. Certain kinds of behaviour which our forbears regarded as heinous and demanding of the most severe punishment are today the subject of only mild disapproval. Very little legislative effort has been devoted to the philosophy of imprisonment as an appropriate punishment response to these kinds of offences and the original imprisonment sanctions continue to apply. An illustration of this is the apparent over-representation of prostitutes at Fairlea and the female division at Pentridge. Most of these women seemed to be there through inability to pay heavy fines for the victimless crime of loitering. Quite a few were serving sentences for the same thing. Are these women so destructive of our way of life as to warrant depriving them of their liberty? If their behaviour must be proscribed, are there not more enlightened and productive alternatives? Most are victims of society anyway and the dupes of far more evil people who usually go unpunished. Another class of offenders which unnecessarily clutters our prisons is the fine defaulters. Between 1 February 1987 and 30 April 1987 in police cells in the eastern metropolitan police districts of Melbourne, 226 people served time in police custody in relation to 468 unpaid warrants

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1. The Law Reform Commission (Commonwealth) Discussion Paper No. 31, August 1987, Sentencing: Prisons, para.8.

totalling $84,257. The total amount of time ordered to be served in default of payment was 1410 days and, because of the concurrency provisions, the actual time served was 179 and a half days (Victorian Sentencing Committee, 1987, p. 18). It is clear from these figures that an appreciable number of fine defaulters must also be entering the prison system.

At the present time in Victoria, an offender who has been fined can approach the court for permission to expiate the fine by performing an appropriate period of unpaid community work. Curial permission is dependent upon Office of Corrections assessment of the offender's suitability. This system only operates on the initiative of the offender. Most impecunious offenders, being socially disadvantaged, tend to allow events to catch up with them rather than take the initiative and the inevitable result is a warrant of commitment.

Law-makers should be able to design and penal authorities to operate an unpaid community work scheme which automatically applies to fine defaulting offenders. Such a scheme would have the advantages of equitable application to all fine defaulters and containment of the prison population.

In conclusion, the objective here is to offer a sentencer's reaction to the Victorian approach to controlling overcrowding of prisons. The measures taken to date should be applauded. A comprehensive penalty review project should be undertaken with a view to removing the imprisonment option for offences for which it is warranted. And, lastly, there must be a concerted effort to inform the public of all the ramifications of the 'law and order' debate.

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PRACTICAL ASPECTS OF VICTORIA'S APPROACH

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HISTORICAL OVERVIEW

Until 1983 Corrections in Victoria was part of the larger State Welfare Department. This situation resulted in a confused philosophical base and lack of resources for adult corrections. This, in turn, resulted in crowding, poor integration of prisoner programs and security requirements, inadequate staff training, low morale, an unacceptable escape rate from security institutions and an inhumane prison environment. The system was described by one consultant (Neilsen, 1983):

> Our review of physical conditions and programs in the State's prisons identifies a real sense of neglect, gloom, frustration and tension which pervades the whole system.
>
> The prisons are, by current standards, disgraceful places in which to house people, however serious their offences, and disgraceful places in which to expect prison officers to work.
>
> To deprive people of the means of basic sanitation is totally inconsistent with any internationally accepted principles for containment and treatment of prisoners, and certainly infringes the United Nations Minimum Standards for the treatment of prisoners.

The Victorian Government decided to separate adult corrections by establishing a new department. The Victorian Office of Corrections was created in October 1983.

Its early tasks were obvious. The Office required a new philosophical base to enable the establishment of short, medium and long-term plans. This base required acceptance of the principle that imprisonment should only be used as a sanction when <u>total</u> deprivation of liberty is warranted. The second task, as the Attorney, Mr Kennan, has indicated, was to ensure the Office was integrated with the various arms of the Victorian criminal justice system.

It was also obvious that any plans needed to allow for the construction of some 900 beds to replace many of the State's antiquated facilities. The problem, of course, was to ensure that the provision of new beds did not simply increase the number of available beds. Community based alternatives needed to be found. This, in turn, required the improvement of the extremely poor image of community based sentencing options in Victoria. At that time few probationers were appropriately supervised and some were totally unsupervised; parolees, unless they were very difficult, were often not allocated to parole officers. Community service orders operated in only one small geographical area with 40 offenders at any time. The only positive program was the attended centres which only operated in half of the State's regions.

Also, for too long the Department had attempted to handle crowding, not through integrated community based options, but by depending on very liberal interpretations of the legislation and exercising broad administrative discretion which severely diluted the court's intention. This had reached a ludicrous stage where all prisoners sentenced to less than one month were 'walked through' the system, that is, they spent only the day of reception in prison.

THE STRATEGIC PLAN

In order to address these problems a strategic plan was developed based on the following:

- appropriate community facilities which would divert people from the criminal justice process wherever possible;
- integrating adult corrections within the State's criminal justice system;
- acceptance of the principle that imprisonment would only be used where total deprivation of liberty was warranted;
- limitation of an imprisonment rate to 50 per 100,000 as an appropriate planning base;
- developing and introducing legislation both in the sentencing and corrections area;
- regaining the confidence of both the courts and the community by providing appropriate and strictly supervised community based programs and by curbing inappropriate use of administrative discretion;
- a prison construction program aimed at replacing inadequate prisons;

- developing and implementing prison based management plans which would provide adequate programs for the 'hard core' prisoner group remaining in maximum security facilities.

The plan was devised to include three periods, that is, 3 years from 1984 to 1986, 2 years from 1987 to 1988 and 3 years from 1989 to 1991.

The first period was characterised by the development of the Office, the establishment of the Staff Training College, preparation of legislation, designing and planning new facilities, establishing a community based corrections division, planning experimental and training programs in unit management in preparation for the new facilities, and to develop close co-operation with the other arms of the criminal justice system.

The second and most difficult period, 1987-88, was intended to be and is a period of consolidation, that is, a period for operational planning of three new maximum security institutions, to formulate new staff attitudes, to eliminate inefficient work practices, and to introduce subordinate legislation and policy directions.

The third phase, 1989-91, will see the opening of the new and the closing of the old facilities and the further development and consolidation of viable community corrections programs.

Has the 3-Phase Plan Worked?

The answer is yes, to date.

The Office has been established with excellent administrative systems, the Staff Training College has trained over 1,500 staff, legislation integrating sentencing and corrections objectives has been passed, a capital replacement program in the vicinity of $200m is nearing completion, experimental prison based programs are being evaluated in reception, classification, unit management, drug treatment, education, industry, leisure and health service delivery.

However, the most exciting aspect of the implementation of the plan has been the establishment of a highly professional and acceptable community based corrections program.

In establishing the community based correctional division within the Office of Corrections, there were two significant periods. In February 1984, community corrections programs were expanded statewide, the court advice service was introduced to all courts and, in June 1985, legislation was implemented which consolidated all community based sentences into a single order.

In establishing these programs, it was critical to ensure that -

- programs with consistent standards were delivered Statewide;
- programs would be cost effective and be flexible to meet the needs of the courts;
- programs were designed to provide tangible benefits to the community;
- programs were designed to provide varying degrees of loss of liberty while addressing the needs of the offender;
- programs were managed in such a way as to ensure the confidence of the Government, the courts, the community and the offenders.

A Statewide Service

The service is administered through 10 regions and 22 locations throughout the State. It is staffed by approximately 260 full-time, 100 part-time staff and 600 trained volunteers. The cornerstone of the service is the Court Advice programs which allow all courts to have access to objective, reliable and up-to-date advice on both corrections programs and offenders appearing before them. These assessments are now requested at the rate of 450 per month and in over 90% of cases the recommendations of the Court Advice officers are accepted by the court. To date, all orders of the court have been administered even in the remotest part of the State.

Flexibility and Cost Effectiveness of the Program

The Attorney-General Mr Kennan has already discussed above the way in which the legislation enables the courts to be flexible in tailor-making a community based order for an individual offender.

Regarding cost effectiveness, based on the 1986-87 financial year, the cost of maintaining a prisoner in Victoria is $33,000 per annum. In addition to this recurrent cost, the State is expending $200m in replacement capital. In contrast, the cost of community based programs is $1,800 per offender per annum. The value to the community of community work performed by offenders has been conservatively estimated by the Office to exceed $67,000 per week. One may argue that this figure can be reduced to $1,230 per offender if the impact of unpaid community work is taken into account.

It should be noted that the annual cost per offender has been reduced from over $2,000 in 1984/85 to $1,800 in the 1986/87 financial year. This is primarily due to the effective use of available community resources.

Programs Designed to Provide Benefits to the Community

The Division is able to undertake many community projects which simply would not be completed if the work had to be undertaken by paid employment. Indeed, the success of the Division's programs has been such that there are many more requests than can be fulfilled. Not only do these programs provide a positive experience for the offender, they also provide an opportunity for the community to gain a better understanding of the correctional process.

Offender Needs: A Flexible Approach

Community based programs allow for varying levels of supervision and degrees of loss of liberty.

The programs also address the needs of offenders, but draw a distinction between:

(a) those needs that can be clearly related to the individual's offending as a direct cause or as a contributing factor; and

(b) those needs that are not clearly related to offending and are therefore more properly met in a non-correctional program.

This distinction is drawn in the first instance at court by officers providing the Court Advice Service, who are able to assist the court in tailoring a sentence to address these offence related needs.

The initial assessment will be further refined on reception of the offender at a Community Corrections Centre.

Every Community Corrections Centre in Victoria has established co-operative links with community services and agencies offering programs relevant to both the offence related and other commonly encountered needs of offenders. This involves liaison with TAFE colleges, local drug and alcohol counselling and treatment agencies, aboriginal community groups, community education, community health centres, the Commonwealth Employment Service and a range of voluntary agencies and self-help groups.

Where programs are not available in the local community, people with relevant skills and abilities are engaged on a sessional basis.

Maintenance of Confidence

Clearly from Mr Kennan's remarks, the strategy and its implementation has the confidence of the Government. The

Corrections Act 1986, by clearly imposing legislative limitations on administrative discretion, will further enhance the confidence of the courts in the administration of sentences.

The courts have confidence in the program, as shown by their acceptance of over 90% of the 450 monthly recommendations from the Court Advice Service and their use of community based orders for serious offenders, and from Mr Gerkens' remarks.

The Victoria Police have been very supportive on the Community Corrections Committees in all ten regions.

The response from the community has been positive with a high degree of input into program development by community groups. The division is able to select its 600 volunteers from a vast number of regular applications and receives a large number of requests for speaking engagements from a wide variety of community groups.

The media's response has generally been very favourable and suitable community representatives are readily available to participate on the Community Corrections Committees.

IMPLICATIONS OF THE VICTORIAN APPROACH

Netwidening - Has it Occurred?

The question of netwidening emerges when developing any community based options. The Australian and overseas experience shows that developing alternatives to imprisonment are associated with some degree of netwidening, because introducing any viable alternative means the courts are more likely to use these options with resulting increase in numbers over the first period. The success of a good diversionary program is the extent to which it limits this inevitable netwidening.

In Victoria, offender numbers increased from 3,689 in June 1984 to 6,078 in June 1987 and have stablised around 6,100 since January this year. This was in the order of increase expected given the provision of a Statewide service with flexibility in sentencing options and strict monitoring of all offenders. Further, we were able to contain the increase to expected levels due to the provision of a highly professional Court Advice Service. Not only has this service been able to advise on appropriate placement of offenders, it has been able to perform a more general educative role on the appropriate use of correctional options.

Additionally, offenders on community based orders in Victoria are sentenced for more serious offences than in most other States as outlined in Professor Richard Harding's 1986 Whatmore Oration (Harding, 1987).

During the same period, Victoria has been able to maintain its rate of imprisonment at less than 50 per 100,000. Over the previous 3 years, the national rate has increased from 62 to 72 per 100,000, while the Victorian rate has actually declined from 49 to 47 over the same period. Notwithstanding the apparent effectiveness of community based corrections programs diverting persons from imprisonment, it must be acknowledged that Victoria has traditionally had a low imprisonment rate due, at least in part, to the reluctance of the courts to subject people to the appalling conditions which have existed in the State's prisons.

Victoria should be able to maintain the rate of imprisonment to below 50 per 100,000 which is still the planning base for the $200m prison replacement construction program. This program is on target and nearing completion.

There is, of course, a risk that providing modern institutional facilities could remove the court's reluctance to sentence to prison. However, the confidence already being shown in community corrections programs by the legislators, the courts, the police and the community will ensure the continued implementation of a strategy firmly based on the belief that imprisonment should only be used when the total deprivation of liberty is warranted.

Effects on Prison Management

Since Tom Abbott, the Victorian Director of Prisons will address this issue more fully, just three points need be made here:

- More Serious Offenders

  Whilst the overall number in prison has not greatly increased and the rate of imprisonment has slightly decreased, the characteristics of the prisoner population have changed. Offence seriousness has increased, particularly drug trafficking and armed robbery while the number of minor offences, such as default of fine and motor vehicle offences have decreased. These and other trends have resulted in the gradual accumulation of prisoners with longer sentences, more serious offences and previous prison experience.

- Special Needs Prisoners

  Prison management difficulties are further compounded by the noticeable increase in intellectually disabled and psychiatrically ill prisoners entering the system as authorities close security institutions, such as psychiatric wards in the major hospitals. The Community Corrections Division has rapidly increased its Service to offer these offenders appropriate programs. One such

program uses intensive supervision of intellectually disabled offenders by specially selected and training volunteers. Despite such initiatives, the impact of increasing numbers of special needs prisoners is being felt in Victorian prisons. These problems are further compounded by other categories with special needs, such as witnesses and others requiring protection.

- Lack of Flexibility

  Any prison system requires some capacity to enable the rapid and appropriate placement of prisoners according to security requirements and management needs. This flexibility has decreased, thus increasing the demands on staff and facilities.

  The traditional mix of low, medium and maximum security prisoners has also altered with a greater percentage requiring higher security classifications. This trend is placing increased pressure on the classification system to place prisoners earlier than normal in lower classifications, thus increasing the possibility of escapes and other security breaches.

Phase II Management Response

These changes were predicted to occur during the second phase of the 7 year plan and a number of initiatives other than the capital replacement program were developed to deal with their expected effects.

The Department has reviewed its workforce requirements and training programs to provide staff with the skills to effectively manage these changes. The reception and classification systems are being reviewed and new procedures adopted to identify and cater for prisoners with special needs and to develop individual case management programs for the whole of a prisoner's term.

In addition, many new programs have been developed and piloted, for example, unit management, the integration of education industry and recreation programs, improved health service delivery models through greater inter-agency co-operation, and a greater emphasis on community involvement, particularly through the Official Visitor and Volunteer schemes. These initiatives, together with improved work practices, better security systems and changing staff attitudes, particularly in the middle management levels of prisons, will ensure that the Office is able to enter the third phase of the plan - the operation of modern prisons - with professionalism and confidence.

FUTURE DIRECTIONS

The problem of prison crowding is, and will, continue to be a reality not only in Australia, but worldwide.

However, it is not an insurmountable problem, but one which can be successfully tackled through an integrated approach across the criminal justice system. It requires an agreed philosophical, policy and planning strategy such as that developed in Victoria. The Victorian approach will be further refined by the Sentencing Committee chaired by Sir John Starke referred to by the Attorney-General.

Above all, it requires a determination by the legislators, the courts, and the correctional authorities to deliver programs which maintain a high degree of community acceptance and a constant search for new initiatives that will enable the scarce corrections dollar to go further.

Considerable progress has been made towards this end in Victoria. The challenge for the next 3 years is to continue to provide highly professional and credible corrections programs which will withstand the hysteria created by law and order campaigns.

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WHOSE GAOLS? WHOSE GOALS?

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INTRODUCTION

The components of the justice system tend not to function as an entity, but rather as separate parts with policies developed independently and with different goals. Sentence control and other imprisonment avoidance methods may serve the goals of one part of the system, but not others. Those parts whose goals are being thwarted or deflected, can be expected to be resentful, resulting in non-cooperation and probably active resistance. The front-end operators in such a situation are not without power and have considerable community support.

The strategies for controlling prison crowding, currently under discussion, are not new. Other countries have faced the crisis before us and there is much to learn from their experience. The front-end operators will categorise sentence control and other net reductionist policies as expediency rather than justice. It is necessary to examine, therefore, whether prisons are acceptable in economic terms and desirable in philosophical terms, whether people are prepared to pay and whether jails are inherently damaging to offenders.

THE PRISONS SITUATION

Prisons are imperfect organisations. They are frequently overcrowded, underfunded and poorly managed. They can breed inmate violence, and act as crime education centres. They have not been shown to be effective in reducing crime and are believed to offer little chance of rehabilitation for offenders. Nevertheless, the community believes in imprisonment and expects it to be utilised.

The views expressed in this paper do not necessarily reflect the views of Prisons Department in Queensland or those of the Comptroller-General. They were prepared specifically to give a counter view to the Victorian approach.

COMMUNITY CORRECTIONS

The general community does not consider community correctional alternatives to imprisonment as suitable for anything but minor criminal activity. They are seen as 'Go thy way and sin no more!' options. While we all recognise that community corrections can do more than that, there is a point beyond which community corrections can break down. Attempts to apply the concept to increasing numbers of more serious offenders and petty but constant offenders, may serve only to bring community corrections into disrepute. The effectiveness of community corrections is already under the microscope and the future is very susceptible to public opinion. Further pressure could seal its fate.

SENTENCE CONTROL

Sentence control, dependent on the level of prison overcrowding, is already pursued overseas. This strategy has neither police nor community support and only limited support from the court. Differential justice can result if the control is based merely upon today's excessive numbers.

WHOSE GAOLS?

The justice system is made up of many players: government, police, the courts, the correctional services and the community itself. The public has strong expectations that the Government will provide laws and facilities which will enable it to be and feel safe and to protect its property. The public's view of how to achieve this may be ill-formed, but its attitude is well-known (Hough and Moxon, 1985), namely a demand for higher levels of 'protection'. While the extent to which public opinion should influence Government decisions is a moot point, the people's representatives must go some way towards acting on the people's wishes (Shaw 1984).

To whom do the gaols belong? They are not solely the province of correctional administrators. The gaols service a whole justice system and the community. Is it appropriate for intake control to be initiated unilaterally by the keepers?

THE GO-STOP MESSAGES

Governments pass laws, the police uphold them and bring law breakers before the Courts. Governments prescribe sentences (which the Courts impose by exercising discretion within the maxima) for breaches of laws. The Corrective Services carry out the sentences. It seems inconsistent then if governments, having passed laws and sentences, wish to control legislatively or administratively the Court's capacity to hand down the sentences they have provided.

This interference suggests that while the government gave the police and courts certain powers, it does not wish them to utilise these powers either because it cannot afford to provide the service for which it has legislated or because it does not believe the service is effective or desirable. A government with such a view should revise its criminal code.

A JOB WORTH DOING IS...

If the reasons for controlling the intake of offenders into imprisonment are primarily economic, then greater savings could be made by revision of the criminal code. This would save funds at the front and middle of the justice system as well as the end. It would also save the police the frustration of seeing offenders fail to receive the sentence the law provides. In all likelihood the Judiciary would also be happier.

It is uncertain whether the public would accept decriminalisation of certain offences and lower sentence maxima on others while 'law and order' calls resound around the country. Nevertheless, such revisions would be more forthright than back-of-the-system options.

THE PETTY OFFENDER - DECARCERATION

It is popular amongst corrections officials to talk of decarceration for the short-sentence offenders, on what we term minor charges. Their perception, based on overcrowded prisons and restricted budgets, is unlikely to be shared by police, court or the public.

Magistrates and police would point out that many of these offenders have received community corrections options and have failed to negotiate the period. Many appear in courts a number of times per year, and while their offences may not have included violence, they may have incurred significant cost on the property owner. Most crime victims do not suffer violence, but do suffer loss. Their privacy is invaded; their house ransacked and their possessions stolen. Compensation is unlikely. There is as much outrage about petty crime affecting the many, as there is about the horror of one-off spectacular crimes and this is the foundation of the law and order campaigns.

Sentencers reach the point where, even with the best will in the world, they must incarcerate (Potas, 1985).

Life-style offenders are unlikely to respond to community corrections and are less likely to be positively affected by any rehabilitation programs in gaol. However, they feel the effects of community retribution. They are exposed to whatever deterrent effect imprisonment holds for this type of offender and are

unable to offend while they are out of circulation. However ineffective the process may be felt to be, it is one with which the community agrees. It is possible the community may pay less in imprisoning these offenders than by releasing them. A recent National Institute of Justice Paper strongly makes the case of more imprisonment on economic grounds (Zedlewski, 1987).

Perhaps years of close contact with the offending population inure corrections administrators to the work of 'petty' offenders. One suspects the community is prepared to pay for such offenders to be imprisoned. Only now is the well of community resentment beginning to be tapped (Marphan Poll, 1983, Observer, 1982).

PRISONS - INHERENTLY BAD?

Why is prison such a destructive experience? Personal experience and the volume of literature available indicate that prison experience is frequently negative. Hans Mattick, Director of the University of Illinois Centre for Research in Criminal Justice, said 'If man had deliberately set themselves the task of designing an institution that would systematically maladjust man, he would have invented the large, walled, maximum security prison' (Rand McNally, 1974).

The creation of positive social environments in correctional settings is poorly understood. The interaction of prison managers, officers, professionals, prisoners, architectural designs, program availability and applicability, prison rules etc., seldom creates a positive atmosphere. The coercive nature of imprisonment always emerges.

Designers of new prison buildings have become very clever architecturally, at wrapping buildings around staff nodes, to 'maximise efficiency'. The negative effects of these new buildings is much less apparent. Nothing could be as dehumanising as the new Series 270 cell block design in California.

Although the task of creating positive environments in institutions is a complex and daunting one, it must be undertaken (Insel and Moos, 1974). Regardless of the future of decarceration, there will always be prisoners. Containment and management strategies still need reworking. Only then perhaps will imprisonment generate less guilt among us.

REHABILITATION

The efficacy of rehabilitation is viewed too pessimistically. The word is even avoided with such terms as 'community reintegration' or 'resocialisation' used instead. The mid '70's

crisis for rehabilitation, primarily created by the reaction to the works of Martinson and his co-workers, caused considerable damage (Martinson, 1974). Correctional literature is still influenced by that time, and there are constant references to the failure of rehabilitation.

Martinson did not say rehabilitation did not work. The study was of 231 evaluative processes which were so poor that it could not be shown that rehabilitation worked. The inference can be made to the rehabilitation work itself, to some extent, but not entirely.

Regrettably, but predictably, many people for varied reasons, seized upon the opportunity to bury rehabilitation. Subsequent work by other researchers, e.g. Ted Palmer (Palmer, 1978), did not receive the same attention.

The general question of the value of rehabilitation in prisons is too large to address here. But there is a case for the rehabilitation of rehabilitation as an equal partner in the goals of the correctional administrators. Public attitudes, while reportedly strongly anti-offender and pro-imprisonment, are also pro-rehabilitation. This is not to suggest that the presence of viable rehabilitation programs in prison would be a reason for justifying imprisonment. Prisons would not be so destructive if there were a more integrated approach to the planning of such programs.

THE NUMBERS GAME

Some may still argue that the increase in crime and court appearance rates indicates the need, without further ado, for more prisons. But the crime rate figures are always subject to interpretation and the need for prison space has not necessarily grown proportionally with crime rates. This ambiguity is detailed in Imprisonment in America, (Sherman and Hawkins, 1981), which shows that using the same body of data, California liberals found it obvious that no more prisons should be constructed, and California conservatives found it equally obvious, only a couple of years later, that more construction money was absolutely necessary. The book goes on to show the present problems of polarised interpretations of data in America. It correctly contends that policy in the area of prison construction does not flow logically from the facts but rather from political and social values.

PRAGMATISM

Of concern to Victoria is that the present policy on prison intake/construction will be overwhelmed. Public, police and

judicial criticism may grow. Only small movements in power are necessary for the collapse of this standstill policy and practice. All that may be required is a portfolio change, an administration change, a concerted media challenge, a police campaign, a number of judges or magistrates making antagonistic sentencing remarks, or the retirement of supporting judiciary. The justice system requires the maintenance of some harmony between the components. While corrections have been the forgotten partner in the justice continuum, I suspect that the current discussion is a little too much of the the tail wagging the dog.

WHOSE GOALS?

What are the goals of Victoria's current approach? Are they system-wide goals? One suspects the goals have narrow support.

There has traditionally been a low level of co-ordination between the players in the justice system. A goal-setting exercise for the whole system is needed. No one player should dictate the policy to all the others.

After all, the policy of nett reductionism aims after all not only to restrict the prison system but the whole of the criminal justice system. Consultation seems appropriate. In the short term, one player going it alone may seem to succeed. This strategy, in its present form, closely resembles the 'deep-end strategy' employed by Jerome Miller in decarcerating juvenile offenders in Massachusetts:

> By this is meant, attention is given first to contracting the size of the prison system, the deep-end of the criminal justice process. Only after steps have been taken in this direction, do alternative sanctions serve a strategic role. The deep-end strategy reverses the conventional wisdom regarding alternative sanctions, which is that when these are made available, less use will be made of custody. There is sufficient experience available to be confident that this is an unlikely outcome. For alternative sanctions to replace custody, it is necessary that such sanctions be used not as a pre-condition, but as a consequence to contraction of the prison system (Rutherford, 1984).

THE REALITIES - THE REDUCTIONIST CHALLENGE

Governments are passing more laws that have imprisonment as a penalty and are increasing sentence penalties for many breaches.

Magistrates and judges, either in response to the perceived community mood or of their own volition, are increasing sentence lengths. The community appears to support imprisonment and longer sentences. Prisons are already overcrowded and many have poor conditions.

Against these and other pressures, the challenge to maintain reduced prison intake in real terms is a shaky one. The philosophy of the reductionist (along with the many barriers to the implementation of these ideals), is detailed in 'Prisons and the Process of Justice', (Rutherford, 1984). While it applauds the motives of reductionists, the book is depressing reading for anyone committed to the philosophy.

SUMMARY

While understanding the aim of the reductionist philosophy in limiting cell availability, such a policy, in less than the whole criminal justice system, is likely to be provocative to the other agencies and susceptible to shifts in power in governments and administrations. Despite Jerome Miller's initial success in lowering the amount of water in the pool and thus restricting the diving height, he did not last and his policies were reversed in large part.

QUEENSLAND

Queensland is in the process of constructing three new prisons. This may appear to be the outworking of the prison expansionist view. There will certainly be a gain in the nett cells available but some of the construction will be for the replacement of older prisons.

An increase in cell space is not the only approach being taken in Queensland. For some time community corrections have had a range of options available to magistrates and judges. One back-end strategy is the home detention program which is granted under very strict conditions. The parole process is being reconsidered by the parole board with a view to improving the processes of parole release. Prisons and community corrections meet regularly with the police and the courts to improve the co-ordination of policy and practice and improve the knowledge available in the justice system. Discussions are taking place in this forum and changes in policy, practices and attitudes are being gradually effected.

There is no government pressure upon the courts to control sentence length other than the availability of the normal process of appeal. Most judges and magistrates are well aware of the crowding situation in prisons. Watchhouses are holding prisoners for additional periods of time. While this is undesirable, it

is within manageable proportions at the moment.

The three prisons under construction are being built rapidly. The designs offer maximum use of space and are built with rehabilitation principles in mind. In doing so, security has not been compromised but rather increased. The designs offer opportunity for skilled managers to offer differential treatment in a secure design economical on staff. They also offer the opportunity to separate out prisoners who do not wish to participate in rehabilitation programs and those whose activities are considered detrimental to the progress of others.

The approach is a balanced one which resists the pressure of true expansionism, improves the conditions already in use, services the courts, offers diversionary programs, offers back-end relief to the prison system without being too interventionist, upgrades the potential for program delivery and encourages the development of a justice system-wide understanding.

Moderate prison growth is not only tolerable but is expected by the community.

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A POLICE PERSPECTIVE ON PRISON POPULATIONS

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INTRODUCTION

Prison overcrowding has been an issue of particular relevance to the South Australia Police Department in recent months. The issue is discussed here within the general context of human rights considerations. A specific example is presented to demonstrate how the police function can be affected by the growth of prison numbers. Finally, the impact of legislative reform and the introduction of alternatives to imprisonment on community attitudes and the police role are discussed.

GENERAL HUMAN RIGHTS CONSIDERATIONS

Firstly, the general issue of human rights, and in particular the rights of those deprived of their liberty will be discussed.

In putting the case for prisoners' rights Zellick, (1978) argues that a penal policy based upon such rights must do three things: it must respect the prisoner's inherent dignity as a person; it must recognise that upon imprisonment a prisoner does not surrender the law's protection; and it must ensure that there be just, fair and humane treatment of prisoners at all times.

Indeed, the Human Rights Commission Act (1981) states that:

> All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person (Article 10(1), Schedule 1; International Covenant on Civil and Political Rights).

Zellick cites three arguments supporting the case for prisoners' rights; the fundamental human rights argument, the natural justice argument and, what I have called, the rehabilitation effectiveness argument. The last concerns the premise that a penal system which is just, and which respects human dignity, will be more conducive to positive rehabilitation effects. The

natural justice argument suggests that the existence of formal and informal mechanisms whereby prisoners may be assured of fair treatment is crucial if one is to have a just and efficient penal system.

The fundamental rights argument constitutes the basic justification for prisoners' rights and concerns the maintenance of a satisfactory standard with respect to such things as accommodation, food, medical attention, hygiene and safety, and outlaws any form of cruel or degrading treatment of prisoners.

In the long term, all three categories are likely to suffer as a result of an overloaded criminal justice system. Sufficient resources will not be available to ensure that the mechanisms by which such rights are normally addressed can function in the proper manner. However, it is those rights incorporated under the 'fundamental rights' heading that are likely to be inadequately addressed in the short term.

THE RIGHTS OF THOSE DEPRIVED OF THEIR LIBERTY

The United Nations Standard Minimum Rules for the Treatment of Prisoners are generally considered to be the guidelines for acceptable conditions in penal institutions. As the result of a seminar ('Penal Philosophies and Practices in the 1970's', Australian Institute of Criminology, 1976) guidelines were drafted as to what were considered to constitute 'basic rights' for Australian prisoners, taking into account, among other things, the Council of Europe minimum rules and recommendations of the United Nations in relation to prisoners' rights (Bevan, 1978). These guidelines set out the acceptable standards of accommodation, food, hygiene, clothing, bedding, exercise and sport, medical services, discipline and many other aspects of prison life. It will be shown that, at least in the experience of the South Australia Police Force, prison overcrowding has led to circumstances coming dangerously close to violating these basic human rights.

THE IMPLICATIONS OF PRISON OVERCROWDING FOR HUMAN RIGHTS: CASE IN POINT - THE SOUTH AUSTRALIA POLICE DEPARTMENT CITY WATCH HOUSE

The facilities of the South Australia Police Department's City Watch House were originally intended for use as overnight or weekend holding cells only - and were designed as such. Unfortunately, they have been used for more than their intended design purposes on several occasions since 1986.

During the latter half of 1986, in order to reduce the number of inmates in Adelaide Gaol on humanitarian grounds, the Correctional Services Department began to refuse receipt of any prisoner under sentence, remand or warrant at correctional

services institutions. While this allowed achievement of an appropriate number of inmates, this situation necessitated the use of the City Watch House in housing prisoners for relatively extensive periods of time. Those prisoners would normally have been taken to Adelaide Gaol. In order to deal with the dubious legality of the situation, the City Watch House was declared a police prison in January 1987. At that time, the Police Department was assured that this would be a temporary measure - in the order of two months, and that the proclamation would be revoked pending the opening of the Adelaide Remand Centre and the introduction of a Home Detention Scheme.

During this critical time, resources in the City Watch House were sorely tested. Conditions were cramped and overcrowded and with limited hygiene and only basic showering facilities. Furthermore, there were no drinking facilities in individual cells, difficulties were experienced in keeping food warm, there was a limited availability of bedding, restricted opportunities for visitation rights and insufficient staff and facilities to permit adequate exercise. Although the City Watch House staff are to be highly commended for their overall handling of the situation and for their efforts in ensuring that basic human needs were met, it should be recognised that the extent to which such needs were able to be addressed was limited by staffing and other resource levels. The City Watch House was not designed for the long term accommodation of prisoners and should never have been expected to cater for the overspill from Correctional Institutions.

The situation led to considerable industrial unrest on the part of police officers as well as to prisoner protest with respect to the conditions both were expected to endure. Nevertheless, at the present time, the declaration of the City Watch House as a police prison has not been revoked. Thus this potentially explosive situation continues to the present date.

HALTING THE EXPANSION OF THE PRISON POPULATION

The various methods which exist for dealing with the problems of swelling prison numbers are well known. Therefore, rather than develop details of such schemes, their implications for the police department will be examined here.

(a) Sentencing, Parole and Bail Reform

Firstly, one must consider the implications of reform of legislation concerning the areas of sentencing, parole and bail. In South Australia there have been a number of significant changes to the legislation in these areas over recent years.

Bail. One such reform was the Bail Act of 1985, which resulted from a comprehensive review of bail procedures in South Australia (Office of Crime Statistics, 1986). This review demonstrated that there was a need to be more discriminating in relation to the availability of bail since, among other things, it was found that:

- 17 per cent of remandees were there because they simply could not arrange cash bail or secure recognisances, and
- More than 40 per cent of those remandees eventually found guilty did not receive sentences (O.C.S., 1986).

Both findings imply a certain amount of scope for reducing prison population.

Sentencing and parole. There have also been changes to sentencing and parole procedures in South Australia in recent times.

However, with respect to adult offenders, a review of sentencing practices since 1979 suggests that, if anything, sentences seem to have become more severe (O.C.S., 1986). Moreover, since the amendments to the South Australian Parole Legislation in 1983, it appears that while head sentences have increased only slightly, non-parole periods have increased significantly (O.C.S., 1986).

Despite this, the overall number of sentenced prisoners in South Australia has not returned to the levels experienced prior to the legislation. This highly desirable reduction in prison numbers has, nonetheless, been offset by increases in the number of unsentenced prisoners - the proportion of remandees in the South Australian prison population often being among the highest in Australia (Dawes and Morgan, 1987). Thus overall, prison numbers have returned to pre-legislation levels. Such a high remand rate, again, suggests considerable scope for a reduction in the prison population.

It is interesting to note that a very large proportion of sentenced prisoners - 60-70 per cent (Dawes and Morgan, 1987) - have terms of imprisonment of less than a month's duration. This raises the possibility of reducing prison numbers by greater use being made of the many alternatives to imprisonment for such short-term sentences.

In relation to the issue of sentencing, it is perhaps pertinent to comment on the growing concern that victims of crime ought to play a role in the sentencing process. There is a belief in some quarters that the involvement of victims in this process might

lead to an increase in the length of sentences, and therefore exacerbate the problem of prison overcrowding. However, this might not be the case. It has been suggested that victims are seeking involvement in the process only inasmuch as they can be satisfied that they have received adequate understanding and consideration of their concerns on the part of the judiciary, and would not, in fact, be pressing for harsher penalties (Whitrod, 1986).

(b) Alternatives to Imprisonment

It has been said that alternatives to imprisonment should be used as extensively as possible, and that imprisonment should only be a last resort (Nagle, 1978). However, a major dilemma that faces politicians is that of reconciling the community's expectations with respect to retribution and the community's ability to meet the increasing costs of imprisonment. The community may not see such alternative programs as adequately addressing the retributive function. Certainly a wide range of alternatives to traditional incarceration exist, including: work-release programs, halfway houses, open prisons, suspended sentences, periodic detentions, community work orders, fines and restitution and methods of diversion (Tomasic, 1979). Such schemes have a major advantage in being far less costly than imprisonment. It has been estimated that the cost of imprisonment outweighs the cost of probation or parole, some twenty fold (O.C.S., 1986). Thus, there would be substantial financial benefit to be gained from a reduced rate of imprisonment. Moreover, the burden of prison overcrowding would also be greatly alleviated.

(c) Implications of Reforms for Police

As one might imagine, there are many advantages and disadvantages associated with the types of reforms outlined above. Some are more obvious than others, and whether or not any detrimental effects can be offset by the benefits to be derived from the reforms must be carefully determined before any changes are implemented.

For example, a reduction in the number of prisoners on remand either through legislative reform of sentencing or increased use of alternatives to imprisonment might reduce police involvement in

- holding prisoners in police cells between court, gaol and prison, while they are awaiting trials etc.

- ferrying prisoners between the various criminal justice institutions.

and perhaps

- a reduction in the number of police currently routinely involved in court duties, through a 'freeing-up' of the court system.

However, 'there are no free lunches', and there might also be an increase in police workload, with respect to imprisonment alternative schemes, concomitant with a possible reduction of workload in the previously mentioned areas. For example,

- Although it is acknowledged that Correctional Services staff would have the primary obligation for monitoring those individuals subject to the new schemes, it is also considered likely that the police department will be involved, in some way, in ensuring that the conditions of the schemes are met.

- in addition, police would have to deal first hand with any failure of individuals on the new schemes.

- police might also have to deal with an increase in the number of warrants through non-payment of fines, resulting in an increased workload for police and possibly ending in imprisonment anyway.

Although by raising these matters, I run the risk of sounding overly pessimistic, it is important to emphasise that such factors are highly important considerations from the perspective of the Police Department. While the circumstances that surrounded the use of the City Watch House as a police prison are certainly undesirable from a police point of view, there may also be aspects of alternatives to custody that are equally unwelcome.

CONCLUSION

Others have mentioned that there is a crisis of public confidence in the criminal justice system. It is a fact that police and public alike tend to display a degree of emotionality when confronted by what they perceive to be inappropriate sentencing practices, early releases and schemes that do not conform to traditional punishment methods, and this is somewhat understandable. The community has a right to feel secure and protected from crime, so when they observe what they believe to be the administration of inadequate penalties, it strikes at the heart of what appears to be the only mechanism available to ensure that the perpetrators of crime in the community are safely 'locked away'.

As part of that same community, police officers have the same feelings, but may also come to see early release from sentences as undermining their own investigative and professional efforts. The profession of policing is a demanding and most often thankless one and is not facilitated by such beliefs. Feelings of frustration with the criminal justice system can arise, as can the notion that their efforts are pointless, if the end-product is perceived as being inappropriate.

It is therefore important to make the point that legislative reform and other changes to traditional criminal justice practices are only likely to succeed if they have widespread acceptance by the community. Police officers are part of that community. If familiarity with new practices and procedures and the theories underlying such changes are only addressed as part of the initial training regime, only the new recruits will have the benefit of such a detailed insight. For most police officers, and for the community at large, many reforms will be difficult to understand and are likely to be treated with scepticism - perhaps even cynicism, initially at least. For police officers such views will be even more pronounced if the changes are seen as increasing their overall workload and making an already difficult job even more difficult. Thus, whilst it is acknowledged that many reforms will be necessary to deal with the issue of growing prison populations, care must be taken to ensure that the public are fully conversant with the need for, and benefits to be derived from, such change.

At this point it might be pertinent to raise the issue of the role of government in the judicial process. Should they in fact have any role at all? It would, of course, be totally inappropriate for executives to instruct the judiciary in any way, and it is recognised that the judiciary must at all times retain their independence, political and otherwise. Nevertheless, the government must exert some influence, albeit in an indirect way, because they are the elected representatives of the community, and as public servants their role is to meet the needs and reflect the concerns of that community. Thus, inasmuch as this function is fulfilled, the government plays some part in determining judicial practices.

Prison overcrowding constitutes a serious problem for the safety and well-being of corrections and police personnel, for the community and for the prisoners themselves. Furthermore, it undermines many of the purported functions of imprisonment and neglects basic human rights. The situation should be immediately addressed if the integrity of not only the correctional system, but the criminal justice system as a whole, is to be maintained.

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OVERCROWDING - POLICE AND PRISONS

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I have listened with interest to the papers presented so far, and have been impressed by their realism, practicality and yet occasionally opposite points of view. The Victorian prison system has improved dramatically over the last few years especially in relation to prison conditions and the professionalisation of the custodial staff. Nonetheless, it is necessary to comment on some of the issues raised.

First, it is quite clear that the concept of prison crowding and its effects can be viewed from a wide range of sometimes disparate perspectives. The literature and the research in this area can at best be described as equivocal.

Ellis (1984), for example, reviewed the literature on crowding and density effects, and proposed interestingly that crowding is an 'attributional' label and should be approached as a major dependent variable. That is one that can be manipulated or affected by other mediational variables such as population age and transiency, or program availability. This implies that reported infraction rates are an unsatisfactory measure of institutional violence and its relationship to crowding. It may in fact be the case that variations in types of social control may lead to variations in violent forms of deviation. One can refer here to Mr Kennan's valid and important comments in relation to the measuring and reporting of crime rates.

To illustrate this point (using my own department as an example) over the period I have been manager of the police psychology unit the number of police officers presenting with

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stress related problems has increased. Does this mean that more police are developing stress disorders? A more likely explanation is the change in staffing within the unit and the mandatory consultation for police involved in shooting incidents.

Infraction rates and crowding figures are subject to a wide range of interpretations and must therefore be packaged and marketed to the community in the correct manner. It is my contention that much of the public criticism directed at the prison system, from both the media and from other parts of the criminal justice system, is a result of poor marketing of policies, strategies and rationales which has led to some general misconceptions.

Gaes (1984) has pointed out that the concept of prison crowding may be viewed from two further perspectives, both of which have been validated from my experience in the Victorian prisons:

1. A prison's level of crowding may exceed an individual prisoner's tolerance without affecting the institution's ability to meet general health care, education safety and programming needs;

2. Conversely - these needs may not be met yet the crowding level may not have exceeded the individual prisoner's tolerance of a 'crowded' environment.

In other words, what is important is the individual's PERCEPTION of his conditions, particularly as the literature has clearly shown that the reality of crowding and what constitutes crowded conditions is difficult to establish.

The prisoner who believes he is 'crowded' may show negative physical and emotional responses - i.e. 'negative stress reactions' such as depression, anxiety or anger.

The behavioural consequences of such emotions are well-known to the correctional administrator and include suicide/self-destructive behaviours; violence - both between inmates and officers, and among inmates; and poor health.

Since a person's perception of their environment is affected by other factors (such as availability of programs, availability of health services, opportunity for gainful employment and reasonable standards of accommodation), it is possible to alleviate the impact of crowding to some extent. Other research has stressed that reduction in inmate turnover, reduction in prison size, and elimination of dormitory accommodation will also contribute to minimising the negative aspects of prison overcrowding (Cox, McCain and Paulus, 1985).

It is not only the inmate's perception that is central to this issue. Regardless of the 'real' relationship between crowding and violence/stress - what is important is the fact that the community often believes that such a relationship exists.

Fuelled by media reports that are often sensational, the community's beliefs are however based upon intuitive logic, i.e. that extreme overcrowding is bound to cause problems. Unless the public is convinced otherwise it will continue to accept such stories as accurate.

It is also no accident that it is invariably at times of high media interest that the system tends to experience other problems such as industrial problems among correctional officers - who have often been forced to work in poor conditions, which invariably worsen as crowding increases.

Communication problems that exist between and amongst the various arms of the criminal justice system exacerbate the situation. A good example of this type of problem is the confusion that exists in relation to the so-called 'early release schemes' and the related use of police lockups as alternative imprisonment facilities. It is quite clear that at least until very recently, there has been little understanding of the rationale and procedure underlying the early release schemes (more accurately labelled pre-discharge temporary leave), fine default, pre-release and parole. Only lately have these programs been discussed in any detail with senior members of the force. It therefore seems unlikely that the average police officer has had the mechanisms of these schemes explained to him either.

It is often believed that the Office of Corrections enjoys implementing these programs as some sort of malicious attempt to undermine the criminal justice system. Nothing of course, could be further from the truth. Prison officers' morale is negatively affected by having to implement such schemes, in much the same way that the morale of the police officer is affected. No group that is impacted upon by these mechanisms likes them - in fact some prisoners have been heard to make disparaging remarks about them! Yet at the same time these groups often know very little about the schemes. It is our responsibility to ensure that this situation is remedied as quickly as possible.

USE OF THE MEDIA

The media can be most effective in presenting a point of view, or in educating the public in regard to a particular issue, but is under-utilised by the correctional system.

For example, it is rare for the Office of Corrections or other relevant arms of the criminal justice system to be seen to put

forward a point of view on issues such as the early release schemes. The police media unit, on the other hand has been extremely effective in presenting a police point of view - one that does not always take into account the prisons' point of view!

MORALE

One important by-product of the lack of marketing and poor communication strategies is a problem with morale. If an officer feels that he is not being fully informed, or that some of the programs run by his department contravene his personal correctional philosophies, then his morale will suffer. When there is a general feeling of low morale, the likelihood of industrial disputation increases, and the ability of the prison to provide effective programs decreases accordingly.

My recent clinical experience within the police force has shown that poor morale is often related to a lack of confidence in the criminal justice system. This can manifest itself in the inappropriate use of discretion or, at its most extreme, in the development of a vigilante mentality.

To avoid these types of problems the Victoria police and the Office of Corrections must work closely together, with a unified media package to provide the public and each other with an accurate explanation of the programs implemented to alleviate the overcrowding problem. Regular formalised communication should occur between the relevant sectors of the criminal justice system to ensure an adequate flow of information. Sentencing information, crime rates and prison infraction figures must be presented in an accurate and contextual fashion and must be marketed in a palatable, understandable way. One can only reinforce the comments of previous papers that research into these issues is fundamental to the long term effective management of the criminal justice system. After all marketing is MOST effective when there is some substance behind the strategies being employed.

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A FURTHER COMMENTARY

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A GENERAL PROBLEM FOR THE CRIMINAL JUSTICE SYSTEM

The problem of prison crowding is a general problem requiring a general solution extending beyond the confines of the prison and what prison administrators can do. This has been recognised in Victoria where there is close co-operation between the Law Department, Police and the Office of Corrections, in implementing policy.

TWO BASIC OPTIONS IN RELATION TO PRISON CROWDING

Because of the crisis of overcrowding in all Australian prisons (except Tasmania), governments are faced with two options: (1) to impose a moratorium on the building of more prison space and to adopt policies which will reduce existing prison crowding; and (2) to build more prison space. The former policy is being adopted with some success by the Victorian Government. It has imposed a ceiling of 2,000 prison spaces and is actively pursuing policies to keep to or reduce this level. This does not prevent the construction of better prison facilities on a replacement basis. (It is freely acknowledged that much existing accommodation is unsatisfactory). The other option of building more prison space will lead to a dramatic escalation in expenditure. A serious question arises as to whether taxpayers will bear such a cost given the equivocal evidence in relation to imprisonment as a method of achieving crime prevention. Moreover, limiting available prison space will encourage debate about, and development of policies, restricting the use of imprisonment to cases where it is necessary. A reductionist policy should be adopted by governments throughout Australia.

THE VICTORIAN EXPERIMENT

In an area where it is often claimed that nothing works, it is encouraging to see that the policies being pursued in the criminal justice system in Victoria to maintain a relatively low rate of imprisonment are succeeding. In other words, it is no longer possible to say that it is all 'pie in the sky' because there is a concrete example to point to. The key features of the success so far seem to be:

- the co-operation of the various agencies involved in the Victorian criminal justice system and the adoption of a policy of providing non-custodial sentencing options which are appropriate for serious offences.

- communicating that message effectively to the community.

AVAILABILITY OF PRISON SPACE AS A FACTOR IN SENTENCING

From time to time it is suggested (and various North American jurisdictions have adopted this approach) that prison space should be a factor which the sentencing court takes into account in deciding whether an offender should or should not go to prison. Although my view is clearly that imprisonment should be a sanction of last resort, I think that the attempt to achieve this end by the court having regard to available prison space can lead to problems. Does this mean that if, for some reason, a good deal of prison space becomes available, courts should be encouraged to send people to prison? On the other hand if, for some reason, there came to be very few prisons, does this mean that courts should not send extremely serious offenders to prison simply because there is no space? It would seem that there are serious difficulties with this approach and that the objective of using imprisonment as a measure of last resort should be achieved in other ways. (For example, by providing statutory guidelines for the use of imprisonment as a sanction.)

IMPRISONMENT AS A PUNISHMENT OF LAST RESORT

It is now widely recognised that it is desirable for imprisonment to be used as a measure of last resort. In various jurisdictions (in Victoria, in Federal legislation and in New Zealand) the principle has been laid down by statute. In other places (for example, Western Australia) the courts have adopted the approach without waiting for a statute. An important inquiry by the Canadian Sentencing Commission has made similar recommendations. The Australian Law Reform Commission originally recommended the principle which was subsequently adopted in Federal legislation. The Commission has since argued further for statutory presumptions as to the use of imprisonment or non-custodial penalties for various offence categories. A similar approach was adopted in the New Zealand Criminal Justice Act 1985 and by the Canadian Sentencing Commission.

THE NEED FOR RELIABLE INFORMATION

The Australian Law Reform Commission has pointed out many times the lack of adequate information about sentencing issues in Australia. As a result, the ability of the courts to operate effectively is hampered. Likewise, the media and, hence, public

opinion, have no ready access to detailed, accurate and reliable information in relation to sentencing matters. This in turn creates problems in relation to public confidence in the sentencing system when judgments are made on an ill-informed basis. It can be argued that a sentencing commission could play a key role in the collection and dissemination of information about sentencing issues in Australia. This would assist police, prosecutors, courts and correctional officials. It would also be of benefit to the media and ultimately the public. It now appears to be more widely accepted in Australia that a body such as a sentencing commission should be established. The Victorian Sentencing Committee has recommended a Judicial Studies Board. New South Wales has already established by legislation a Judicial Commission with certain functions related to the collection of sentencing information, as well as the education of judicial officers. The Australian Institute of Judicial Administration has developed some initiatives in relation to the education of judicial officers. The Australian Law Reform Commission has long recommended the establishment of a sentencing commission. Significant differences between the Law Reform Commission proposal and the other bodies mentioned include the broadly based composition and wider range of functions of the model proposed by the Commission. While these developments are desirable, it should be acknowledged that resources are scarce and it may be necessary to co-ordinate the activities of these newly established bodies so there is no duplication of effort.

NEW PENALTY STRUCTURE

Penalties have historically been allocated to offences in Australia on an ad hoc basis. This has led to an inconsistent, even chaotic, penalty structure which does not reflect community values in Australia in the late 1980's. A comprehensive review of legislative penalties is required in Australia. This entails assessment of the seriousness of offences and the penalty scales which ought to apply. Ideally, such an exercise should be undertaken in conjunction with a review of the substantive criminal law and criminal procedure. People are often surprised by the fact that there is no uniform law or procedure in Australia. Likewise there is no uniform law relating to punishment. Unfortunately, there are no official inquiries being undertaken at this stage in relation to uniform criminal law procedure. Nevertheless, valuable progress can be made by looking at reform at the punishment end of the process and reform of that aspect should not await the establishment of a review dealing with all aspects.

STRATEGIES FOR REDUCING PRISON POPULATION

In conclusion, a comprehensive approach is desirable. This might include consideration of:

- Prosecution policy (assessing the extent to which diversionary strategies such as the use of the caution and other methods of pre-trial diversion can be used).

- A review of remand in custody. Currently the proportion of prisoners on remand throughout Australia is too high. In some cases it represents up to 20% of the existing prison population.

- A review of enforcement practices. Imprisonment need not be the automatic sanction for failure to comply with a non-custodial penalty. The problem of imprisonment of fine defaulters is well-known and a useful contribution could be made by abolition of imprisonment for fine default, except perhaps in the case of wilful default. However, it is less well-known that imprisonment is generally the back-up sanction for failure to comply with other non-custodial penalties, such as probation and community service orders. Also, it may be possible to reduce the amount of imprisonment by reviewing the approach to revocation of parole for minor breach of conditions.

- Establishing statutory guidelines for the use of imprisonment as a sanction only where no other form of penalty is appropriate. (This may include presumptive guidelines for courts in relation to the use of non-custodial penalties for various offences.)

- A critical approach to netwidening. In other words, careful scrutiny of whether existing or newly proposed alternatives to imprisonment are genuine alternatives to imprisonment, or merely 'alternatives to alternatives' is required;

and finally,

- An approach which addresses problems relating to victims and offenders separately. The needs of victims are not necessarily (nor even best) addressed by a more punitive approach to offenders. This is a common myth which should be exposed.

A MAGISTRATE'S VIEW

Clarrie Briese
Chief Stipendiary Magistrate
New South Wales

The approach taken by Murray Gerkens, particularly his attitude to imprisonment, is shared by many magistrates and judges in New South Wales.

A number of matters could be taken up from Murray's excellent paper. Two such issues are first whether sentencers in Victoria are more active in using alternatives to imprisonment and second, where imprisonment is used, whether Victoria imposes shorter terms of imprisonment than New South Wales.

Overall, sentencers in New South Wales are as much aware of the problems posed by prisons as are their counterparts in Victoria, but imprisonment rates in Victoria are substantially lower than in New South Wales. Why is there a difference?'. Are Victorian sentencers more knowledgeable, more advanced, more sophisticated, more humane?

One explanation for the difference in imprisonment rates between the two States could be that the crime rate in New South Wales is greater than in Victoria. Don Weatherburn (Jurisdictional Differences in Imprisonment Rates, 1987) strongly believes that statistics and other material supports this view, and argues that there are two popular explanations for Victoria's lower imprisonment rate - firstly, that offenders imprisoned in Victoria generally serve shorter periods of imprisonment and, secondly, that imprisonment as a sanction is employed less frequently than other dispositions, such as community corrections in Victoria as compared with New South Wales.

The available evidence is inconsistent with the first proposition and there is no convincing evidence to support the second.

Taking proposition 1 first, Figure 1 shows the distribution of expected sentences in Victoria and New South Wales. The data is drawn from Table 35 of A National Prison Census (Walker and Biles, 1986).[1].

An inspection of Figure 1 shows that the expected sentence distributions of Victoria and New South Wales are very similar. Indeed, if anything, Victorian prisoners serve slightly longer

periods in custody than their New South Wales counterparts. The difference in imprisonment rates is therefore not attributable to differences in time served between the two jurisdictions.[2]

On Proposition 2, Victoria has an extensive system of community corrections available to any offender convicted of an imprisonable offence. Don Weatherburn argues that New South Wales has no comparable scheme, I disagree with this. The Victorian approach is more logical and more comprehensive in the way it is framed, but essentially if a sophisticated sentencer wants to put a person on a community based order in New South Wales, he can certainly do so. It is simply a question of the sentencer's philosophical approach.

Richard Harding, in his article in the Australian-New Zealand Criminal Journal (1987), has suggested that the availability of this system may divert many offenders from prison and account for the lower Victorian imprisonment rate. His argument was directed at imprisonment rate differences between Victoria and South Australia, but may be extended to New South Wales. He observed that the ratio of sex offenders and burglars serving community correction orders, rather than terms of imprisonment was higher in Victoria than South Australia. Having noted this, he pointed out that, if the Victorian ratio were applied to South Australia, its imprisonment rate would drop. From this he concluded that, 'The current imprisonment rate disparities between Victoria and South Australia could be wholly attributed to different sentencing practices in relation to these two categories of offender'.

Don Weatherburn says that such a conclusion does not follow from the premises. It assumes that South Australia imprisons the sort of offenders which Victoria places on community corrections. The higher community correction ratio in Victoria may simply be due to a tendency in Victoria to use community corrections rather than recognisances and/or fines. On this argument, Victoria and South Australia might send similar proportions of sex offenders and burglars to gaol, but differ in their use of recognisances, fines and community correction orders for burglars and sex offenders not sent to gaol. If this were true, differences in imprisonment rates would have nothing to do with the relative usage of community corrections dispositions. It is worth noting that the definition of sex offender employed by the Australian Institute of Criminology and on which Harding's argument is constructed, is very broad and would include categories of sex offender for whom non-custodial sentences are appropriate.

Viewing imprisonment rate differences from another perspective - Figure 2 shows the distribution of the number, not the percentage, of prisoners serving expected sentences of varying length in New South Wales and Victoria (same source as

Figure 1). A comparison of the two figures shows that while the sentence length profile is similar for New South Wales and Victoria, there are many more prisoners at most levels of sentence lengths in New South Wales than in Victoria. This suggests that differences in imprisonment rates between the two States are due to differences in crime rates - at least among those categories of crime which typically attract a sentence of imprisonment. Two important facts point to this possibility. Firstly, since 1985 New South Wales has been investing large amounts of money in policing drug related crimes. In the first eight months of 1985, drug supply charges rose by 31% over the preceding twelve months. The work of other squads, such as the Anti-Theft Branch may be having a similar effect. Secondly, urbanisation and youth unemployment are factors positively associated with higher crime rates and New South Wales is both more urbanised and recently has had higher rates of youth unemployment than Victoria. It would be quite absurd to compare the crime rate in New South Wales to the crime rate in the ACT. But that is what is being done here. Why would New South Wales be identical to Victoria? Statistics indicate there is significantly more serious crime being detected for which people are being convicted in New South Wales than in Victoria, which accounts for more people being in gaol in New South Wales than in Victoria. Other inferences are also possible such as that the police are more effective in New South Wales than in Victoria, for example. While these considerations do not prove that differences in imprisonment rates between New South Wales and Victoria are due to differences in crime rates, they certainly invite closer examination of the possibility.

If the above is true, then more imaginative, resourceful alternatives to imprisonment than presently exist need to be devised to get more people out of gaols in New South Wales. These schemes would need to have credibility for the sentencers and for the public. There is a real possibility that present alternatives to imprisonment, based as they are on the probation service, are to some extent losing credibility with sentencers. This means that the probation service would need to be more resourceful in the supervision of the people under their control. An extreme example would be a situation where a person who was certain to be imprisoned had the option of the probation service delegating a volunteer to live with that person 24 hours a day. This would sound credible and may be taken up by the sentencer and by the public. They may allow it because the person is, in fact, being supervised 24 hours of the day. These are the types of schemes which need to be devised if, in fact, we are to seriously tackle prison overcrowding.

I support the call for more information and more accurate research work in all these matters. More research work is needed on the system as a whole before we can make sensible suggestions

for solutions. For example, how much damage is done to the community when people are now left in the community under supervision? Perhaps considerable damage is being caused by recidivist persons on our present alternatives to imprisonment. But perhaps the damage is small. We simply don't know.

A few points should be made concerning magistrates - the people who are responsible for levying most of the fines. From some media presentations, the impression is that there are large numbers of people in gaols imprisoned for non-payment of fines. In New South Wales, this is roughly 70-80 persons per day. It is the throughput which is of concern. Removing imprisonment for non-payment of fines would considerably reduce prison staffs' clerical work but only turn up an extra 70 or 80 beds per day. It is a lot of beds, but not out of 4,000. These people are also put into maximum security prisons, and it is difficult to understand why minimum security prisons are not used for this purpose.

Remands is another area needing attention in New South Wales. Many people are charged by the police with relatively trivial offences. Bailed to a court, the person often does not turn up, requiring a warrant to be issued to bring him or her into court. Then because the person has not previously appeared, bail conditions are set. Sometimes the person cannot meet the bail conditions and is therefore kept in custody. Instead of this process, what is required is a simple ex parte provision for persons failing to appear after arrest for certain minor charges, enabling the Courts to impose appropriate fines forthwith. A new Court Attendance Notice scheme is about to be introduced into New South Wales and it may remedy the problem.

Considering the criminal justice system as a whole, there are far too many people appearing before the magistrates courts. Hundreds, indeed thousands of them could be dealt with by infringement notices. There is no need to bring people before a court where there is going to be a standard fine imposed. Take middle-range drink-driving charges for a first offender. The penalty is going to be generally a fine of around $300 or $400 and disqualification for 3 months. Why virtually require the defendant to employ a barrister or solicitor or use the Legal Aid resources of the State when an appropriate monetary penalty and period of disqualification could be fixed by an infringement notice with a right to go to the court if desired. There are literally thousands of these sorts of offences which continue to be dealt with by our courts, wasting resources which could be put into more prison beds.

CONCLUSION

One has the impression that Victoria has always had a low imprisonment rate, even before it started to dream about alternative policies. Since Victoria was going along perfectly well without these additional community based orders (marvellous though they sound in themselves), are they needed? Sometimes communities need to rely on myth-making when certain truths become unpalatable. This can be done either by design or unconsciously simply through faulty information. In the Victorian case, it seems to be the latter. Myth-making that they have a more humane, advanced approach to the criminal justice system than, for example, in New South Wales. The truth is that there is just far more solid crime in new South Wales and one suspects that if the population, including the sentencers, were substituted, the result would be exactly the same.

FOOTNOTES:

1. Frequencies have been converted to percentages so as to show the relative frequency of sentences of a given length between the two jurisdictions. The expected sentence is essentially the period in custody a prisoner was expected to serve (taking remissions into account) at the time of the sentences.

2. Comments from the floor suggested a flaw could lie in the fact that the types of offenders were not matched, such as length of sentences for armed robbers, murderers, etc. Victoria probably has a higher proportion of heavy prisoners serving longer sentences. New South Wales may have more traffic offenders serving shorter times. A valid comparison would be between appropriately matched groups.

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FIGURE 1

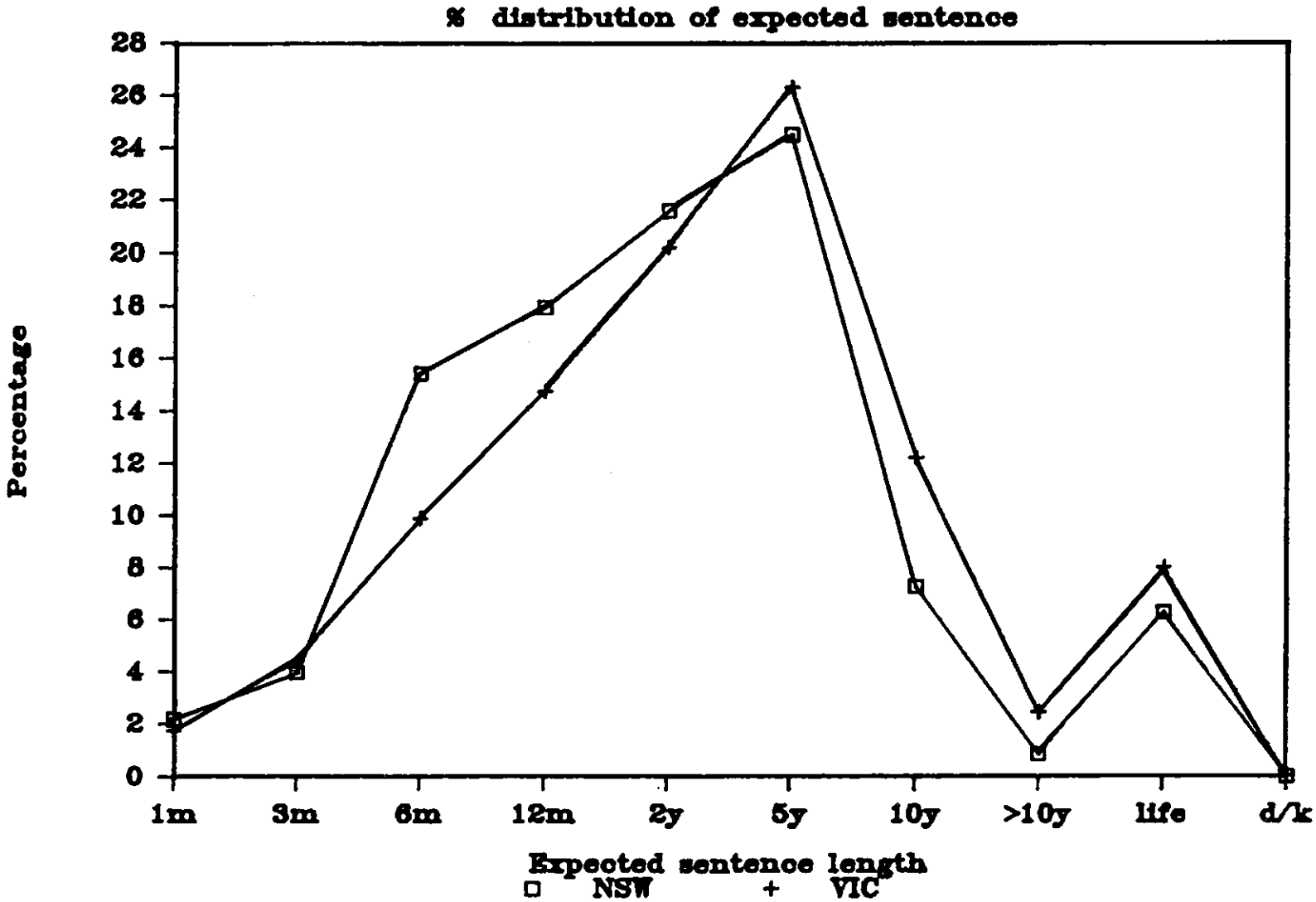
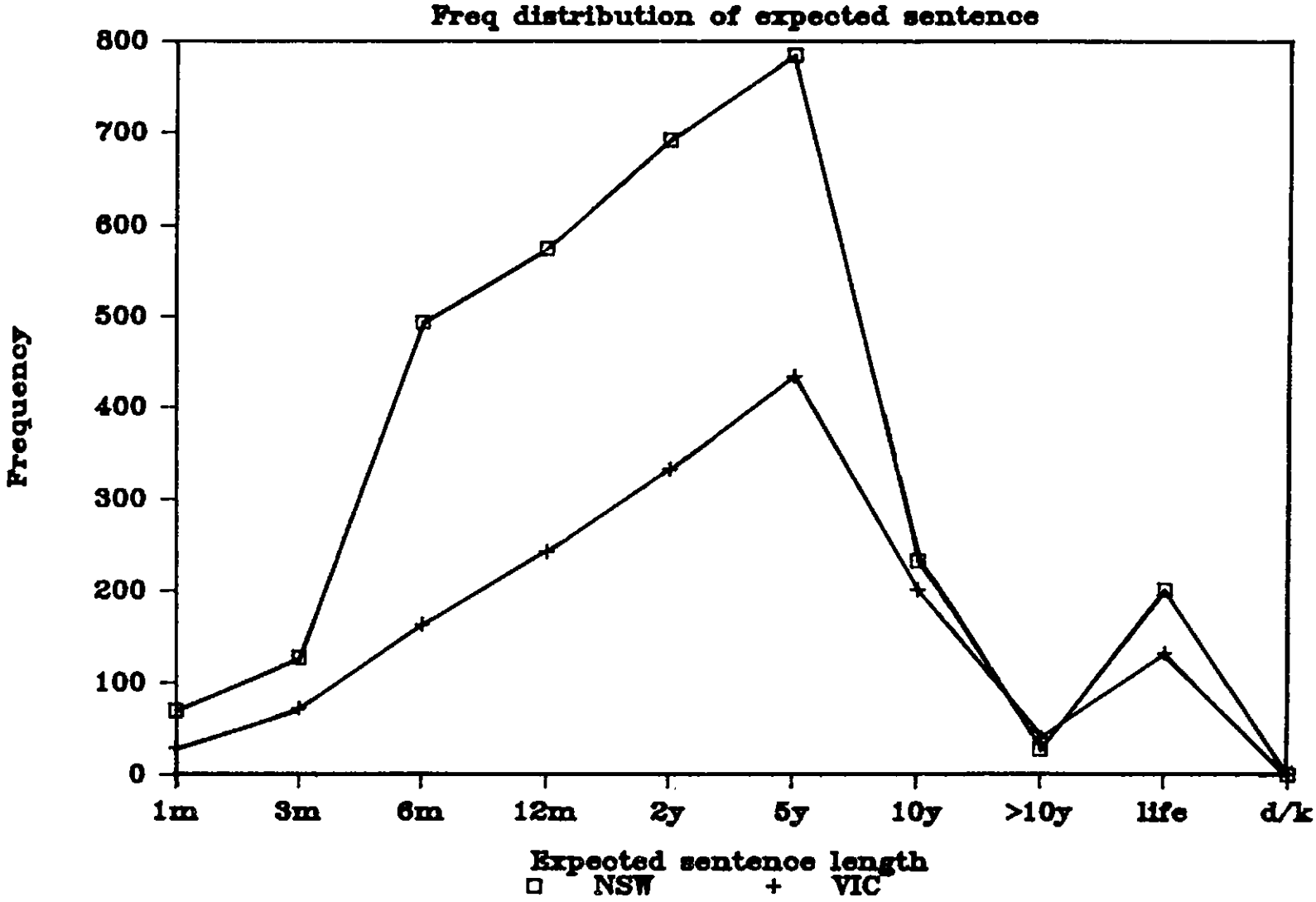

% distribution of expected sentence
Percentage
28
26
24
22
20
18
16
14
12
10
8
6
4
2
0
1m
3m
6m
12m
2y
5y
10y
>10y
life
d/k
Expected sentence length
NSW
VIC

FIGURE 2


Freq distribution of expected sentence
800
700
600
500
400
300
200
100
0
Frequency
1m
3m
6m
12m
2y
5y
10y
>10y
life
d/k
Expected sentence length
NSW
VIC

CROWDING AND PRISON MANAGEMENT

Tom Abbott
Director of Prisons
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Victoria

RECENT HISTORY - U.K. EXPERIENCE

Speaking here on the management of overcrowding I am unclear which part of the U.K. overcrowding history to address. Should it be the overcrowding of the early '70s when the prison population was 38,000 and the then Home Secretary said that if it were to exceed 40,000 it would be intolerable (perhaps suggesting what is known in Victoria as a 'bed led' system)? Should it be the mid '70s when with the population nudging 43,000, the then Director General observed that the effects of overcrowding had created an affront to civilised society? Should it be the late '70s when the Home Secretary called for the use of imprisonment as a sanction of last resort? This appeal was followed shortly by another Home Secretary giving his famous 'red meat for the blue rinses' speech where he promised longer sentences for certain types of crimes and called for more and broader use of detention centres for young offenders in certain categories. He went on to pledge that the police cells which were themselves becoming crowded with remand prisoners, would be emptied by the 1st of January, but I seem to recall by the 2nd of January remand prisoners were once again finding their way into police cells.

At about the same time that he announced his war on crime the then Home Secretary, prudently also announced an ambitious building program which would provide 5,000 places by the end of the decade (that is, 1990), a building program which placed a 500 bed category 'C' prison on stream every year from mid 1985. The projected population for 1990 was 49,000. This morning The Canberra Times reported that the population for England and Wales had exceeded 51,000 (The Canberra Times, 30 September 1987).

Another overcrowding crisis occurred in the early '80s when the Prison Officers' Association (the union for prison officers) refused to allow any more prisoners into some of the larger city gaols and remand centres - this emergency was met by the conversion of military camps into temporary prisons administered by the Prisons Department and manned military personnel.

In 1985 the population took another lurch upward and the pressure of numbers, even on a rapidly expanding building program, became

inexorable. Last month the Prime Minister, with a third general election just behind her, announced special remission for over 3,000 prisoners in certain categories in order to get the population down to under 50,000. This gave temporary relief, but it is likely that this respite will be a brief one.

It is evident from all this that it is difficult to isolate a particular event of the last decade where it could be said that that was when overcrowding started.

I think it is important to observe that overcrowding in England and Wales cannot be separated from what was happening in society during that period. The Commissioner of Police for the metropolis asked for 3,000 more staff in order to properly police the inner urban areas. Other Chief Constables faced with civil unrest in places like Toxteth, Handsworth, Brixton and Tottenham also bid for large increases in staff resources. The police pointed to low clean up for burglaries, car thefts and increase in crimes of violence, particularly rape, to pressure politicians for yet more staff. Curiously I can never remember similar pressures being brought to bear by prison administrators, who seem to simply swallow and get on with the job, although more staff have been recruited to man new prison places, with pressure elsewhere on the system to attempt to reduce staffing levels.

My role in the overcrowding crises was a fairly minor one. Along with many of my colleagues I was given an opportunity to govern. I had Beckenham, a camp situated in Lincolnshire and one of two converted army camps. The purpose of Beckenham was to relieve pressure on the large extremely overcrowded locals such as Manchester and Liverpool. It was quite a good gaol to run. By virtue of its population - mostly 'long-terms' requiring maximum security - I was never short of resources. I never felt overcrowded and indeed, because of a program of refurbishment, I had 120 empty cells. In some ways that was the problem across the service - the available beds were in the wrong places.

At the time of the 'big bang' for population in the early '80s, I took into my camp short-term sentenced men from Strangeways Prison in Manchester to help relieve the pressure there. My most lasting impression of the camp was that staff and prisoner morale was very high indeed. It was a bit like the 'Klondike'. It was very cold, there was lots of mud, wooden huts and people digging away. From my point of view, it was refreshing to get back into a setting which demanded a hands-on role, more like the traditional role of Governor.

Sir James Hennessey, the Chief Inspector of Prisons, with whom I once had the honour to work, reported that the prisons which were the most overcrowded, (largely the crumbling Victorian prison estates) were the worst places for facilities such as baths, toilets, visiting rooms and associated areas - which may

have alleviated the cramped conditions. The same prisons were often lacking in educational work programs for prisoners because the supervisory staff required (particularly in industries) were frequently transferred to other urgent duties. The daily routine, which is so important to the running of a prison and to inmate adjustment, was often disrupted. We have to be very careful when looking at prisons and blaming those sorts of things on overcrowding alone.

I have governed prisons where programs have been cut for reasons which may have been presented in the annual report as a consequence of overcrowding, but have in fact been cut for other reasons: in order to control the overtime budget; because of staff shortages; or because of a need to reprioritise the life of some of the systems and regimes within the establishment.

OVERCROWDING AS A STATE OF MIND

In the early '80s Governors were asked to define their overcrowding figures. These figures were assessed at four levels. One level was the certified normal accommodation (CNA) - the number for which the prison was designed. The second level was an overcrowding figure - the number where the prison could accommodate, feed and provide normal services for an indefinite period over and above the CNA. The third figure was the emergency overcrowding figure - this was the number of prisoners who could be housed, fed and slopped out without impacting on the prison regime. The fourth figure was the 'bust' figure which was the number of prisoners we could hold in a prison for 24 hours without the drains backing up and the roof caving in. There were places like Bedford, with a CNA of about 150 holding 350 prisoners; Liverpool and Wormwood Scrubs designed for 900 or so prisoners performing the daily miracle - holding, feeding and slopping out 1800 prisoners. Kitchens designed to produce 1,000 meals a day were putting out 5,000 meals a day. From time to time the drains did back up.

A point worthy of note is that I clearly recollect that my colleagues working in the worst of these places reported that staff and inmate morale was good, staff sickness rates were low and in some places there was a noticeable drop in the numbers of prisoners placed on report for infringements of the code of discipline. That may have been because curtailment of the regime reduced the opportunities for prisoners to get into trouble. I think perhaps the doom and gloom we might associate with overcrowding in our minds was not necessarily realised in the prisons themselves.

I don't wish to trivialise the effects of overcrowding, but it would be equally unhelpful to exaggerate them merely to feed the prejudices of this audience. What I am saying is that in those cases where the prison was well led, it was very much the 'Spirit of the Blitz'.

I have not read any current works on the convict settlement in Australia, but I do seem to recall that Bentham was said to have described the First Fleet as an 'interesting experiment'. Indeed there are some indications that it was presented as a piece of enlightened Georgian policy designed to get criminals out of sight and out of mind and at the same time be used as an experiment in colonisation. It must not be forgotten that George had an expensive Colonial war to pay for, but I find it difficult to accept that he did not have a Chancellor of the Exchequer somewhere saying that the most effective way of dealing with the problem of overcrowding was not to build more prisons, but to think laterally and look for other, less expensive options. The extent to which that has been picked up should not be minimised. Prior to leaving England, I was able to see some of the First Fleet re-enactment preparing to sail. I give you fair warning that some of those ships were lying very low in the water indeed!

OVERCROWDING AND USE OF POLICE CELLS

One pressure which is not currently around for us in Victoria, but figured in my English experience, is that when police cells were used to house remand prisoners, the police billed the Home Office Prison Department (about $300 per night in London).

A Director of Prisons has a responsibility to care for the people who are in police custody, but who should be in prison. This is a problem we cannot turn our backs on.

The pressure to relieve police cells is persistent and the issue in the public mind, is a compelling one. In Victoria we have an enlightened Minister whose interest in prisons goes far beyond any political good they might do him. Both the Minister and the Director-General are as close to prison reformers as I have ever met, but prison reform is a very high risk and vulnerable strategy to pursue. Prison numbers are almost impossible to predict. The only sure thing is that, as beds become available they will be filled unless, at the same time as additions to prisons are made, bulldozers move in and knock down the old facilities.

It must also be acknowledged that in Victoria a change in Minister or ground swell forced by 'law and order' as an issue could expose a 'bed-led' policy as a very frail initiative indeed. As in the U.K., the premise that prison numbers are demand-led is compelling and attractive to politicians, much of the press, most other parts of the criminal justice system and is a type of kneejerk for the man on the street.

So far, all the evidence shows that large prison building programs, however ambitious, are a folly. If we do not learn that then we learn nothing. A folly, not because offenders who

commit certain offences should not be locked up, but rather because, for so long as we provide bigger better and more expensive prisons we will not be sufficiently lateral in our thinking to consider alternatives.

I feel a bit of a charlatan discussing overcrowded prisons in the British or Australian context. We are not nearly as badly off as elsewhere. I am not talking Third World. Indeed our own situation compared to what is happening on the West Coast of America is very small potatoes indeed. Where we used to look to California in the early '60s as the 'Mecca' of prison reform - people used to fall over themselves to go there - their system is now bursting at the seams. From many accounts their prisons are places of despair and places where I am sure that the obligation of protecting a prisoner from other prisoners is not met.

REMANDS

In terms of remand prisoners, overcrowding is tolerable to a point. I dare say that most prisoners would much rather be in the safety of their cells than out on some 'program'. Perhaps if I were to experience the bluestone of Pentridge radiating out heat in high summer in Australia, I might not see things that way. But we have to be careful which aspects of overcrowding disturb us.

Out-of-cell time, like so many other well-intentioned 'reforms' has no merit of itself if it simply exposes the prisoner to a predator. The cell as a refuge is a notion I hear time and again from prisoners - programs are seen by a prisoner as activities which place him at risk.

I see that I come comparatively close to supporting an argument which almost encourages overcrowding. That is not my intention. I am simply suggesting that an overcrowded prison which is well-managed and humane can cope with most pressures. Any institution, overcrowded or not, which does not possess these qualities really will be an affront to a civilised society.

ELECTRONIC TECHNOLOGY AS AN ALTERNATIVE TO PRISON

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BACKGROUND

In 1977 Judge Jack Love of Albuquerque, New Mexico, was doing some extra-judicial reading. He was reading a Spiderman comic. In it the crime fighter, Spiderman, had attached to him, by a criminal, an electronic bracelet that allowed the criminal some advance notice of the crime fighter's whereabouts. Judge Love, who was interested in the possible application of electronic monitoring devices in a prison setting, thought that crime control would be better suited by having the electronic bracelet attached to the offender rather than to the crime fighter. He solicited some of the major electronics companies to design a device that could be attached to offenders for the purposes of monitoring their whereabouts. The large companies were less than interested. However, one employee left to set up NIMCOS (National Incarceration Monitoring Control Services) to design and market the first active monitor. In April 1983, Judge Love ordered this electronic device to be strapped to the ankle of a probation violator in Albuquerque on condition that the probation violator would remain home during non-working hours and with the agreement of the probationer to have himself electronically monitored. Electronic monitoring in this form thus dates from 1983.

In truth there was an earlier, more orthodox basis for the introduction of electronic surveillance of offenders, one apparently unknown to Judge Love. Dr Ralph Schwitzgebel, a psychologist working working at Harvard University, was interested in developing tracking devices (of the sort that are often attached to animals in the wild) to attach to human beings in order to locate their whereabouts and, by radio-telemetry, to monitor some physiological or biological function as part of psychological studies and experiments. Harvard law students wrote an article in the Harvard Law Review in 1966 on what they called Dr Schwitzgebel's machine, and what it was then designed to do. They also speculated on its probable future uses and the law's likely responses. There were multiple receiver

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This presentation is based on an article written by the speaker, 'Dr Schwitzgebel's Machine Revisited: Electronic Monitoring of Offenders' in (1987) 20 ANZJ Criminology 131-147.

transmitters around the Harvard campus to pick up and retransmit the signal via a missile tracking device (apparently surplus to United States defence needs at that stage of the Cold War). The tracking device could show on a screen where on the Harvard campus or its vicinity the person wearing the monitor was to be found. In this regard the original Schwitzgebel machine was different to that developed by Judge Love for the latter has no tracking function. It can only tell whether the offender is at home or not. Once the offender has left the vicinity of his home no further tracking facilities are available.

The idea of an electronic tracking system for offenders using multiple detectors scattered throughout a city, possibly built around equipment already in place as part of a cellular telephone network (as now exists in Australia) was proposed in England in the mid 1980s by a private organisation known as the Offenders' Tag Association'. The idea was rejected by the government, but in April 1987 the Home Affairs Select Committee of the House of Commons invited the Home Office to reconsider its position.

DR SCHWITZGEBEL'S VISION

But Dr Schwitzgebel actually had in mind something even more elaborate than a tracking system. His vision was of an 'electronic rehabilitation system' to largely replace prison. He believed that correctional authorities could provide a high level of supervision of people in the community using the electronic device to monitor offenders sentenced by the courts. He had in mind that the machine could also monitor physiological functions, blood alcohol levels, brainwaves, and other bodily activities that might be predictive of criminality. Tests with volunteers were run and he obtained a patent in 1969 for the use of what would now be called an active monitoring system. He also wrote about scientific responsibility in introducing such measures.

The electronic monitoring of offenders and the 'electronic rehabilitation system' as an alternative to prison were really Schwitzgebel's ideas.

Those in corrections considering the introduction of the Love technology should keep in mind Schwitzgebel's view of its potential because, as the monitors become miniaturized and as our ability to manipulate human bodily functions through chemical and electrical means is enhanced (as in the case of implanted pacemakers or drug infusers), the realization of that potential is coming closer and closer. There is no limit to what the imagination can find for uses for the machines. However, it must be made clear that, at the present time, none of the machines offer anything more than confirmation that the person tagged is within range of verifying equipment attached to the phone in their home. There is no facility to overhear conversations, or check upon biological functions.

THE SYSTEMS

Currently, there are both active (radio transmitter attached to offender inhibiting a dial-out function attached to home phone absence, causes message to be phoned to correctional authorities) and passive systems (correctional authorities dial into offender's home requiring offender to verify presence by inserting attached electronic device into equipment attached to phone). They come in a variety of configurations and have already been discussed and demonstrated at this seminar. Devices may be strapped to the ankle, to the wrist, or worn around the neck. By and large it appears that offenders have no difficulty in the physical wearing of the straps. I understand, however there was one case in which an offender declined to wear the apparatus because it would interfere with her work as a topless cocktail waitress. Those who do wear it explain it as either a beeper, a heart monitoring device, or as having some other important function. Some of the devices have circuits in them to detect the breaking of the strap.

As to the merits of each system, some concern has been expressed about the question of dead space in the active system. It has been addressed in some jurisdictions by putting in a repeater station so that the signal is not lost in particular areas, or by having the offender move house if they are, for instance, in a concrete building or a building that has too much metal in the bathroom or the kitchen to allow the unimpeded transmission of the radio signal. It is within the power of the court or correctional authorities to require the offender to move or to stay with a friend where there is better radio reception at least for the duration of the order. If reception of the radio signal really is a major problem, then the person may be denied the non-custodial option and, if it is a true alternative to prison, will end up in jail.

From a legal perspective, the difficulty dead space in the active system creates relates to what weight is to be given to the false positives that dead space generates. Each one will appear to be a breach of the condition of release. It will show as an unauthorised absence. It may lead to a revocation of the order itself. The legal consequences of the system automatically printing out a report of a breach may well be even more serious. The person may be subject to re-sentencing. And what of due process rights, or proof beyond reasonable doubt that the person has, in fact, breached a condition of an order requiring them to stay at home at nominated times?

It is interesting that, in Florida, the conditions of the probation order under which attachment to an active system is required, declare:

> I agree to abide by the curfew restrictions and comply with the court's order in every respect, I agree to remain at my residence at all times required by the court order. I must stay in the residence at the times, except for the days that I work or other periods authorised by my probation officer. If I have to depart during an emergency, I will report as soon as possible and furnish documentation and verify the emergency departure.

The order specifies where the offender is to reside, the duration of the order and the obligation to wear a security device attached by a non-removable ankle bracelet which the offender agrees to wear twenty four hours a day during the entire period of in-house arrest. It also contains the offender's acknowledgement that the location is to be monitored electronically by way of a common carrier and the monitoring facilities of a specified agency, and records the offender's agreement to pay a rental or supervision rate per day for the equipment. The latter may create constitutional problems in the U.S. if it involves depriving a person of a sanction that would ordinarily be available to them solely on the basis that they cannot afford it. As yet, this issue has not arisen. In fact, jurisdictions which do charge the offender for the rental cost of the equipment have usually some means tested arrangement whereby the costs are waived if a person is unable to pay.

The breach provision says:

> I understand that the purpose of the monitoring equipment is to alert my probation officer if I should violate the curfew established above. I agree that the loss of a receiving signal or the receipt of a tamper signal by the monitoring device...shall constitute prima facie evidence that I have violated my curfew and I further agree that the computer printout of this location may be used in evidence in a court of law to prove the said violation.

It is uncertain whether, in law, one can admit to liability in advance in such matters. There are certainly legal provisions in Australia that allow an offender to make admissions of uncontested fact at a criminal trial. But this effort at attempting to overcome the question of proof by having the probationer agree, in advance, to print-out records as evidence of breach may not suffice in this country. I am not sure that an advance admission that, if the print-out says you were not there, you may be punished for absence would be upheld as sufficient proof without some specific legislation deeming the print out to

be proof. This would make the problem of dead space' false positives ever more acute. Of course, what is required at court in terms of proving a breach of probation conditions and what is required by a prison administrator in revoking an early release order might be quite different.

The weakness of the passive system is said to be the necessity of dialling in and waking up the person to have them verify their presence during the very hours in which they may well be at greatest risk of decamping. A very strict regime of supervision can be imposed by making frequent phone calls to ensure that a person, who might otherwise wander out at night to commit offences or maintain a drug habit, is actually at home. A regime which may deprive a person of a good night's sleep for up to six months may well be challenged as cruel and unjust punishment under the United States Constitution and an unreasonable and oppressive probation condition under our law. The Australian jurisprudence on challenges to probation conditions is not well developed. What is permitted by way of conditions in any form of supervised or unsupervised release is unclear. However, the courts will decline to maintain oppressive or unreasonable conditions, or conditions impossible to fulfil. Once the technology allows the setting up of curfew regimes, the actual standards for their application have to be defined. Otherwise, as at present, each individual judge or magistrate is free to specify what particular regime he or she thinks is appropriate.

There will be marked variations and unfairness between judicial offers within the same jurisdiction and between jurisdictions.

There is no doubt the superior courts will uphold a challenge to oppressive conditions. But their own standards are poorly defined. One bond condition struck down by Chief Justice Bray in the South Australian Supreme Court as oppressive and impossible to fulfil was that college students be respectful to their lecturers. He said that such an obligation was unreasonable, oppressive and uncertain, because a student did not quite know what he or she was supposed to do to comply with. As a university teacher, I would have thought that such a condition was entirely reasonable!!!

In the United States the general time limit for the duration of home detention is about six months, but at least one order is to be in force for two years. The regimes ordinarily allow a person to go to work and the Americans are also willing to adjust the curfew to allow the offender to go to church. But, where this leaves the irreligious unemployed is not at all clear.

RELATIONSHIP TO PRISON

If this is an alternative to prison, aimed at diverting offenders at the point of intake, it must be ensured that imprisonment is

not being threatened when it is not really intended. It should not be a pretended mitigation of prison to gain access to a monitored form of home detention. It should not be used for offenders who were not really deserving of imprisonment. If the court is really satisfied that this is a case that otherwise would have warranted a sentence of imprisonment, then there is some justification for detaining a person in their own home instead. The latter is a more humane alternative to a prospect of real imprisonment. Likewise, if a person is actually undergoing a sentence of imprisonment and is allowed early-release on the basis that they stay at home during non-working hours and agree to be monitored electronically, then the necessary connection between prison and its mitigation by electronic means is made out.

Experience from the use of sanctions involving attendance centres, community service orders, and suspended sentences indicates that when a non-or semi-custodial order is supposed to be available only on the basis that it is a humane and mitigated version of imprisonment, there is an inexorable tendency to make use of it when, in truth, there is not a real likelihood of immediate imprisonment at all. This can be easily tested by seeing what happens when the order is breached, or when the offender refuses to consent to it for some personal reason. They should be sent straight to prison. They are not in a significant number of cases.

A second problem arising out of use of electronic monitoring as an alternative to imprisonment is what is the equivalence between the two systems? If the threat of imprisonment is one week then how many weeks of home detention should be given? Is the proper ratio between the two 1:3, 1:5, 1:10 or some other? And if there is a breach, how much prison time is owed on return? At the moment, in the United States, each court seems to be allowed to calculate its own standards of equivalence. One judge or magistrate may well think that a threatened sentence of imprisonment of one week should be allowed to be served by way of home detention for three weeks or a month. Another may have an entirely different calculus, or may consider that if three weeks home detention are still owed on breach, the appropriate sanction is three weeks of imprisonment. Equivalents will vary from magistrate to judge and result in a real disparity, unless statutory standards are set.

As previously mentioned, the question of how to prove breach is a third major difficulty. There is a difference between the proof of breach for the purposes of returning the offender to court for re-sentencing under a breach of probation order, and proof of breach sufficient to warrant an administrative decision to return an offender to prison to serve the balance of the sentence owed.

Our courts do require a high standard of proof in respect of breach of a condition of probation before the probation order can be revoked and the person made subject to a new sentence based on that regarded appropriate for the offence on the first occasion.

Another difficulty relates to how easy it is for the offender to remove the devices. Part of the answer here is that this measure not be used for serious offenders. Then it is not so important if someone cuts the strap and flees. As the device becomes more attractive, there will be pressure to use it for other groups.

If more serious classes of offender are attached to these devices, then the public safety concern will be exacerbated. In the United States, one group that seems to figure prominently in the use of these devices are drunk drivers, many of whom face mandatory sentences of imprisonment for a relatively short period, e.g. thirty days. The pressure group Mothers Against Drunk Driving (MADD) has taken objection to the use of monitored home release for this group, but less because the drivers represented a trivialisation of an offence for which they wished to have more serious sanctions applied.

COSTS AND BENEFITS

As to financial costs and benefits, the figures available indicate that electronic home supervision is an economical measure. But it is only economical provided that the group of offenders for whom it is used are really facing imprisonment.

That is a problem at the front-end. When used to expedite early release of prisoners, it is no doubt possible to calculate savings per day of accommodation no longer provided, but the capital staffing and recurrent costs of prison are not reduced too far by taking twenty or thirty, or even a hundred people out a few months earlier. These costs tend to remain stable.

Already there is one report from California of a home detention program having been cancelled because it was too expensive to run. It neither relieved gaol overcrowding nor allowed staff reductions to be made.

Regarding social costs and effectiveness, it can be said that being home is better than being in prison. Indeed, Judge Jack Love was influenced in initiating his efforts to develop the electronic tags because some relatively minor offenders whom he had sentenced to gaol, were killed in a prison riot. He thought that they really should not have been imprisoned in a gaol and he wanted to have some other detention measure available to use for relatively minor offenders who could thus avoid the physical dangers and other adverse effects of prison life.

Though the user pays' principle is the political fashion in other areas of social policy, it is not something we have yet seen in modern corrections in Australia. It is however well-developed in the United States in respect of the use of electronic alternatives to prison. One then has to address the question of whether the measure should be denied to people who simply cannot afford to have a phone in the house, or the rental costs. If they are deprived of a measure that would have realistically been available to them had they had the funds to pay for it, they are being punished for their poverty. And, moreover, they are being punished in the severest way since, if the measure is really an alternative to prison, they will end up in prison.

Ease of administration is always a relevant consideration. The electronic monitoring systems are easy to introduce and flexible to administer. Even at this stage the lawful introduction of these measures in this country can be undertaken relatively expeditiously. In fact, legislation for home detention (to which electronic monitoring could in theory be attached) is in force or being introduced in both the Northern Territory and in South Australia and the same result is achieved administratively in Queensland. In South Australia and Queensland the order for home detention may be made only at the end of a sentence of imprisonment. The Northern Territory allows for such an order in lieu of prison. No state or territory has yet attached any form of electronic telemetry as a condition of release to home detention.

Under Federal law, s.19 and s.20 of the Commonwealth Crimes Act 1914 permit a person to be released on conviction, or without conviction, on such other' conditions, if any, as the court thinks fit. There are similar catch-all provisions to be found in State law authorising conditional release on adjournment, or upon community-based orders, on pre-release or parole, on the release of Governor's Pleasure detainees, or on discharging an offender on a common law or other bond. These all could support electronically monitored home detention. It could also be attached as a condition of transfer or release under mental health legislation, or under special orders for children. Indeed in Florida electronic devices are already being used on children.

It is worth noting that the Commonwealth government has an overriding power under the Constitution to regulate these devices under its constitutional power in respect of radio and telephonic communications. It could either ban them outright or regulate them if it wished to do so.

I am unable to point to any psychological literature on the effect on offenders of the use of the new technology. Reports of those who have been subjected to it indicate that it is somewhat draining to be detained at home in all non-working hours and to

keep within range of the phone for six months or so. Given the impulsive nature of many offenders, if the period is too long, the electronic supervision is almost certain to fail. The probation officer or prison authority must be invested with wide discretion to overlook apparent violations. In the tape recording we heard earlier in this seminar, the supervising probation officer had to decide whether the offender's failure to insert the verifier in the machine accurately, was in fact a violation. The probationer was obviously at home and apparently drunk or under the influence of drugs. One could become too technical about the verifier not being put in to officially register his presence. The immediate point of the exercise was to ensure that the offender is at home and he was.

The longer term objective is to allow the offender to return largely unsupervised back into the community. The psychology of supervision suggests that what this requires is a form of graduated release with a continuing reduction in supervision at various stages in the program so that, in the end, verification by an attached electronic device is no longer required and a simple telephone call will do. It is true that the failure rate is low. The evidence of actual breaches, violations, removal of the equipment, absconding with it, etc, is quite rare. To that extent the schemes are a success. However, there is no data on whether home detention is successful in modifying an offender's long term criminal behaviour. If what is being done is to replace the personalized case-method form of supervision that was supposed to underpin community-based orders, probation etc, by new electronic and mechanical devices, then the quality of supervision must fail.

There is reason to be anxious that the supervision of an offender in the community is being shifted from an individual-based program designed to meet and deal with the offender's particular needs in the community, to one of remote impersonal surveillance, superintendence and discipline in the person's own home under conditions emulating a prison environment without providing adequate supportive services. This, in essence, is to leave the person alone in their home with an electronic wall built around them hoping that somehow this will change their behaviour.

Whenever a probation officer phones to see if a probationer is home and to check how things are, that is, in a sense, an example of the passive electronic monitoring system. When automatic dialling, voice recognition and electronic verification are added it becomes more remote, more automatic and more like what the new technology is offering. Indeed the immediate American precursor to the passive system was an automatic program for dialling probationers at home and asking them to respond with their name, date of birth or other identifying information. The probation officer could later listen to the recording to decide whether that was the person under supervision. But later even

recognition became automated. Mechanistic control thus became substituted for personal efforts at rehabilitation. There is a danger that the very nature of the probation service is being shifted to something quite foreign to its original objectives.

There is a lot of evidence that this is happening in the English experiences with tracking, close supervision and control. It is sometimes described as the 'dispersal of imprisonment', the movement of prison discipline from its present location behind walls into the community and into homes to be maintained by electronic devices such as these.

One can also see the technology moving into pre-trial areas such as bail. The latter is a form of constraint within defined territorial limits. The person charged has to stay within a certain area. In many cases the bail order is subject to onerous reporting obligations. Electronic monitoring systems lend themselves very well to release on bail and could be used in that context to provide a high level supervision as a real alternative to the prison remand yard.

CONCLUSION

The minimum legal framework for the immediate Australian use of these devices is in place. I have no doubt that, tomorrow, any government, or indeed any court, which wished to use the technology could do so lawfully. But no one has set standards for the use of electronic surveillance technology to compel home detention in terms of duration, conditions, controls, or a graduated program of reduction in the level of supervision. No one, as far as I can tell, has determined what is reasonable, equitable or effective. The new legislation in respect of home detention in South Australia gives the widest possible discretion to the authorities. They are free to place an offender on home detention for years under the most extraordinarily oppressive conditions. No doubt they will not do this, but it could occur. There is also the ever present concern about disparities between like cases when magistrates and judges make use of new measures without adequate legislative guidance on how and for whom they are used. Therefore, I have to conclude that before getting too enthusiastic about how electronic technology can serve as a cost effective alternative to prison, we had better sit down and think about how it actually is to be used. It is in the mutual interests of prison administrators, judges and offenders to have guidelines prepared, in a legislative or administrative form, so as to attain some degree of consistency. Otherwise there will be the inevitable series of appeals in which counsel for the appellant will open by saying: 'What has been done to my client is oppressive, unfair and unreasonable'.

A REFLECTION ON PRISON CROWDING

David Grant
Deputy Chairman
Corrective Services Commission
of New South Wales

The comment has been made that overcrowding is a relative term, but the situation in New South Wales is a little more than relative. Currently New South Wales prisoner levels are at 110% of capacity and rising. As a result, over the last 6 months or so, New South Wales has been formally and informally formulating some strategies to try and respond to the kind of problems that result from overcrowding. An outline of the main features of these strategies follows.

The first is the crucial issue of regarding prison overcrowding as not simply a correctional problem. Unless the criminal justice system is analysed and regarded as an entity, Corrections will continue to be forced to solve the problems created by the activities of those before us in the system.

Besides the good intentions that have been expressed, action is being taken in New South Wales. The Premier recently endorsed and encouraged the establishment of a standing committee to develop a model for the criminal justice system. The committee is to be convened within several weeks and will include as part of its agenda the following issues: the examination of all current offences and their relevant punishments; the role of the police as it affects correctional matters, particularly in the area of bail; problems in relation to the operation of courts and their administration with regard to the need for detailed research in a number of areas; an analysis of the changing patterns of crime and sentencing practice; and, finally and importantly, an analysis of the 'flow on' effects of all other departments on Corrections.

Consider two recent examples of the potential difficulties that Corrections may experience if these flow-on effects are not taken into account. The first is the recent announcement that in New South Wales it is planned to have two thousand more police released onto the streets in one form or another. Obviously, the ultimate effects from the additional activity of that number of police officers on the correctional system will be tremendous. The second example is the de-institutionalisation of psychiatric hospitals which has been taking place over the last couple of years since the release of the Richmond Report. Already the effects of persons being released from psychiatric hospitals are

being felt. These persons are appearing in courts and ending up in gaol which, has significant implications for our Prison management processes. The Department has not prepared itself for this change in social policy.

It is the process of looking at the criminal justice system as a whole, and trying to make it work as an entity that will allow us to gain some control over our destiny. A major cause of overcrowding has always been the sense of powerlessness that Corrections experiences as a result of the policy and practice initiatives of other organisations. The first requirement then is to try to convince other parts of the criminal justice system that a decision cannot be made in isolation because it has flow on effects.

A second issue, a subset of the first, is the relationship between the Corrections area and the courts. Community-based correctional programs in New South Wales, because they are very large in dimension (there are approximately 12,000 people under community based correctional programs in New South Wales), may appear to divert a large number of people from custody. But comments suggest that these programs are losing credibility because of the way they currently operate. This is primarily because many of the staff seem to adopt the view that it is their role to act as advocates for, and welfare supporters of, offenders rather than defining themselves as representatives of the community with the responsibility of supervising people. This problem needs correcting so that in future people can no longer say that these programs lack credibility, for it is the lack of that credibility which contributes to overcrowding.

A third issue is what precise measures can and are being taken to reduce overcrowding in New South Wales. One of the benefits of overcrowding, and there are some benefits, is that it has forced New South Wales to examine the categories of people currently held in custody. Because New South Wales' numbers are higher than Victoria's the allegation can be made that New South Wales has people in custody who should not be there. In fact this has been recognised by both the previous and current Commissions and legislation will be drafted in the foreseeable future to have fine defaulters kept out of imprisonment. There is also a program to introduce a home detention scheme either with or without electronic surveillance. These releases will be by way of a statutory board releasing suitable prisoners as a pre-parole program, not as a front-end program, but as a program just prior to parole. The fine default program and the home detention program, should result in an additional two hundred and seventy beds or so. It has to be acknowledged that, like Victoria, we would have to rely on the police to hold up to thirty remandees per day, which we are no longer able or willing to accommodate. This is not part of their public strategy, but the police have so far been very tolerant, mainly because the Department over

recent years has developed a very good working relationship with the police, through regular liaison and discussions. But I am sure that, as in other States, the police's tolerance of this imposition will not be endless.

In addition, we will be determining where we can be more efficient in the use of current bed space. Given our projected population figures over the next five to ten years, more beds are going to be needed and we are looking at an acquisition program and eventually a construction program to try and provide some additional facilities. But in doing all this it must be emphasised that New South Wales is aware of the dangers of apparently easy solutions to these problems. One has a lot of sympathy for Mr Kennan's view that in all likelihood simply building more beds will mean that more beds are filled. One would also agree with him that the exercise of administrative discretion certainly undermines the confidence of the courts, particularly in the correctional system. All the proposals in the area are cognisant to these two dangers.

The last issue is really an elaboration of Tom Abbott's comments about managing prisons which are overcrowded. In fact the level of tension in a prison is a better guide to overcrowding than whether prisoners are one, two or three out to a cell. There are prisons which can have prisoners three out and there is no tension at all. There are other prisons which have prisoners two out and they are very tense.

One feature that is under consideration in dealing with this problem is the length of the prison day. Here I differ with Tom over the difference between Australian and English conditions. Whereas he argued quite compellingly for the advantages of shorter prison day, (that is fewer hours out of a cell), in my view, that approach would not be possible in New South Wales given the already long hours that prisoners spend in their cells and the Australian summer heat. The longer people stay in cells, the more testy they are likely to become.

A second feature is the importance that we place upon keeping prisoners busy during the day when they are out of cells. Recently, we have successfully negotiated funds to increase prisoner employment opportunities and to provide educational and recreational facilities, but that will take some time to establish.

The issue of prisoner movement is regarded as critical. This involves the flexibility to be able to move prisoners from over-crowded situations, not only in terms of general prisoner movement but also in terms of their placement in specialist units, when this is important. Inevitably, overcrowding leads

to pressures on officers. Staff training is critical for preparing officers to cope with prisoners who are under stress, to cope with their own levels of stress and the stress of their colleagues. I think the extent to which stress can be relieved by a few extra dollars in the pay packet is amazing, but not entirely surprising. We are therefore also looking at strategies to improve officers' salary and conditions.

As overcrowding continues to grow, it becomes increasingly pressing and urgent that prison staff exercise control and that they do not in any way hand over the prison to the prisoners just because there are problems associated with the dimensions of overcrowding.

That is a summary of the main points of the New South Wales' strategy for overcrowding. I would emphasise in concluding that no single part of that strategy is important on its own. There needs to be a total holistic approach in any attempt to resolve these problems.

A FURTHER REFLECTION ON PRISON CROWDING

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South Australia

South Australia has considerable sympathy with the directions which have been discussed throughout the Conference, and these may be broadly encapsulated as follows:

1. The desirability of jurisdictions taking all possible steps to ensure that the sanction of imprisonment is the one which is utilised when maximum deprivation of liberty is required.

2. Total commitment to effective and appropriate uses of sanctions which graduate the deprivation of an individual's liberty through appropriate community based correctional programs, with the clear purpose of reducing prison numbers as primary focus.

3. The need as far as possible to build for replacement of existing cell accommodation and to minimise the building of additional cells.

To assist with the achievement of these goals, the Conference has identified some critical areas which require urgent attention:

(a) The need to encourage effective research in order to ascertain as clearly as possible the categories of persons imprisoned and to appropriately analyse the differences between imprisonment rates in the various Australian jurisdictions, and to facilitate community education and discussion regarding broad issues which impact upon the development of an integrated criminal justice system and specifically the issue of overcrowding.

(b) Recognition of the futility of confrontationist approaches between various arms of Government which may prove to be counter-productive, but at the same time to accept that it is ultimately Governments and their taxpayers who underwrite the enormous costs of imprisonment. Consistent with this view is the proposal that respective Governments have a responsibility to determine how financial resources will be expended, and must develop appropriate sentencing structures and options for the judiciary consistent with that policy. Substantial comment has been made at the Conference in relation to the need to rationalise existing legislation to remove anomalous and outdated provisions.

(c) Encouragement of effective integration of agencies within the criminal justice system to achieve consistency of approach and a policy which is supported across the board.

South Australia's approach has been pragmatic in recognising the abovementioned realities. A significant increase in numbers has occurred in the recent past notwithstanding the continued development of community based correctional programs. Consequently, the Government has, current with the enhancement of community based programs, implemented a Capital Works program which increases the number of cells available beyond the number which the early refurbishment program anticipated. Initially it was considered that the new prison at Mobilong and the Adelaide Remand Centre would have been sufficient to have closed Adelaide Gaol, but this is not now the case, and to ignore this reality would force South Australia to face a bleak future of overcrowding. This situation would inevitably result in the inability of the Department to provide the minimum standards prescribed by law in relation to staff and prisoners. Compliance with the new Occupational Health, Safety and Welfare Act, 1986, Government Management and Employment Act, the Ombudsmans Act, Equal Opportunity Act and Correctional Services Act all require particular processes to be observed in order to facilitate proper employment conditions for staff and safe and humane management of prisoners. It is acknowledged that litigation in regard to alleged failures to observe prescribed procedures is increasing and industrial action would be anticipated if the State was unable to provide for appropriate working conditions.

Recently South Australia, together with other jurisdictions, has also had to face the very difficult problem of the management of prisoners who suffer from incurable diseases - specifically AIDS.

In summary, overcrowding and doubling up which would result from insufficient accommodation to cater for increased requirements would be disastrous.

I wish now to make a number of specific comments on South Australia's response in regard to the four key areas mentioned above.

1. Numbers

It is now clear that during the past two years significant pressures have substantially increased the prison population, notwithstanding effective utilisation of community based alternatives. The projected trends which are likely to occur in the foreseeable future take into account the fullest utilisation of all possible measures to divert persons from prison.

The prison system is, and has been, operating at full or near to full capacity during the last 18 months. In practice the only accommodation available has been at two minimum security institutions which has been at the expense of overcrowding at Adelaide Gaol. Actual male prisoner numbers have risen from a low point in the mid 600s in 1976 to approximately 800 in 1981, with a reduction in numbers to below 700 in 1984 after significant changes to parole legislation, and the introduction of the Community Services Order Scheme. The figures have consistently grown since 1984 to the low 800s. The bleak longer term forecasts of the Australian decade, and taking into account community correctional alternatives, prison population throughout Australia could rise by 50%. This prediction would reflect a figure for South Australia of approximately 1150 male prisoners by 1995.

Discussion has taken place at this conference in relation to differential rates of imprisonment, and a number of speakers have referred to the possible cultural and historical reasons which may explain differences between New South Wales and Victoria. It is possible that the small relative size of South Australia increases the visibility of crime, and this may be a factor which contributes to conservative attitudes which have prevailed to make the reception of short-term prisoners a serious problem.

2. Capital Works

Prior to the past 18 months, the policy in South Australia can be described as one of replacement. In essence, the Adelaide Remand Centre and Mobilong Prison were planned to replace the appalling Adelaide Gaol, and a major program of refurbishment at Yatala Labour Prison has occurred. However, the recent Capital Works programs have provided additional accommodation at Yatala Labour Prison (Segregation Unit 24, conversion of a former hospital which will temporarily hold 85, the new F Division for 90) and some modest increases in the country. These increased requirements would not have been necessary two or three years ago. Needless to say, there has been considerable discussion in relation to the implications for management when the South Australian Police, from time to time, have been required to hold prisoners in their watch-houses who would ordinarily have been transferred to prison. Without the abovementioned programs, the system would become seriously overcrowded notwithstanding community options.

3. Mechanisms for the Integration of the Correctional Criminal Justice System

(i) A Cabinet Sub-Committee of Ministers regularly considers policy issues relating to the criminal justice system, and has demonstrable value as a forum for consideration of major issues prior to Cabinet consideration.

(ii) Recently a Committee of Chief Executive Officers who are responsible for the criminal justice system was established to provide thorough consideration of critical issues which affect policies and the administration of agencies. The Committee is significant as a mechanism which can appropriately 'feed' major policy issues to the Ministerial Committee.

This Committee is in the process of developing a Criminal Justice Strategy which will be submitted to Government with a view to identifying solutions from an overall viewpoint. The role of health, welfare and educational agencies in the prevention of crime will be considered in this study.

(iii) An Operational Committee of Senior Officers from the South Australian Police, the Courts Service Department and Department of Correctional Services meet on a regular basis to resolve operational details which involve all three Departments.

(iv) One area which is increasingly becoming the focus of attention is the nature and appropriateness of current advice and information which is provided for members of the Judiciary. It is acknowledged that, unless sound communication exists between the Executive and the Judiciary and clear support given for the goals of legislation, effective implementation cannot be assumed.

The abovementioned measures do not guarantee that the policy and resource implications of all the issues which affect agencies in the criminal justice system are thoroughly considered for their impact on other agencies. It is noted that in New Zealand, Criminal Justice Impact Statements are required to be submitted to a Cabinet Sub-committee prior to the alteration of any major aspect of legislation or ministry of processes or the allocation of resources. These statements specify through established formulae the resource requirements which result from any change in one agency upon another. Nevertheless, the South Australian initiatives represent a clear commitment and concerted endeavour to address critical issues.

4. Diversion

(i) A qualitative improvement in relation to court advice in South Australia has occurred recently, and probation and parole have gained considerable respect.

(ii) Community Service Orders have been introduced throughout the State.

(iii) The Community Service Order Program for fine defaulters will be available in November 1987 and this is expected to significantly reduce the number of short-termers who clog up prisons.

(iv) Home Detention was introduced during 1987 and currently there are ten prisoners per day on the program.

(v) Furthermore, the courts will be able to release prisoners on bail with a condition of Home Detention from November 1987. This program is currently under examination with a view to extension.

(vi) Administrative discharge (also known as early release), is utilised in relation to prisoners in the last thirty days of sentence subject to discretion. A prisoner is required to serve two-fifths of a sentence. This is believed to free at least 40-50 beds daily. While the continued use of administrative discretion is not regarded as ideal in the longer term because of its clear impact upon the sentencing discretion of the courts, it is an absolute necessity in South Australia at this point in time and will continue to be so for the foreseeable future.

Administrative ceilings have been endorsed by Government to limit the number of prisoners who may be held at Adelaide Gaol. This arrangement is not a legal maximum 'CAP', but is recognised as an inevitable and necessary measure to logistically facilitate closure of Adelaide Gaol and to ensure that the new prison facilities may operate.

Comment on Home Detention in South Australia

The Department of Correctional Services Departmental Instruction Number 110 prescribes the criteria for eligibility and the conditions upon which prisoners may be released into the program. At the moment, to be eligible, prisoners must be serving a

sentence of between one and twelve months for a non-violent crime and must abide by the curfew arrangements prescribed by their supervisors. Opportunities exist for arrangements to be made for Home Detainees to leave their premises for the purposes of employment, medical, or other significant purposes approved by the Home Detention Supervisor. Prisoners must have served a minimum of one third of their head sentence for terms of imprisonment of up to three months, or two ninths for terms of more than three months. In practice, approved applicants to date have served approximately nine weeks on the program given existing sentence requirements, and must have a telephone in the approved residence to be eligible. Whilst it is not a requirement that prisoners have a job on release, the majority are in fact employed full-time. To date 35 prisoners have been approved for the program, and six have breached the program.

The fact that the number of persons on the program is so small, and the critical need to ensure that 'cushioning' is provided in the system (given the imminent closure of Adelaide Gaol in February 1988) have given rise to a review of the program. A detailed submission for the extension of the program is being prepared for Cabinet consideration, and it is believed that an additional 45 prisoners should be diverted from the system through Home Detention if appropriate leeway is to be provided. It is quite evident that any broadening or relaxing of the existing program will increase the possibility of breakdown. It will be recommended to Government that the use of electronic surveillance equipment, when used as an adjunct to staff supervision, will increase the public credibility of the program. No decision has been made in relation to the use of electronic surveillance in South Australia at this point in time, but undoubtedly there is a strong argument that the use of this equipment will enhance public credibility.

DEVELOPMENTS IN CORRECTIONAL POLICY: MORE PRISONS?

29-30 September 1987

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Overcrowding is a serious problem in most Australian prisons, but simply increasing capacity may not be the answer.

Correctional administrators, law enforcement officials, the magistracy and academics discuss alternative solutions to imprisonment in this Australian Institute of Criminology seminar: *Developments in Correctional Policy: More Prisons?*

Because of its low imprisonment rate, much of the seminar's focus was on the 'Victorian approach', but a wide range of alternatives to imprisonment were considered including community-based programs and the use of electronic home detention.