WESTERN AUSTRALIAN GOVERNMENT
SYMPOSIUM ON CRIMINAL JUSTICE POLICY

In collaboration with the Australian Institute of Criminology
Perth, 18 November 1978

Report by
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INTRODUCTION

On 18 November, the Western Australian Government convened a public symposium on the subject of "Criminal Justice Policy - What Should It Be". The symposium was under the chairmanship of His Honour Judge D.C. Heenan and was opened by the Honourable Premier Sir Charles Court, O.B.E., M.L.A. Sir Charles Court declared his Government's policy as being reformative and rehabilitative. It sought to provide programmes and facilities for all those who have made a mistake, recognised it and who desire to reform; but also it sought to reform the legal provisions necessary to provide adequate deterrence for those who were a danger to society. He drew attention to the lack of precise scientific data on some of the most fundamental questions and the difficulties before any government faced with an allocation of resources between new schools, health centres or prisons. Outlining the way in which the symposium had been designed to encompass a wide range of community interests, Sir Charles complimented Mr. Medcalf, the Attorney General, on the way in which he had helped the Cabinet to respond to the criminal justice issues. To this symposium, 18 community groups with interests in criminal justice services had been invited to send representation. Womens groups, church groups and minority groups had been invited. The Premier welcomed these and all other participants and pledged the Government's full consideration of the results. The Attorney General had invited representations to be made to him up to the end of 1978 and would be reporting to the Cabinet. Sir Charles expressed his full support for the symposium, his hope that all would be free with their comments and his gratification in declaring the symposium open.

CRIME, CRIMINAL POLICY AND SOCIETY

Mr. W. Clifford, Director, Australian Institute of Criminology, gave the first paper of the symposium on the subject of "Crime, Criminal Policy and Society". Giving the latest figures for crime in West Australia, he pointed out that, whilst most offences had risen slightly, the rate of serious assaults had more than trebled. Mr. Clifford said that these figures could be easily dramatised, but the pattern was not uniform and he gave examples between the differences in homicide figures, the rates of fraud and the number of juvenile offences and offenders. He also pointed out that total male crime in Western Australia per 100,000 of the population was at least as high in 1904 as it was today and that one criminologist had estimated that the N.S.W. people, with respect to murder, attempted murder and manslaughter, were 30% safer in 1970-74 than they had been in 1950-54. All this meant that it was extremely difficult to give precise figures on the total amounts of crime. So much depended upon the time span taken into account and the number of offences actually recorded. This problem faced all nations and would be taken up at the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders to be held in Sydney in 1980.

Drawing attention to the fact that recorded crime was but a small fraction of total crime, Mr. Clifford said that the total amount of crime had to be extended into all kinds of non conventional offences which might not be brought before the courts, including corporate crime, organised crime and white collar crime. Moreover, the efforts which are made to control crime may actually increase the figures because there is a feed-back, so that crime prevention policies would be reflected in the levels of crimes reported. Moreover, crimes would be affected by social and economic conditions and unfortunately we had in the past often abused, rather than effectively used, our criminal justice systems and we have not made adequate use of the

community prevention which is necessary. It was difficult to find other countries which had been more systematic in dealing with their criminal justice systems and most attempts to deal with crime had been of a "band-aid" nature. He pointed out that the systems as they now operated were more geared to patch than to plan. He advocated a criminal policy which would unify the pluralistic divisions in our society by being based upon reducing the costs and evaluating the benefits we were getting from the money spent on crime prevention. We were deeply divided on values and it was astonishing, therefore, with such confusion as there ought to be (given these divisions), that we have as little crime as we have. Such a policy of reducing costs would be amoral, but it could have a unifying effect.

CRIME AND PUNISHMENT

Mr. N.H. Crago, Chairman of the Law Reform Commission of Western Australia, explained to the symposium the workings of the Law Reform Commission. He described how working papers were produced for each subject to attract public comment and how, after the collection of data, the Commission compiled a report for the Attorney General. The Commission worked only from references from the Attorney General and he gave an account of the 8 projects which he felt had some reference to this particular symposium. One of these dealt with bail, another with rights to compensation, another dealt with the question of imprisonment for first offenders and the adequacy of penalties and he mentioned specifically the Law Reform Commission's work in conjunction with the Australian Institute of Criminology in getting some of the answers to these questions.

Mr. Crago asked the participants to be in touch with him on any of the matters arising and to make sure that their opinions were before the Law Reform Commission in connection with its future work.

RESEARCH FOR CRIMINAL JUSTICE POLICY

Mr. David Biles, the Assistant Director (Research)

of the Australian Institute of Criminology, presented a paper entitled "Research for Criminal Justice Policy". In this he asked what we ought to know about crime and justice - what information should be available to provide a foundation for the development of modern criminal justice policy. He itemised 6 major criminal justice indices, namely -

1. reportability rates
2. rates of reported crime
3. detection or clear-up rates
4. conviction rates
5. imprisonment rates
6. recidivism rates

He felt that reportability rates should be relatively high, because it would be unfortunate if the police were not receiving necessary information. He thought that rates of reported crime should be low and detection or clear-up rates should be high, since this was a very important indicator. Similarly, if a case had to be taken to court, then the conviction rate should be high, but imprisonment rates should be low and he gave information about the rates of imprisonment in the various States, showing that Western Australia had one of the highest rates for the use of imprisonment in Australia. He believed that this could be reduced by 50%.

Giving the information on crime available up to 1973, he was able to show that Western Australia was in a rather happier position than most of the States and yet its high imprisonment rate was not very reassuring. He referred to work of his own on the crime and prison rates in the 50 States of America, the 13 States of Canada and the States of Australia. He felt he had been able to show a correlation between high imprisonment and crime rates which seemed to indicate that it was a mistake to believe that crime could be reduced by imprisoning more people.

TRAINING AND THE DEVELOPMENT OF CRIMINAL JUSTICE POLICY

Mr. C.R. Bevan, Assistant Director (Training) of the Australian Institute of Criminology prepared for circulation a paper entitled "Training and the Development of Criminal Justice Policy". He chose not to deliver the paper in order to allow more time for discussion of the issues already raised. In his paper however Mr. Bevan carried forward the themes already developed by other speakers and emphasised their implications for training throughout the criminal justice system. He referred to the increasing awareness of a need for higher education for effective police work and speculated that one by-product of unemployment might be better qualified applicants for positions in the police forces of Australia. He observed that it had become quite commonplace as a result of seminars conducted by the Australian Institute of Criminology for Judges, Magistrates, Police Officers, correctional workers and others to sit down and discuss common problems; but only very recently the fact that this was an innovation in Australia had been stressed by interstate Judges.

Drawing on a U.K. report of a Working Party on the training of judges Mr. Bevan listed the areas for future education. These included training in the sentencing law and practice, criminology and penal theory, in information for sentencing and in the practical implementation of sentencing. He complimented Western Australia on its Law Reform Commission's recommendations for greater flexibility in sentencing and on the work of Mr. Syddall on the application of the law to aborigines, and he described the success of the Australian Institute of Criminology's follow up of a suggestion made by Mr. Christie (the West Australian Member of the Board of Management) on the subject of preparing teaching materials on the teaching of law in schools. Mr. Bevan looked forward to the time when the Australian Institute of Criminology could provide executive training for the higher ranks of correctional and perhaps other services.

DISCUSSION

Following Mr. Biles' paper, the symposium moved into general discussion under the Chairmanship of Judge Heenan. The first question was put by the mother of a prisoner, who felt that there should be provisions for a person to tell his story to a counsellor or some person able to give guidance, before he was, in fact, confronted with the law. This gave rise to considerable discussion and the panel was mostly unable to see how, once an offence has been committed and the police had been brought into the case, that there could be provisions for non legal counselling which would not have legal effect. However, one member of the panel did sympathise with the questioner and felt that provision should be made for psychological support and guidance before the formal proceedings of the law assumed their positions in a legal case.

The panel was questioned on the extent of crime actually attributable to recidivism and found itself unable to answer on the available evidence. It is not possible in any State of Australia at this time to say to what extent the crime rate is due to recidivism or due to other offenders committing the offences.

A member of an organisation against rape raised the possibility of some system being developed in Western Australia which would avoid children of tender years having to be put through the trauma of a court hearing, with all the implications of cross examination and tension for the child. On this the panel divided. Some thought that the principle of British law, whereby an offender was innocent until proved guilty, made it essential that, whatever safeguards were adopted, the complainant would have to be cross-examined, even if it was a child. Other members of the panel felt that, on the example of Israel, a very great innovation in criminal justice in relation to young people was raised. In Israel, a panel of social workers, teachers or counsellors is maintained on a 24 hour basis and whenever a child is involved in an offence, either as victim or offender, a member of the panel is called by the police, goes to the house of the child and takes a detailed statement. This may last many hours until the counsellor or panel member is absolutely satisifed

that he or she has all the information necessary for a court hearing and has anticipated all possible questions. At any future proceedings the panel member appears as the child and is legally recognised as the child, which means that the child itself does not have to appear or submit to cross examination. There was considerable opposition to this scheme when it was originally introduced to a system which had been primarily a British legal system but gradually it found acceptance and is now in regular use in Israel.

Several members of the symposium referred to the need to use a tape recorder in getting statements from a witness. There was general support for this idea, although caution was expressed that a tape recording could be tampered with and could, in fact, be used in ways that would make it impossible in the collection of evidence in certain cases.

An ex-prisoner made a plea for prisoners to be meaningfully occupied - not only because of the rehabilitative effect, but also because of the need to reduce the costs involved, which were now running at $250 per week. The Director of Correctional Services agreed that not enough was being done to provide meaningful activities, but he pointed to the restraints imposed by the physical conditions of Fremantle Prison and by the interests of trade unionists who objected to prisoners doing work which non-prisoners could well do.

The question of coordinated statistics for the State was raised. There was an interest in Western Australia in the establishment of an office of criminal statistics, which would collect and analyse local data from the police, the courts and the corrections. This had been referred to a committee by the Crown Law Department; it was hoped that a fully integrated system of information would be achieved but it may take several years.

The issue of prisoners being released for work or on parole and then committing further serious offences was examined by the participants and responded to by the panel. A confusion about parole being the responsibility of the Department of Corrections was discussed and clarified. Parole and community work orders were not the responsibility of that Department. As for work release, it was essential that the Department took some risk: there would be mistakes, there had to be: but in general the system worked.

Questions were asked about the figures which had been provided by Mr. Biles. Some members of the panel questioned the adequacy of prison population figures as indicators of the practice of the courts. About five years ago the judges had been imprisoning less, but had been criticised for doing so: therefore, they had recently imprisoned more. The reference to a victimisation study carried out March to May 1975 by the Australian Bureau of Statistics but not yet published, was the subject of concern to the participants. Mr. Biles explained that the Bureau had been handicapped by the budget restraints and technical problems, but had now overcome these.

The plight of persons held in custody before trial was discussed. There were 100 held on remand. It was suggested that the Attorney-General should receive a daily return of all persons held in custody on remand, with the list arranged in order of the length of time each person had been held awaiting trial. It was alleged that one person had been held on remand since 12 January, but this was rejected by a member of the panel. It was argued that all accused persons' names should be withheld from publication before conviction. This was particularly necessary in the case of persons accused of rape but not yet convicted: this was as important as it was to withhold the name of the victims of rape. Another suggestion was that a person held under a sentence of capital punishment should not be removed to the condemned cells (with all the extra staff, facilities, and stress that this implied) until his appeal had actually been rejected.

The appropriate place in which to place a person with mental disorders - or alleged mental disorders became the subject of discussion without there being specialist comment. It was merely observed that a prison should not become a mental hospital, but there could be no hard and fast division between the sane and insane and there were cases in which a person mentally sick would and could quite properly be held in prison.

It was asked whether taking a motor car should not be dealt with as more serious theft, since the petrol was stolen and the increased mileage reduced the value of the car. Also, since drunkenness could not be an excuse for crime, whenever drunkenness was pleaded in mitigation, should not this be made an additional charge.

Mr. Murray, the Crown Prosecutor, replied that the unlawful use of a motor car would not be an offence improved in prosecution by making it a theft. Already the sentencing tariffs allowed the case to be adequately dealt with, either as a theft or as unlawful use. He also saw little merit in making a plea of drunkenness a further offence. It was not a mitigating factor, but a factor in determining the formation of intent. In most cases it would not greatly change the situation to make drunkenness an additional offence.

Mr. Kidston urged caution in using the figures for average prison population. He felt that one should look at the geography of Western Australian towns and the population distribution of Western Australia, which often precluded the adequate use of alternatives. He pointed out that maybe over 80 per cent of the prison sentences were less than six months and he thought these should be the subject of a detailed study between his Department and the Australian Institute of Criminology. If this was done, he felt that we would understand far better how imprisonment was used in the absence of other effective evaluative measures. Mr. Vodanovich pointed out that the rural areas of Western Australia were now making more community service orders than the urban areas.

Dr. Hills pointed out that, prior to the Probation

and Parole Act thirteen years ago, there had been speeches of good will, hoping for a reduction of imprisonment: but these alternatives had not reduced imprisonment. So the provision of alternatives to imprisonment does not necessarily reduce the use of imprisonment. He quoted from a study of the Dutch system which had a low rate of imprisonment of 22 per 100,000: this had concluded that there was nothing very different about the Dutch and other countries, except that the Dutch were just less punitive in their approach to offenders. Some of the panel supported this ... others felt that we should, nevertheless, continue to develop alternatives if we ever hoped to reduce the dependence upon imprisonment.

Mr. Gorton, Deputy Director of the Department for Community Welfare, described the system of juvenile panels for young people who were likely to be charged with offences. There was an 88 per cent "success" rate of these panels and they had proved their worth.

Mr. Kidston was asked to what extent work releases were supervised. He said that they were not supervised at all if, under the Act, they had qualified for the grant of work release. Responding to a question as to how he reconciled his full time study leave proposal with his philosophy of prisons not being for rehabilitation, Mr. Kidston said that he saw no conflict. He thought that the prison should supply all the facilities for offenders who wished to rehabilitate themselves - but it should not presume to hold offenders until such time as they were rehabilitated. In this context, full-time study leave fitted as a provision for those who might qualify for it and be interested to use it for themselves.

Comments were made on "the large amount of depression in the State of Excitement". This was raised by Mr. Davy, who asked the panel whether a one-third reduction in the police, with the savings in manpower devoted to social work, would be more preventative of crime. Mr. Taylor, the Assistant Commissioner of Police, said that police were not only repressive. He said that 132,000 young people under 18 years of age were attending police clubs. Both Mr. Davy and the Assistant Commissioner agreed, but for different reasons, that a dearth of marihuana led to some increase

in the supply and demand for heroin. Mr. Davy seemed to be implying that the marihuana supply should not be stopped. Mr. Taylor suggested that Mr. Davy was proving that persons addicted to marihuana would thereby become an easy prey for hard drug pedlars.

The predicament of mental patients or persons liable to indeterminate sentences received attention. The treatment model deprived the offender of the protection to which all citizens had a right and, therefore, it was thought that there should be a greater endeavour to work towards a legal model.

Towards the end of the day the plight of the victim was raised again. It was observed that the day had been spent mainly on ways of reducing imprisonment and benefitting the offender: but the victim's position had received little consideration. One member of the panel pointed out that the general demand for longer sentences was in conflict with this idea that the victim had received no real attention. Mr. Clifford called for a wider consideration of the whole area of victim/offender relationships. He pointed out that, in the legal system, the victim had got lost and had been translated into a simple witness for the prosecution. He mentioned that, in Papua New Guinea, the payment of compensation was accompanied by a gift from the victim to the offender. Therefore, our system should be redrawn to provide for more direct victim/offender transactions. Mr. Murray pointed out that the offender was, as a rule, a "man of straw" and could not always be made to repay. The last question of the symposium however, pointed to the way in which victims and insurance cases were handled and thought that it was not true that more could not be done to make the compensation a direct transaction between offender and victim.

CONCLUSIONS

The symposium did not vote on recommendations and no final report was available for comment by the participants. However, there were several themes which emerged very clearly and which in the absence of anything more formal may be regarded as the general conclusions of the symposium. These are :-

1) The objective of a criminal justice policy must be to reduce costs and evaluate total expenditure.

2) Heavy penalties alone are not a sufficient response to crime which requires a total community control.

3) Statistics need to be made more immediately available on both a national and state basis. Consideration might be given to a local office of criminal statistics to collate information from police, courts and corrections.

4) Projects for closer collaboration between Western Australian Departments and the Australian Institute of Criminology should be considered to clarify the real meaning of lower crime figures in Western Australia and higher levels of imprisonment.

5) Greater attention should be paid to the plight of the victim and to his right to compensation - not just from society but from the offender. In particular, consideration should be given to the measures already taken in Israel to protect the child likely to appear in court as a result of a sexual attack.

6) More attention would need to be given to the better training of police, judges and magistrates and correctional workers. Some of this could be provided at the executive level via the Australian Institute of Criminology.

7) The tape recording of voluntary statements might be desirable subject to overcoming existing technical difficulties resulting from the possibility of altering tapes and care would need to be taken that it did not reduce present effective levels of the police.