

reporter



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Child Abuse Conference

Delegates attending the National Conference on Child Abuse criticised the existing practices of the Family Court for not promoting the best interests of the child in instances of child abuse.

Speaking at the conference, held at the Institute from 3 to 7 February 1986, **Ms Moira Rayner**, barrister, and **Ms Sally Beasley**, court counsellor, said that the court did this by denying a child's right to be heard on matters personal to that child.

This 'right', although enshrined in both common law and legislation, did not actually exist, said the authors. The child is not a party to the court proceedings, the child's wishes and feelings regarding guardianship or custody are usually not directly canvassed by the court, and the child's advocate does not necessarily advance what the child wants, but what, in his or her view, was in the best interests of the child. Further, the child has no right of appeal against a decision which he or she feels to be against his or her interests.

In fact, it is the 'best interests' of the parents and lawyers that are promoted by the existing statutory methods adopted by the Family Court, said Ms Rayner and Ms Beasley.

Conciliation, for example, implies that partners are in an equal bargaining position, and that parents are able to reach true consensus and agreement in relation to their children. However, conciliation is ineffective in homes where domestic violence occurs: 'The subject of that violence or abuse is frequently deprived of the capacity to make reasoned decisions free of fear. The victims must deny much of what goes on in the home in order to survive. Also, stories of violence are often underplayed by the adults involved, or are not "heard" by the legal professionals taking instructions for proceedings in court. In some cases they are heard, but independent evidence is lacking and so they are not pleaded. Accordingly, cases of child abuse may tend to be under reported in the Family Court'.

The Family Court's reluctance to suspend access to children may not be in the child's best interests. It might perhaps be more in the best interests of children — and more conducive to their ultimate welfare — to act as if parents were guilty until proven innocent, and to expedite the hearing of matters in the Family Court where abuse is alleged.

In one case cited by the authors, a social worker believed that there was a 'reasonable possibility' of sexual misconduct in the form of 'inappropriate sexual play' between father and daughter, yet the judge was not prepared to limit access to the child because the allegations of sexual assault could not be proven.

Ms Julie Stewart, from the Women's Legal Responses Centre in Sydney, maintains that the Family Court should not even consider cases of incest. It is a criminal offence that should be dealt with by the criminal law.

However, incest is not treated as a serious crime. 'Police effectively condone incestuous child sexual assault by not providing appropriate support for child witnesses, and by their reluctance to charge offenders. Police perform the function of judge and jury and prejudge the outcomes; they make no apology for this exercise in discretion, or their failure to improve methods of investigation and collection of evidence, nor their unwillingness to "put those little children through the court process"', said Ms Stewart.

Ultimately, the Family Court is approached for a remedy for incestuous child abuse. Yet, again, Ms Stewart emphasised how conciliation and agreement served the court rather than the people who sought counselling.

'There can be no compromise where the parties to the dispute are of unequal power. Where a mother states that her child has been sexually abused and the child is to no longer see the father, the father is likely to deny the allegations and pursue a wish to see the child. How can conciliation be appropriate in such a case?'

'The majority of cases of alleged child sexual abuse are genuine; however, too many times there is the presumption that women lie and are spiteful, and that they make unfounded allegations of sexual abuse. The mother of a sexually abused child is left to cope with the child's disturbed, regressive, or aggressive

behaviour, and to clean up the mess that the abuser has left behind. Counsellors observe an emotional, upset, and angry mother arguing with the father who denies the allegations. The mother is understandably upset that the father's persuasive denials seem to be believed.'

Ms Stewart also criticised the legal system for failing to train lawyers to deal adequately with child sexual abuse. 'Solicitors in the Family Court do not develop a case by using outside agencies and expert witnesses. The tendency has been to simply advise the client that the court will not deny access, and that the mother must agree to "supervised access"'. Lawyers lose sight of the issue: the child who has been sexually abused, and what it means to have to go on seeing an abuser, having disclosed the abuse.'

Ms Stewart described 'supervised access' as a cop-out for the court: 'Supervision is typically carried out by some one chosen by the offender — his mother, his girlfriend, or his new wife — all of whom have a considerable vested interest in not believing the allegations of sexual abuse, and will therefore never really supervise adequately. And, just as supervised access is a mythical notion, so too is separate representation. It implies that the child is party to the proceedings, and mothers have understood that separate representation means that the children have their own mouthpiece. This is not how it works. The Family Law Rules categorically state that the separate representative cannot place him or herself in the position of witness.'

In addressing the procedures of questioning victims of sexual assault, **Mr Paul Byrne** from the New South Wales



Ms Sally Beasley,
Family Court, W.A.

Law Reform Commission recommended that the interview with the child should be recorded on video tape.

'The initial interview with the child is crucial because it will be at that time that the events are fresh in the child's memory. Since the nature of the offence is such that there will rarely be any eye witnesses to the events in question, the strength of a prosecution for child sexual assault lies chiefly in the value of the evidence of the child victim.

'Having a video record of the interview would also be in line with a submission to the New South Wales Child Sexual Assault Task Force from the Children's Hospital at Camperdown, that children show through "play" what has happened to them', said Mr Byrne.

Also important is that the child making the complaint of sexual assault would only have to be questioned once, rather than being required to repeat the intimate details of the assault to police, doctors, social workers, solicitors, and the Crown prosecutor.

'Quite apart from these interviews, there are the two crucial occasions on which the child must suffer the ordeal of giving evidence in a criminal court. Firstly, at the committal proceedings, and secondly, at the actual trial before a judge and jury. Where the allegation is contested, this will usually mean that the child victim is examined and cross-examined. As a result of these procedures, the child must deal with the facts on four separate occasions in court, and probably more frequently than that out of court', said Mr Byrne.

A child's sense of fear and intimidation of appearing in court, rather than a reluctance to make a complaint, can lead to young children not being able to utter a word when called to give evidence', said Mr Byrne. 'The trauma suffered by young victims is so seriously regarded, that it has led prosecutors to try and conduct cases without calling them as witnesses.

'The existence of a video tape recording of the child's complaint should also increase the number of guilty pleas, and should ensure that these pleas are made at a relatively early stage of the proceedings. Some accused people are known to drag the case out because they do not believe that the child has in fact made the complaint which is alleged against them. It is not uncommon to hear "My child would never say that about me". If the accused person could be shown at an early stage a video record of the child's complaint, it may be that more accused people will be satisfied of the strength of the prosecution case, and will not continue to challenge the allegation being made against them', said Mr Byrne.

STOPPING CHILD SEXUAL ASSAULT

Ms Moira Carmody and Ms Affrica Taylor, from the Westmead Sexual Assault Centre in New South Wales, have identified that it is the school system that has a major function in teaching prevention education.

'Prevention programs aim at stopping an assault from

occurring. This involves the early identification of a problem, and the learning of skills to stop an assault. If children are made aware of sexual assault, and are taught effective methods of managing potential exploitative situations, the assault is either less likely to occur, or it will be reported more quickly', said Ms Carmody and Ms Taylor.

Two prevention programs implemented in American schools were outlined by Ms Carmody and Ms Taylor at the conference.

The first program was developed by Illusion Theatre and the sexual assault services to produce a play called 'Touch'. The play informs children about sexual assault and personal body safety, encourages children to say 'no' to unwanted touch (whether the touch is by someone they know, or someone they do not know), and educates children to ask for help from adults or others when needed.

The program has three major components, theatrical presentations, the design and implementation of sexual assault prevention curricula, and the training of community and professional staff. It emphasises the concept of being touched: how it is confusing when the receiver does not understand or misinterprets the intent, or when double messages are perceived between verbal and physical communication; how touching can be of an unfamiliar nature, or the touch is in conflict with the attitudes, values, or morals of the giver, and/or the receiver; and how touch can be exploitative, manipulative, or forced (i.e. rape).

The second program, Child Assault Prevention Program (CAPP), is aimed at pre-school and primary school age children, and emphasises that children have the right to be safe, strong, and free, and they need to learn skills to achieve this. Prior to class involvement, CAPP workers run a training seminar for parents and school personnel. CAPP workers then attend schools for a one-hour presentation and several role plays.

'The role plays show different assault situations a child might encounter which include: child-to-child assault, an adult stranger to child, and assault by someone known to the child. Each role play is done at least twice. The first time, the child (played by CAPP staff) is shown as a victim, the second time the child is shown asserting his or her rights and no longer being victimised. The children are also taught a special deep bellied yell which they can use in potential abuse situations to summon assistance. A final role play shows a child talking with, and getting help from their teacher or another trusted adult. Following the presentation, CAPP staff remain to allow children to talk with them. If an abuse situation is identified, action is taken to ensure the child receives help. The focus of the program is teaching children skills to handle all abuse situations.'

Community-based groups also have a vital part in implementing protection programs. Sergeant Vicki Brown, from the Victoria Police, outlined how one such program,



Professor Peter Boss,
School of Social Work,
Monash University

called 'Protective Behaviours', has been adopted by community groups. Teachers, school counsellors, community health workers, police, doctors, clergy, and representatives of parents groups have been trained in the techniques of the program, which they implement in a variety of ways. 'Protective Behaviours' is not a step by step teaching guide, but rather a conceptual framework within which the individual internalises the two themes of the program: we all have a right to feel safe all the time, and there is nothing so awful we can't talk with someone about it.

The program centres on three concepts: 'safety', the child is encouraged to differentiate between situations when it is okay to feel scared, and situations where it is not; 'early warning signs', the child becomes aware of his or her bodily reactions to threatening situations; and 'networking', the child identifies others to whom he or she can turn for encouragement, assistance, action, and other help when they are feeling unsafe.

The 'Protective Behaviours' program introduces two new ideas. Firstly, it takes the 'no, go, tell' sequence a step further: if a victim has told someone and nothing has been done, the child is encouraged to persist by telling others until action is taken. Secondly, the program emphasises

the process of stopping someone from self-disclosure in a context that would increase their victimisation.

The proceedings of the National Conference on Child Abuse will be published by the Institute later in 1986.



Dr Flora Botica,
Adelaide Children's Hospital
a speaker at the conference

New Staff

Two new staff members took up senior positions with the Institute in February 1986.

Dr Paul Wilson was appointed Assistant Director (Research and Statistics). He is probably Australia's best known criminologist, and is internationally recognised for his writings on Australian criminology. Dr Wilson



Dr Paul Wilson
Assistant Director
(Research and Statistics)

was formerly a lecturer in the departments of political science, sociology, psychology, and criminology at Queensland University, as well as Associate Professor and Chairperson of the Department of Sociology.

Dr Wilson will direct the Institute's research program and the collection and evaluation of crime statistics. His areas of expertise include 'high profile' violence, that is, child killers and juvenile violence; Aboriginals and criminal justice; and the way the mass media interprets crime and criminal justice events.

He has published twenty-one books, eighteen reports, and numerous chapters in books and articles in journals.

Mr Dennis Challinger was appointed Assistant Director (Information and Training) with responsibility for the operation of the Training Section, the Publications Section, and the J.V. Barry Memorial Library.

He comes to the Institute from the University of Melbourne where he was senior lecturer and past Chairman of the Criminology Department.

Mr Challinger has published two books, three reports, and numerous articles in journals and chapters in books, mainly on youthful offending, correctional matters, and retail crime, including shoplifting. This last area is an activity which he describes as having interested him ever since his adolescence.



Mr Dennis Challinger
Assistant Director
(Information and Training)

Wife Battering: Denial of a Health Issue

Many academic accounts of wife battering effectively invalidate women's accounts of the violence, by redefining the experience of violence within relationships, said Dr Suzanne Hatty, Senior Research Officer at the Institute, speaking at the Second National Conference on Women's Health in a Changing Society, in Adelaide from 4 to 7 September 1985.

Academic theorising on wife battering has accompanied the designation of such violence as a social problem, said Dr Hatty.

A particular sequence of activities has been identified as integral to the process of problem-construction: firstly, the naming of the problem by feminists; secondly, the provision of feminist-based services to battered women; thirdly, the recognition of these services by official organisations; and, finally, in the face of dissatisfaction with the bureaucratic response, the revival of feminist claims.

Some American commentators have argued that feminist demands have been compromised in the process of official co-optation. The control of funding procedures has thus been seen as a tool of social control enabling the existing governmental agencies to shape and control much of the destiny of the battered-women movement.

With the co-optation of wife battering by those who uphold the status quo, there has emerged a school of expertise upon battered women. Dr Hatty said that these experts have often attempted to locate battered women's experience within the framework of social deviance. This serves to emphasise the definition of this violence as a 'welfare' problem derived from psychological or interpersonal difficulties. This diverts attention from the severity of the violence.

Dr Hatty also noted that women's experience of victimisation is often scrutinised for authenticity. Such an attitude has been especially pronounced amongst service providers.

The police have undoubtedly received sustained and vociferous criticism of their response to domestic violence; however, the responses of many other practitioner groups to the needs of battered women are also

deficient, said Dr Hatty. Research in Britain has indicated that medical practitioners often view wife battering as tangential to their concerns. American research has concluded that the medical profession functions 'to reconstitute the "private" world of patriarchal authority'. Thus, medical practitioners consistently underestimate the proportion of their patients who are self-identified victims of familial abuse.

Of importance here is the definition of wife battering employed by various practitioner groups. Citing recent British research, Dr Hatty noted that these groups generally offer conflicting explanations of the violence. For example, in the British survey, social workers nominated money as the most significant precipitating factor, whilst general practitioners nominated alcohol. Obviously, such varying perceptions directly shape both the type of response offered by each practitioner group and the recording of the incidence of wife battering.

Despite the apparent denial of both the incidence and consequences of this violence, Australian research has clearly indicated that women often sustain injury as a consequence of attack by a male partner, according to Dr Hatty.

A recent study on battered women in Canberra, conducted by Dr Hatty and Dr Rosemary Knight of the A.C.T. Health Authority for the Australian Law Reform Commission, found that the extent of injury suffered by many of the women ranged from inconsequential to severe. Physical abuse was often inflicted through punching, kicking, or hitting (38 per cent), attempted strangulation or smothering (16 per cent), or use of a weapon (13 per cent).

The victims indicated that the last reported incident was characterised by the following: 13 per cent of victims were sexually assaulted; 22 per cent sustained severe injuries, such as broken bones, internal injuries, or loss of consciousness; and 66 per cent experienced severe bruising, lacerations, or blood loss.

Violence typically occurred once a week for 24 per cent of the victims, and daily for 16 per cent of victims. In a quarter of the sample, the violence had been continuing for fifteen to

twenty years or longer, and for 37 per cent of women, the violence had persisted for five to ten years. These results are consistent with the situation reported in other Australian cities, said Dr Hatty.

Some women in the Canberra survey who required medical treatment did not seek it, because of emotional reaction, such as guilt or shame, or because the perpetrator himself actively refrained the victim from seeking medical attention. Others accommodated to the violence by adjusting to the attacks despite sustaining injuries, whilst other women coped with the injuries either by self-medication, or by securing treatment from those within their social circle, said Dr Hatty.

Physical abuse may also culminate in psychological distress. Dr Hatty noted that attempts to accommodate to the violence to preserve the relationship may profoundly hamper women's psychological adjustment. Indeed, research indicates that severe victimisation may be associated with subsequent psychological disorder.

A recent American study has found evidence of histories of physical and/or sexual abuse in almost 50 per cent of a sample of discharged psychiatric patients. Husbands or former husbands had inflicted physical abuse in over half these cases.

Chronic abuse was associated with engagement, on the part of the patient, in both covert and overt self-destructive behaviours. Dr Hatty said that these activities were related to the patient's feelings of worthlessness, shame, and guilt.

Dr Hatty concluded that it is important to comprehend the vital role of service agencies in validating women's experience of the violence, and in offering viable alternatives to victimisation.

The denial of wife battering as a health issue and its construction as a problem of individual social welfare serve to compound the existing oppression. Hence, the significance of practitioners' attitudes and practices to the success of women's help-seeking behaviour is undeniable. An awareness of the importance of these attitudes and practices should then be fostered through educational programs.

Youth, Crime and Justice

The Institute held a conference in Canberra from 9 to 10 December 1985 to examine youth, crime, and justice, to coincide with the conclusion of International Youth Year.

Youth and Australia

Australia would be condemned to a future of mediocrity and irrelevance if it continued to impose traditionalist policies on its youth, said **Mr Michael Clohesy**, Director of the Youth Affairs Council of Australia.

Young people's behaviour, goals, and expectations are different from those of adults. Adults, therefore, cannot judge today's youth on how they behaved when they were young, or on what adults believe that today's youth ought to be doing, said Mr Clohesy.

Young people do not want to be shackled to the past, but want to shape their future. However, society only pays lip service to the notion of young people as the future of the country. At best, said Mr Clohesy, there is an acceptance that, at some far off time, young people will take over the reins and we had better make sure they are well prepared. This 'head in the sand' approach denies the visions and hopes of young women and men, and their attraction to new things and new ideas.

'I believe that the secret of the future — for young people and Australia — lies in letting loose this flair and instinct for innovation. If young people's visions are to be realised, and if Australia is to do other than limp into the future, our institutional machinery has to change vastly', said Mr Clohesy.



Mr Michael Clohesy
Youth Affairs Council of Australia

In his opening remarks, **Professor Richard Harding**, Director of the Institute, said that successful policy change would occur by recognising the value and utilising the findings of good research. The financial costs and human waste of unsuccessful youth policies were now too great to be acceptable. Therefore, the gap between policy makers and research had to be narrowed.

The conference, attended by researchers, criminologists, youth and social workers, educators, judges, politicians, and public servants, aimed at achieving this goal. Areas examined at the conference follow.

Youth and Prostitution

Speculation about the number of young people involved in prostitution was obscuring the truth of the problem, said **Dr Linda Hancock**, from the Swinburne Institute of Technology, speaking at the conference.

From the results of her research in Victoria, Dr Hancock estimated that approximately 180 young people aged 17 years or less were involved in prostitution in Melbourne at some time during 1984. Of this sample, 86 per cent were female.

'This does not mean that at any one time there were 180 young people involved in prostitution. Nor should we assume that all these young people were involved in street prostitution. To the contrary, a high proportion prostitute intermittently and their activities are private. We found that young people may often trade sexual services in exchange for accommodation or drugs, and that such activities may not attract a specific response from police or welfare agencies', said Dr Hancock.

'Although the number of young people involved in prostitution is perhaps lower than expected, this should not detract from the fact that these young people are mainly concentrated in the St Kilda area, they are often involved with drugs, and often lack the support of their families and home communities. They are disadvantaged by their young age and their lack of income, and have particular needs which should be addressed.'

Dr Hancock identified some common themes emerging from interviews with the young people she surveyed:

- home backgrounds disrupted and lack of continuous care in some cases
- qualifications lacking, left school at an early age
- drug use combined with prostitution for some
- experimentation with a wide range of drugs, often at an early age
- institutions as learning grounds for drug use and prostitution
- personal isolation within the camaraderie of street culture
- involvement in prostitution at an early age.

Two main recommendations resulted from Dr Hancock's study: the need to strengthen controls that protect young people from exploitation, and the need to develop a more comprehensive system of support services for young people.

On the first point, Dr Hancock recommended that the sexual protection provisions of the *Crimes Act 1958* required review to adopt a uniform age defining sexual offences, to review present defences, such as believing reasonable age, and to perhaps create specific offences to protect young people from sexual exploitation or abuse.

On the second point, Dr Hancock recommended that services need to be targeted both at prevention, in order to minimise the need for young people to become involved in prostitution, and at facilitating young people to move out of prostitution and/or drug abuse if they so desire.

Youth, Unemployment, and Crime

Young women are being disadvantaged because of the myth that males are the breadwinners who will support their wives and, therefore, women do not need to work, said **Dr Christine Alder**, from the University of Melbourne.

There also exists the view that women can fall back on the traditional role of housewife and looking after their children. This lack of concern for unemployed females denies the reality that over a quarter of Australian women have always worked throughout the twentieth century. Further, the majority of Australian women will work for some period of their life, said Dr Alder.

However, the need for less skilled office workers, technological changes,

and variations to the structure of the labour force had reduced the number of entry level jobs available to the early school leaver, said Dr Alder.

'For the young unemployed, what this means is that they never assimilate the mix of skills, experience, and credentials necessary to gain entry into stable, career-oriented, and decent paying work.

'Unemployment has many consequences for young people, not least of which is the disruption of the expected sequencing of life events, that is, the transition from childhood to adulthood through the phases of leaving school, starting work, leaving home, marriage, and parenthood.

'If you do not know what is going to happen tomorrow, if all that you expected to happen has not, when all your best efforts are to no avail, how can you structure your thoughts about tomorrow?'

Dr Alder also said that for some unemployed youth there were few options other than to turn to some form of delinquent behaviour. Sometimes it was the pressure to acquire goods and the lack of financial resources which contribute to theft. Others, however, struggle with the frustration and deprivation of their unemployment without resorting to criminal behaviour.

'The exploitation of these youth by employers should be of equal or greater concern when speaking of "criminal" or "illegal" activity associated with youth unemployment', said Dr Alder.

'As these people have fewer choices in the availability of paid work, there are increasing reports of youth exploitation. The Youth Affairs Council lists six forms of exploitation: unpaid trial or probation periods, non-payment of wages, underpayment of wages, government grants to employers, informal work, and sexual harassment.'

Dr Alder concluded that 'we should not just focus attention on the "behavioural problems" of unemployed youth. It is not the young people themselves who are the problem. What we should do is confront the dilemma of creating meaningful employment opportunities for youth, but there is obviously no easy solution to this dilemma'.

Youth and Services

A project which provides support, resourcing, and counselling to young sexual assault victims and their families was outlined at the conference by **Mr Colin Coxhead**, Senior Projects Officer, National Y.M.C.A.

Young people who do not receive adequate support when victims of sexual assault may soon become criminal offenders, said Mr Coxhead. He stated that for some victims later offending was directly related to their being sexually assaulted. A common pattern had emerged with the victims with whom he had worked: sexual assault, further contact with the offender, inability to understand or explain what had happened, nightmares of the assault, frustration and lack of someone to talk to about the attack, then offending.

Offending is perhaps a cry for help, said Mr Coxhead. The relief was not in finally being caught in the offence, but in being able to talk to someone about what had happened to them, and how they felt. The frustration of their circumstances was relieved by striking out at the community that appeared to have no concern about them.

The Y.M.C.A. project, in addition:

- provides education programs for youth workers and police
- encourages positive working relationships between police, youth, and youth workers
- provides drug education seminars for police
- works in schools with solicitors and police, to discuss young people's legal issues.

The project also lobbies for alternative short and medium term foster care rather than institutionalisation. Mr Coxhead said that young people, when institutionalised for their 'care and protection', saw themselves in 'gaol' and being punished, while the accused offender was on bail 'free'. Also, there was concern that young women placed in such institutions would often come into contact with and under the influence of serious offenders. Victims do not receive the necessary support by being placed in an institution, said Mr Coxhead.

Also on the topic of institutions, **Senior Judge Kingsley Newman**, from the Children's Court, South Australia, said that alternatives to institution-

alisation for young offenders must be found.

'Although rehabilitation by placing children in institutions has largely failed, the remedy is not to abandon the effort with an air of sophisticated disillusionment; it is to try to understand why, and to intensify the search for approaches that offer some hope of working', he said.

'We should use the options between probation and incarceration: the incarceration is harsh and often damaging; but the probation hardly differs from dismissal.'

Judge Newman said that a child with a problem should not be removed from the community in which the problem exists. Placing a child into an artificial environment would only make the problem worse. Delinquents committed to a juvenile corrections unit are about four and a half times more likely to become serious offenders when adults, than young people who are not institutionalised.

'Intensive Neighbourhood Care (I.N.C.), run by the Department for Community Welfare in South Australia, offers an alternative to institutionalisation and involves the placement of young serious offenders with families within the community. These families are especially selected and trained to provide the guidance and care required by many of these youths who are unable to return to their own families.'

The program includes providing families for young people remanded by the Children's Court into I.N.C. custody, for young people as a condition of a court bond, and for long term care for children with major behaviour problems.

'By being able to reduce a child's offending behaviour, I.N.C. plays an integral part of a longer term strategy in assisting children to achieve acceptable levels of behaviour', said Judge Newman.

Lack of congruence between the social construct of youth (15-24), and the legal status of children and adulthood has led the legal system incorrectly to define 'youth' as children at the upper end of the age range, said **Dr Ian O'Connor**, from the University of Queensland.

'Youth' is not a construct recognised by law. Consequently there has been

Prisons: A Symbolic Gesture?

If it could not be proved that the greater use of imprisonment resulted in lower levels of crime, then imprisonment is little more than a symbolic gesture used to reassure the community that something is being done about crime, according to Mr David Biles, Deputy Director of the Institute.

In a public seminar as Regents' Lecturer in Social Ecology at the University of California, Irvine, in November 1985, Mr Biles said that no consistent relationship had been shown to exist between levels of crime and changes in imprisonment rates over the 1960-80 period in Australia. Although it cannot be proved that no relationship exists, it does, he said, cast doubts on one of the popular assumptions about the use of prisons.

The use of imprisonment varies between about 25 and 250 per 100,000 population across Australia despite the broadly similar levels of crime in all jurisdictions. Mr Biles argued that this showed that some jurisdictions in Australia are generally more punitive,

and others are generally less punitive, regardless of the levels of crime.

'The Australian Capital Territory imprisonment rate is around twenty-five people per 100,000, while the Northern Territory rate is ten times, or 1,000 per cent, higher. Even with the states, the imprisonment rates vary between forty in Victoria, and 120 in Western Australia.

In other words, one state uses imprisonment three times, or 300 per cent, more than one other. The current national imprisonment rate is approximately sixty-seven, representing just over ten and a half thousand people in prison at any one time in the country', he said.

Supporting this view, Mr Biles said that his research had also revealed that those states that have high imprisonment rates, such as Western Australia and the Northern Territory, also have the highest rates for imposing alternatives to imprisonment, that is, probation, parole, and community service orders. Conversely, the low

imprisoning jurisdictions of Victoria and the Australian Capital Territory, have the lowest rates of imposing non-custodial alternatives.

The greater use of prisons, however, does not, and perhaps cannot, lead to lower levels of crime when the vast majority of crime goes unpunished, said Mr Biles. The results of two victimisation surveys in Australia indicated that only 40 per cent of potentially imprisonable offences were reported to police, and from police and court statistics, it is only one in ten reported offences that result in criminal convictions. Further, only a small minority of those convictions resulted in imposition of a prison sentence.

If this is the case, and there is no demonstrable utilitarian benefit to be gained from wide use of imprisonment, then it would seem that imprisonment is purely retributive, or satisfying the demand for vengeance. The question then arises, asked Mr Biles, how much symbolism do we really need?

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little consideration of whether there is any congruence of need or experiences for those aged 15-17 and those aged 18-24, or whether youth as a group experience distinct legal needs, said Dr O'Connor.

For example, under the law a child can be brought before the courts for behaviour which would not result in an adult being brought before the court. The child welfare system can also exert considerable control over the daily lives of children, including their liberty, and intervene in the lives of non-offending children. These decisions affecting youth are rarely open to review. Quoting M. Foley ('The Hidden Courts in Australia', *Legal Service Bulletin*, 2, 268, 1977), Dr O'Connor said that 'the liberty of tens of thousands of Australians is determined behind closed doors in hidden courts. These courts hold sessions without advocates, without strict rules of evidence, without the appearance of the party involved, and often beyond public scrutiny'.

Dr O'Connor's research into legal

services for youth revealed that legal workers did not perceive the legal services as having a role to play in many areas of difficulty encountered by youth. 'They only tended to refer family and criminal law problems to the legal services. But legal problems go beyond these, to tenancy, consumer, and administrative law. They did not use bodies such as the ombudsman or consumer affairs to seek redress for the client's difficulties.'

'A further barrier to youth obtain ing needed legal services was ignorance of the existence of legal aid, a fear of the expense of legal assistance, doubt about the fairness of the legal system, and ignorance about a lawyer's obligations relating to confidentiality and following a client's instructions.

'There is no comprehensive legal rights education for students during the period of compulsory education. Community legal education for youth is often *ad hoc* in nature, unimaginatively presented, and not oriented to the daily lives of youth.

'Legal services can be used to

empower young people to assert, defend, and extend their legal rights. For this to occur, legal services must recognise the breadth of youth's legal needs and youth's lack of access to services. Youth require information on the law and the legal system. So do workers with youth. Access to legal services should not depend on the point at which an individual enters the welfare maze; youth should not bear the consequences of our inability to co-ordinate services. Health and welfare workers need to adopt a perspective informed by a concern for the assertion of young people's rights, rather than the current focus on "what's right" for young people.

'It is clear that the immediate task for workers with youth and legal services is for themselves to adopt, and to facilitate youth's development of, a rights perspective in their interaction with the major social institutions and processes of our society', Dr O'Connor concluded.

The proceedings of this conference will be published later in 1986.

Book Reviews

VISIONS OF SOCIAL CONTROL

By Stanley Cohen

Polity Press, United Kingdom, 1985, 325 pp.

\$26.95 paperback, \$75 hard cover

Reviewer: Dr Suzanne Hatty, Senior Research Officer,
Australian Institute of Criminology

This book, the culmination of a long period of intense and sporadic scholarship, represents yet another addition to the burgeoning literature on deviance and social control. However, there are several features which distinguish this book from its predecessors: its ability to challenge existing perceptual frameworks, and in so doing, propose new theoretical relationships; its capacity to transcend the ideology of the social control apparatus; and its propensity to entertain the reader.

Visions of Social Control is true to its title: the book is ostensibly concerned with organised responses to individual behaviour considered unacceptably different. Whilst Cohen's purpose is to 'classify, assess, and criticize some current changes' to these normative social responses, he provides only an indirect definition, by way of description, of the mechanisms of control and coercion.

Specifically, Cohen is interested in the reciprocity of these systems, whether they be structured around notions of criminality or madness. As such, he explores the significance of alterations in attitude or strategic practice within these systems: the so-called 'master movements'. His objective is to examine the ramifications of these changes and, in particular, to point to their inherent ambiguities and contradictions.

Cohen begins his argument by providing a schematic overview of the major alterations in the deviancy control system in the late eighteenth and early nineteenth century; he alludes here to the pioneering work of Foucault, Rothman, and Scull. He plots the emergence of closed institutions, the decline of physical punishment, and the rise of expert knowledge related to the fragmentation of deviance. Cohen then points to the existence of apparent contemporary shifts in the management of deviance: these encompass the move toward minimal state intervention; the trend toward the relinquishment of professionalism and its popular focus on psychological inner-states; and, most significantly, the urge toward the abandonment of the institution. The destructuring movement, according to its exponents, contained within its momentum the potential to eradicate the hegemonic grip of the earlier ideologies and practices. However, Cohen claims that an analysis of the continuity between the rhetoric of the reformers and their observable activities renders this potential void. There is an explicit mismatch between the 'realm of words' and the 'realm of deeds'. The central argument of the book thus hinges upon the proposition that the espoused 'alterations' to deviancy control are, in fact, illusory. The recourse to community corrections, to diversion from the formal mechanisms of punishment, has involved the extension and yet obfuscation of the social control apparatus.

Subsequent chapters are taken up with the manifest failures of the decarceration option. Cohen claims that diversion programs have merely buttressed and supplemented the traditional methods of sanction. Reminiscent of

Foucault, Cohen invokes spatial metaphors to describe this opportunism: nets, feedback loops, boundaries, penetration, and absorption within particular sites. Cohen states: 'This is the real, awful secret of community control . . . the same old experts have moved office to the community and are doing the same old things they have always done' (p. 75). Nevertheless, fundamental to the structure of this extended system is the principle of binary choice; the management of deviance thus revolves around the bifurcation of the modalities of control.

However, Cohen is at his best in dissecting the 'social-control talk' of the professed deviance experts. He illuminates the relationship between the superficial and deep structures of three versions of this rhetoric: the promotion of community; minimal statism; and behaviourism. It is in this last enterprise that Cohen excels. In discussing the 'baggage of progressive criminology', Cohen notes that the rehabilitative ideal is still viable. Indeed, behaviour modification has, according to Cohen, been promoted as the superior technology: it is compatible with control and surveillance; it is individualistic; and it does not address the issue of causes.

Cohen, at the close of his book, proposes several solutions to the paradoxical dilemma of the 'second transformation'. He labels his approach 'moral pragmatism'. This is offered as an alternative to the self-perpetuation of utilitarian criminology, and involves a focus upon 'doing good', 'doing justice', competent program evaluation, and the application of punishment which is both expressive and visible.

Visions of Social Control is not a book without flaws. The breadth of its parameters, and the swift progression through the material, have resulted in significant sacrifices in the specificity and substantiation of its argument. Also, it is generally silent, or confused, on the issue of gender. For example, in discussing the professionalisation of deviancy control, Cohen implies that this has been even in its distribution and application, yet he has earlier acknowledged that young women have been differentially affected by community corrections programs.

Nevertheless, despite some omissions and confusions, this book will stand as an awesome precedent in its field.

CRIMINAL WOMEN

By Pat Carlen (ed.), Jenny Hicks, Josie O'Dwyer,

Diana Christina, Chris Tchaikovsky

Polity Press, United Kingdom, 1985, 197 pp.

\$13.95 paperback, \$39.95 hard cover

Reviewer: Ms Jenny David, Lecturer, Law Faculty,
University of Sydney

In *Criminal Women*, Pat Carlen has collected together four eminently readable and emotive accounts of the lives of women, all of whom have spent substantial periods of their lives caught up in the criminal justice and penal systems. Each of them has survived, and at the time of writing, all were free. Their stories remove many of the myths surrounding female criminality. They are essential reading for all those who seek to understand our systems, their debilitating and dehumanising effect, and the people caught in them.

The collection starts with an introduction by Pat Carlen setting out the conventional explanations of female criminality, from Lombroso's pioneering work in the nineteenth century to Gowie in the 1960s. Carlen concludes that all these theorists saw women and their roles as biologically linked. However, with the rise of the women's movement, new explanations came into being led by Smart and Smart (*Women, Sexuality and Social Control*, 1978). These explanations sought to 'analyse women's lawbreaking and criminalisation in relation to the "complex and concealed forms of oppression and social control to which women are subject"'. Carlen argues that these attempts were unsuccessful largely because (i) many feminist writers still held the idea that crime is essentially a 'masculine' activity, and (ii) (and more importantly in my view) a global theory of crime (female or male), or a special theory of crime (global or not), are both theoretically unsound and politically ill-judged. Carlen then goes on to point out that the 'women's liberation movement leads to crime' argument reinforces the masculine/feminine dichotomy, and is damaging to feminism because it continues the two socially acceptable identities available to people, and does not emphasise the limitless possible identities that are available once the straitjacket of these two stereotypes is removed. The book would have benefited from the inclusion of more detail of the more recent explanations of female criminality. For the lay person or student who needs an overview of the explanations, there is little fleshing out of these later explanations. None of the Australian writers, such as Jocelyne Scutt and Janet Hartz-Karp, is included. This is a serious limitation on the book's usefulness in Australia.

Carlen's basic thesis, illustrated by the four stories, is that some women turn to crime when faced with the social and economic disabilities imposed on many women in a society organised from a class and sexist point of view. She claims that the two dominant myths the four stories debunk are:

- (a) that women criminals are essentially masculine and maladjusted or mentally ill; and
- (b) that women's prisons are not really prisons, but a 'hybrid' between a mental institution and a 'rather saucy St Trinians'.

The collection certainly does debunk the second of those myths. Josie O'Dwyer's account of her violent experiences in various U.K. prisons is horrifying, and the more so in its matter-of-factness. The fact that she survived is a testimony to the human spirit. Her experiences were worse than those of many prisoners of war in World War II. She lost 4½ stone in weight during one period in a maximum security gaol; after six months in solitary confinement she was unable to hold a conversation, and sometimes deliberately got placed in solitary again as she was unable to stand being with other people.

The experiences of these four women are ample testimony to support Jenny Hicks's statement: 'The prison experience is so extreme, degrading, humiliating, and isolating that prisoners' initial sense of guilt and shame at their crime is soon replaced by feelings of injustice and alienation from the society which can treat them so (p. 136).

Yet, as Pat Carlen chronicles for the U.K., and as the N.S.W. Task Force on Women in Prison reported early in

1985, the incarceration of women is increasing, and doing so rapidly. When will we really appreciate the futility of our present response to crime which falls so unequally on those who commit unlawful acts?

This is a book that brings feelings and the voice of bitter experience to the often dry writings on criminology. Pat Carlen is to be congratulated for her work in bringing together the diverse stories of those four survivors, and making a coherent, informative, and excellent whole. Even though it lacks Australian material, I have no doubt this will be a standard textbook for years.

PHILOSOPHICAL DIMENSIONS OF PRIVACY — AN ANTHOLOGY

Ferdinand D. Schoeman (ed.)

Cambridge University Press, Melbourne, 1984, 426 pp.
\$22.50 paperback, \$66.50 hard cover

Reviewer: Mr Jim Nolan, Executive Member,
New South Wales Privacy Committee

Privacy now receives increasing attention as a political issue. Police powers, access to information, medical and scientific research, and a possible tort of unfair publication, are just a few privacy concerns. The discussion of these issues, however, has been confined largely to journal articles. The importance of this book is that it brings some of the most significant of these articles together.

Although the title emphasises the 'philosophical' aspects of privacy, of the seventeen essays, four have a legal orientation, five are from the social sciences, and the remainder are 'philosophical'.

The volume includes the classic Warren/Brandeis essay which started it all. Other vintage inclusions come from Westin, Prosser, and Posner. Contributions also include an anthropological account of privacy by Robert F. Murphy, and three essays discussing aspects of intimacy and intimate information.

Schoeman's introductory essay surveys the literature on privacy, and in so doing summarises the main arguments of the other contributors. He deals with two primary themes for privacy, the importance of the dignity of the individual, and the human need served by it to secure and maintain personal relationships.

As far as this reviewer is concerned, one disappointment of the book is the lack of 'traction' between the sociopolitical issues raised on the one hand, and the theoretical discussions on the other. Perhaps this is a matter of taste, but too many of the 'philosophical' contributions tend to the bloodlessly abstract. This does less than justice to a potentially lively political issue like privacy.

Benn is the only one of the philosophical authors who attempts to put some political flesh on the bones of the conception of privacy, pointing out that it is closely linked to the liberal ideal. This sense of the importance of privacy as a cornerstone of our political culture is, disappointingly, absent from the more analytical contributions like that of Ruth Gavison's 'Privacy and the Limits of Law'.

It is also unfortunate that some of the contemporary work on 'information privacy' is virtually ignored. Substantial questions for law and public policy are raised by

developments in mass computerisation. The writings of scholars, such as Gary Marx and James Rule, demonstrate that there is great scope for research and reflection here. Information held by the modern state permits a degree of social control hitherto unimagined. The current pressure for a national identity card is just the latest odious example of this trend.

The techniques of 'data surveillance' make search and seizure by physical means technologically obsolescent as those familiar with the investigative methods employed by the Costigan Commission will appreciate. New issues of category and class suspicion emerge with the increasing use of these techniques. The profiling of doctors' over-servicing is a rudimentary example of this. It is a shame that the philosophical and/or jurisprudential aspects of these developments receive no treatment in Schoeman's volume.

This anthology is a valuable compendium of some of the most important statements on privacy since and including the famous Brandeis/Warren essay. It is regrettable, however, that some of the recent writings on emergent privacy issues have not been included.

SENTENCING: STATE AND FEDERAL LAW IN VICTORIA

Richard G. Fox and Arie Freiberg
Oxford University Press, Melbourne
1985, 615 pp., \$125

Reviewer: Mr Ivan Potas, Criminologist,
Australian Institute of Criminology

The research for this book, undertaken by two highly respected Monash University legal academics, was commenced in 1979, and was funded by the Criminology Research Council. It completes a series of sentencing reports, dealing with the principles of sentencing, originally conceived in 1974 by former senior criminologist of the Institute, Mary Daunton-Fear. A Tasmanian study is still to be published, but Western Australian, South Australian, Queensland, and New South Wales studies, produced by various authors and presented in various styles, have all contributed to the understanding and the practice of sentencing laws throughout Australia.

In many respects, the present study is broader and more comprehensive than previous works. It contains an analysis not only of appellate court sentencing decisions wherein are enunciated the principles of sentencing, but also reviews legislation relating to sentencing and includes a study of summary as well as indictable matters at state and federal levels. The inclusion of a consideration of federal law also has the advantage of attracting the attention of practitioners in other jurisdictions where similar inter-jurisdictional problems exist. Furthermore in so far as all Australian criminal justice systems are based on the English common law system of sentencing, the principles discussed in the book will be found relevant to other jurisdictions.

The book itself is encyclopaedic in proportions. It boasts reference to some 250 Victorian and 150 Commonwealth statutes as well as over 1,600 cases. These include High

and Federal Court decisions, decisions from other states, and both reported and unreported sentencing decisions of the Full Supreme Court of Victoria.

The book takes a broad view of sentencing, and commences with a description of the distribution of sentencing authority. The authors note that the legislature has 'perhaps unthinkingly, significantly extended the discretionary powers of sentencers, and contributed to the risks of disparity in sentencing'. We are reminded of *Yates* [1985] VR 41, 44, where the Full Bench of the Full Court described the disparity between the judicially imposed sentence and the sentence served by the prisoner as indicating either that the court has no authority, or else that the court is 'engaged in an elaborate farce designed to conceal from the public the real punishment being inflicted' upon the offender. If the latter is an accurate analysis, if the legislature has shied away from its responsibility of containing sentences within realistic levels, then the responsibility for the issue of disparity falls squarely into the lap of the executive government.

The authors at no time tackle the question of where, in their view, sentencing authority should lie. Perhaps such a question is outside their charter 'to describe the law in Victoria which governs the sentencing of offenders'. They certainly have enough on their plate exploring the intricacies of state and federal laws, the application of inconsistent laws, reciprocal enforcement of judgments, the variations relating to the interpretation and application of penalty provisions, and so on.

The book contains a wealth of information relating to the procedural aspects of sentencing, such as the role of counsel, legal aid, and the factual basis of sentencing. The latter is of fundamental importance because it is ultimately upon the facts as accepted by the sentencing court that the final sentencing decision is made. The authors also discuss the advantages as well as some of the pitfalls of court statistics. Indeed the last chapter of the book provides a series of sentencing tables, together with appropriate commentary, describing the sentencing patterns for some of the major crimes. This last section will prove useful to all sentencers, and particularly to those practitioners who have little experience in the courts, and who require some rough and ready appraisal of the going rate or range of sentences imposed in particular offence categories.

So far as reference books go, the present one is eminently readable. Some chapters are so well constructed and researched that they could be lifted out of the book and published as articles. The chapter on 'Fines' would be one such example, the chapter on 'Forfeiture and Disqualification', another.

The several chapters on non-custodial dispositions, particularly the chapter on 'Supervised Release', should be read not only by those with legal backgrounds, but by other criminal justice professionals such as probation and parole officers. There will be found a brief but nevertheless comprehensive history of probation, details relating to eligibility for probation, its relation to other forms of punishment, the pre-conditions for making such orders, variation and discharge of probation orders, and circumstances relating to the breach of such orders.

Media Exploitation of Women

The claim that pornography and stereotyped images of violence against women in the media are not harmful, has been rejected by Dr Jocelyne Scutt, from the Victorian Law Reform Commission.

Speaking at the Institute's conference on domestic violence in November 1985, Dr Scutt said that it is an illfounded view that pornography will prevent male aggression towards females; rape and other forms of violence against women continue unabated despite the availability of films and videos of women in sexually exploitative and aggressively victimised poses and roles.

This disproves the traditional argument that unless women are displayed as victims of sexual aggression in films and books they will become victims of male aggression in the real world. A similar argument is used in favour of prostitution: unless women are available as prostitutes, then 'good' women will be sexually attacked, said Dr Scutt. 'This is nonsense.'

Dr Scutt said that violence viewed on television, that is, the romanticised 'Mills and Boon' version of family violence — 'she needs a good hit to see she really loves him', 'he needs to give her a good shake to bring her to her senses' — and the paradigm of the happy 'television' family, can also have harmful effects.



Dr Jocelyne Scutt
Victorian Law Reform Commission

The effect is that the criminal justice system and the welfare system are failing to deal with criminal assault at home because they are replicating the false depictions and popular images of women, men, and wife beating portrayed on television and in movies.

A training film used by one police force in Australia clearly illustrates this issue, said Dr Scutt. 'The woman is treated as a childlike creature, without any independent mind . . . She is pushed into the role of being truly in love with her husband deep down, certainly not so hateful as to want to turn him in. Her childishness is emphasised even in the way the police talk to her'.

'At the welfare level, some social workers still believe that the so called working classes articulate love through violence: "It's only his way of expressing his love for her", "We know she really likes it. It's her way of seeking attention"'.

It is also necessary to change the legal definitions of the concept of pornography if violent sexual portrayals, stereotyping, and sexist advertising are to be eliminated, said Dr Scutt. The current legal definitions of pornography are unhelpful and dangerous, and do not deal with the real issue: the exploitation of women's bodies.

'The devising of measures to oppose media exploitation of women and the support through popular messages of criminal assault at home as trivial or "between friends" are the more difficult because of the limitations imposed by a word which has already been given a meaning by a culture unconcerned about women's rights not to be exploited, stereotyped, or beaten and raped, whether by family members, friends, or others.

'If measures are to be introduced to create a new debate about pictorial exploitation of women, or to recast the old, it is essential to clarify the nature of the ill being fought against, and to devise measures amenable to ensuring that equal resources exist on the feminist side of the argument to measure up an equal response to those supporting the stereotyping and sexual exploitation of women, and the rape, bashing, and abuse of women by the men they have married', concluded Dr Scutt.

Dr Scutt's paper will form part of the proceedings from the Institute's domestic violence conference, to be published later in 1986.

(from previous page)

Given sufficient space one could go on praising the book. However, it also has its weaknesses. Not all of it flows. There are times where it appears that the authors have alighted upon a recent decision and decided to insert it in the text as an afterthought. At other times, the authors stop short of providing additional information after they have raised particular issues in the text. Nevertheless, given that the work is essentially a reference book, and in this regard the abundance of references to other sources will also prove indispensable for legal practitioners, law reformers, and students alike, it constitutes a valuable

resource. All who call upon it will be enlightened by it.

Finally, there is one aspect of this work which applies to all sentencing texts. It is that the relevant law and statistics change over time. If a work is not updated on a regular basis, its importance will decline. Already the first body-blow has been struck by the passing last year of further quite substantial amendments to the *Penalties and Sentences Act 1981*. These kinds of problems are unavoidable. Meanwhile, the authors should be congratulated for having provided an important and most welcome contribution to the literature on sentencing in this country.

And, in brief ...

Port Moresby Visit

Mr John Walker, Criminologist with the Institute, visited Port Moresby in November 1985, as a consultant on crime and justice statistics to assist in Papua New Guinea's strategy on maintaining law and order.

Poor communication between the provinces and the central records office, and inadequate numbers of staff, caused many of the problems in gathering crime and justice statistics in Papua New Guinea, according to Mr Walker.

His recommendations were, therefore, aimed at simplifying procedures so that existing staff could produce the statistics automatically arising out of their routine work, but including more cross checking procedures, so that late or missing figures were identifiable.

Mr Walker's report, entitled *Crime and Justice Statistics in Papua New Guinea*, will be released shortly by the Institute.

Seminar on Sentencing

A national seminar on sentencing in Australia was held at the Institute from 18 to 21 March 1986, to consider sentencing reform, and to provide a forum where practitioners and academics could discuss the sentencing process. This seminar will be featured in the June *Reporter*.

Victoria Police Report

The report of the Committee of Inquiry into the Victoria Police is now publicly available. The Committee, appointed in 1982 by the Victorian Minister for Police and Emergency Services, the Honourable Race Mathews, was chaired by Judge T. Neesham, and the members included Mr David Biles, Deputy Director of the Institute.

The report appears in three volumes: Volume One, the main report, of 606 pages, is available for \$20; Volume Two, of 757 pages, comprises supporting documents and review of internal discipline, and is available for \$15. There is also a separate Executive Summary of 125 pages, which is available for \$5. Copies can be purchased from the Victorian Government Printer, Treasury Place, Melbourne.

Terrorism Discussions



Mr Ronald Spiers, Under-Secretary, U.S. Department of State.

Mr Spiers visited the Institute in January 1986, and held discussions on terrorism with Dr Grant Wardlaw, Senior Criminologist, and Mr David Biles, Deputy Director.

Police Reference Book

The Institute has recently published *Police Source Book 2*, edited by Mr Bruce Swanton, Mr Garry Hannigan, and Ms Trish Psaila. It contains information on the police forces of Australia and its states and territories, as well as data on the police forces of Christmas Island, Norfolk Island, and New Zealand, and is presented in four parts:

Police of Australasia — details the legal powers of police forces, personnel strengths, promotion procedures, training, conditions of service, Aborigines and police relations, industrial relations, statistical tables, etc.

Police History of Australasia — changes in practices under the influences of new police commissioners, legislation, inquiries into police behaviour, etc.

Libraries, Literature, and Information Services — details of the library facilities of the police forces throughout Australasia, what literature exists about police and related activities, and where that material can be located.

Contributors' Articles — eleven articles on a variety of police issues submitted for inclusion in this volume, for example, K.J. Rowe, 'Police Recruitment and Selection: Some Vital

Conceptual and Practical Issues', D.J. Smith, 'Police/Community Involvement, A Planned Approach to Effective Crime Control'.

Police Source Book 2 is available from the Institute for \$15, 756 pp.

Potential Dangerousness

Sentencers should not abuse the concept of dangerousness when determining the length of a criminal's period of imprisonment, according to Professor Frank Zimring, from the Earl Warren Legal Institute of the Univer-



Professor Frank Zimring
University of California

Speaking at the Institute in December 1985 with Mr Gordon Hawkins, former Director of the Institute of Criminology, University of Sydney, Professor Zimring said that while he did not reject the use of 'dangerousness' altogether, he was worried that people would enthusiastically imprison offenders for long periods because of their potential danger to society. He said that there was insufficient evidence to prove that a person's long term behaviour could be accurately predicted: therefore, long prison sentences based on potential violent behaviour could not be justified. The most reliable predictions about criminal behaviour were for the year after the crime had been committed. That is, 'If a criminal commits a violent crime in 1985, then they may well do so in 1986. They are the most dangerous in the immediate future, but you cannot predict very accurately after that'.

Criminology Research Grants

The Criminology Research Council, at its quarterly meeting on 13 December 1985, granted more than \$40,000 to research the following two areas.

The Costs of Arson in New South Wales

This research project will examine data held by the N.S.W. Police Force, the N.S.W. Fire Brigade, and the Insurance Council of Australia to determine the pattern of costs of arson in New South Wales. The study, funded by a \$20,000 grant made to the N.S.W. Standing Committee on Arson, will establish a methodology to estimate the costs associated with arson; provide an information base so that the management of the processes and resources used to combat arson can be improved; and suggest improvements in statistical collection and storage of the data on arson.

Children's Understanding of the Legal System

In order that a program can be developed to prepare children for court experiences, this study will examine how children understand the criminal justice system. The research is to be funded by a \$21,944 grant to Dr Kay Bussey and Dr Judy Cashmore, from the School of Behavioural Sciences, Macquarie University, who will interview children to obtain their perceptions of making statements to police and the process of police questioning; what it means to plead guilty or not guilty; and their own role and the role of others in court proceedings.

The following reports of completed research were presented at the meeting.

Detected Young Offenders by Mr Dennis Challenger, from the University of Melbourne, showed that for a sample of

over 15,000 Victorian youngsters dealt with by the police: their average age is 14.6 years; most offend in the company of other youngsters; most live at home with both parents; and most offenders are male.

Evaluation of the Living Unit Concept in Use by Professor G. Brawn, from the University of Melbourne, found that in prisons, the arrangement of single 'living unit' cells with outside views, around a multipurpose space, reduced the negative aspects of incarceration. In these 'living units', compared with traditional cells on each side of a long corridor, there was evidence of less aggression, destruction, disturbances, suicides and escapes.

Tenant Perceptions of Crime and Security on Melbourne's High-Rise Public Housing Establishments by Mr Stephen James, from the University of Melbourne, and Mr Richard Wynne, from the Flemington Community Health Centre, investigated crime, fear of crime, and security arrangements in high-rise public housing.

Drugs, Media and Enforcement by Dr Jane Hendtlass, from the R.A.C.V., surveyed the relationship between drug abuse and media attention to drugs, including a study of the effects of an attempt to elicit information about drug trafficking from the Australian public.

Applications for Criminology Research Council Grants can be obtained from the Registrars of Australian universities, or from:

The Executive Officer
Australian Institute of Criminology
P.O. Box 28
Woden, A.C.T. 2606

Statistics

Australian community-based corrections data

Compiled by Mr Ivan Potas, Criminologist
Assisted by Mrs Diane Grant-Jones

The following table provides the number and rates of adult persons on probation and parole as at 1 October 1985:

	General Pop.* '000	Probation		Parole	
		Number	Rates†	Number	Rates†
NSW	5454	9887	181.2	1952	35.7
VIC	4113	3726	90.5	901	21.9
QLD	2541	5190	204.2	558	21.9
WA	1401	2083	148.6	777	55.4
SA	1365	2358	172.7	416	30.4
TAS	445	1516	340.6	73	16.4
NT	144	374	259.7	86	59.7
ACT	258	247	95.7	60	23.2
AUST	15721	25381	161.4	4823	30.6

The following table shows the number and rates of persons who were subject to current community service orders (or their near equivalent) as at 1 October 1985:

	Number	Rates†
NSW	1614	29.5
VIC	928	22.5
QLD	1753	68.9
WA	763	54.4
SA	259	18.9
TAS	316	71.0
NT	40	27.7
ACT	7	2.7
AUST	5680	36.1

* Projected population end of September 1985 derived from *Australian Demographic Statistics* June Quarter (Catalogue No. 3101.0).

† Rates are calculated per 100,000 of the general population. Only those under actual supervision are included in these data.

New South Wales: The probation figure includes 590 persons who were under the age of 18 years at the time of release to supervision and 784 persons who were released on probation after serving a short term of imprisonment ('after care probationers'). Some persons subject to community service orders are included in the probation figure. The parole figure includes 352 licensees. The total number of persons under supervision of all types in N.S.W. was 12590 ('multiple status' offenders are counted only once).

Victoria: The parole figure includes persons supervised from interstate. There were 435 persons subject to community service orders and 493 persons subject to attendance centre orders (total 928). A small proportion of these may also be on probation and are included in the probation figure. There were also 246 pre-releasees from prison. Many of the latter persons will become parolees in the future.

Queensland: The probation figure includes 610 persons released on probation after serving a short term of imprisonment, 262 interstate probationers and 30 persons subject to Commonwealth recognisances. The parole figure includes 135 interstate parolees and 30 Commonwealth licensees. Approximately one third of those subject to community service orders were also given probation and are included in the probation figure. The figure for community service orders also includes 805 persons who received 'fine option' orders. There were 56 dual community service and fine option orders.

Western Australia: Of those who were subject to community service orders 412 were also placed on probation and are included in the probation figure. Only 351 persons were subject to community service orders without probation and are not included in the probation figure. There were 870 pre-parolees in that state.

South Australia: The probation figure includes 259 persons who were subject to community service orders. With regard to parole, it is advised that a further 10 persons received voluntary supervision in the community by the parole service. A further 12 prisoners were supervised in prison.

Tasmania: The probation figure includes 121 juveniles. It also includes 27 probationers from interstate. The parole figure includes 13 parolees from interstate. The number of persons having a legal obligation under the work order program — the Tasmanian equivalent of community service orders — was 458. This figure includes absconders so that in fact there were 316 currently available and discharging their orders. Of the latter, 239 were also subject to probation and are included in the probation figure.

Northern Territory: 13 persons subject to community service orders were also placed on probation and are included in the probation figure. The parole figure includes those on licence.

Australian Capital Territory: Community service orders commenced in August 1985. As at 1 October there were 7 persons subject to community service orders.

Australian prison trends

By Mr David Biles, Deputy Director

During the period October 1985 to December 1985 the numbers of prisoners increased in all jurisdictions except Queensland and the Australian Capital Territory. The numbers of prisoners in all states and territories for December 1985 with changes since September 1985 are shown in Table 1.

Table 2 shows the imprisonment rates (daily average prisoners per 100,000 population), for December 1985. The national rate of 68.2 compares with 67.7 found in September 1985. For those jurisdictions which have been able to supply this information, figures shown in brackets represent numbers who were received into prison for fine default only.

Table 1 — Daily average Australian prison populations December 1985 with changes since September 1985

	Males	Females	Total	Changes since September 1985
NSW	3600	209	3809	+ 45
VIC	1808	97	1905	+ 17
QLD	1946	77	2023	- 29
WA	1466	83	1549	+ 34
SA	711	32	743	+ 26
TAS	246	7	253	+ 9
NT	372	12	384	+ 8
ACT	79	1	80 ¹	- 3
AUST	10228	518	10746	+107

Table 2 — Sentenced prisoners received, daily average prison populations and imprisonment rates by jurisdiction as at December 1985

	Prisoners Received	Prisoners	General Pop. ² '000	Imprisonment Rates
NSW	595 (245)	3809	5464	69.7
VIC	228 (90)	1905	4121	46.2
QLD	360	2023	2548	79.4
WA	303 (100)	1549	1404	110.3
SA	201 (117)	743	1367	54.4
TAS	60	253	446	56.7
NT	129 (56)	384	145	264.8
ACT	—	80	260	30.8
AUST	1876	10746	15755	68.2

Table 3 — Total prisoners, remandees and federal prisoners as at 1 December 1985

	Total Prisoners	Prisoners on Remand	Percentage of Remandees	Remandees/100,000 of Gen. Pop.	Federal Prisoners
NSW	3833	761	19.9	13.9	119
VIC	1910	222	11.6	5.4	47
QLD	2028	145	7.1	5.7	32
WA	1537	182	11.8	13.0	43
SA	758	164	21.6	12.0	27 ³
TAS	253	24	9.5	5.4	—
NT	397	64	16.1	44.4	4
ACT	74	5	6.8	1.9	1
AUST	10790	1567	14.5	10.0	273

1 75 prisoners (including 1 female) in this total were serving sentences in N.S.W. prisons.

2 Projected Population end of September 1985 derived from *Australian Demographic Statistics* June Quarter 1984 (Catalogue No. 3101.0).

3 Three of the federal prisoners in South Australia were transferred from the Northern Territory.

Juveniles under detention

Compiled by Ms Anita Scandia

Statistics on persons in juvenile corrective institutions for the quarter ended 31 March 1985 are shown below. Definitions of terms used in the tables can be found in the September 1985 issue of *Reporter*. Rates are calculated using estimated June 1983 population figures supplied by the Australian Bureau of Statistics.

Correction: An incorrect figure appeared for the Northern Territory in the *Reporter*, vol. 6, no. 5, September 1985. The figure 28.2 should have read 131.5.

Persons aged 10-17 in juvenile corrective institutions as at 31 March 1985

	Total		Detention Status		Reason for Detention	
	Male	Female	Not Awaiting	Awaiting	Offender / Alleged Offender	Non Offender
NSW	n 332	52	265	119	365	19
	r 90.2	14.9				
VIC	n 232	68	257	43	131	169
	r 84.4	24.5				
QLD	n 102	17	83	36	108	11
	r 56.1	9.7				
WA	n 87	12	82	17	99	0
	r 86.6	12.6				
SA	n 55	3	40	18	58	0
	r 59.1	3.4				
TAS	n 18	5	15	8	18	5
	r 57.3	16.4				
NT	n 24	1	21	4	25	0
	r 225.4	9.9				
AUST	n 850	158	763	245	804	204
	r 80.4	15.4				

Note: n = number, r = rate per 100,000 relevant population.

Asian and Pacific Series

Compiled by David Biles, Deputy Director
Assisted by Mrs Marjorie Johnson

Correctional administrators in the countries listed have supplied the basic information which is incorporated in the following tables. The footnotes contain a number of explanations that should be borne in mind when making comparisons between countries. For countries marked * the data refer to 1 July 1985.

Returns for Canada as at 1 April and 1 July 1985 have been received. The figures are as follows: 1 April 1985: 11980 male and 140 female prisoners. 7238 persons were under parole supervision. 1 July 1985: 12090 male and 161 female prisoners. 7321 persons were under parole supervision.

A return for Sri Lanka as at 1 July 1985 has been received. The figures are as follows: 11203 male and 335 female prisoners. Of this total of 11538 prisoners, 7060 were remandees. 89 persons were released on licence.

Table 1 — Total prisoners as at 1 October 1985

	Males	Females	Total	Population ('000)	Rate ¹
Australia ²	10133	506	10639	15721	67.7
Canada ³	12100	160	12260	24105	50.9
Fiji	740	26	766	677	113.1
Hong Kong	5674	154	5828	5423	107.5
*Japan	53097	2381	55478	120700	46.0
Korea (Republic)	46316	2541	48857	41367	118.1
Macau	639	31	670	400	167.5
Malaysia	17737	403	18140	15300	118.6
New Zealand	2653	119	2772	3291	84.2
Papua New Guinea	4272	267	4539	3000	151.3
Phillippines	13554	197	13751	54668	25.2
Singapore	3932	199	4131	2502	165.1
Sri Lanka	11399	374	11773	15189	77.5
Tonga	116	3	119	97	122.7
*Western Samoa	141	7	148	159	93.1

Footnotes:

1 Per 100,000 of population.

2 Australian statistics in this table are based on the daily average number of prisoners for the month of September 1985.

3 Federal prisoners only.

4 Includes 1223 inmates who are detained in rehabilitation centres on the basis of allegation of facts under Public Order for Prevention of Crime, 1969.

5 As at 1 September 1985.

6 Released to serve extramural punishment (119) and compulsory supervision orders (76).

7 Released on licence.

Table 2 — Convicted and remand prisoners at 1 October 1985

	Convicted Prisoners	Remand Prisoners	Percent On Remand	Remand Rate ¹
Australia	9132	1532	14.4	9.7
Canada ³	12260	—	—	—
Fiji	736	30	3.9	4.4
Hong Kong	5356	472	8.1	8.7
*Japan	46033	9445	17.0	7.8
Korea (Republic)	26522	22335	45.7	54.0
Macau	356	314	46.9	78.5
Malaysia	10646	7494	41.3 ⁴	49.0
New Zealand	2495	277	10.0	8.4
Papua New Guinea	3710	829	18.3	27.6
Phillippines	13578	173	1.3	0.3
Singapore	3660	471	11.4	18.8
Sri Lanka	5059	6714	57.0	44.2
Tonga	119	—	—	—
*Western Samoa	134	14	9.5	8.8

Table 3 — Offenders on probation and parole at 1 July 1985 (in those countries where these options apply)

	Probationers	Rate ¹	Parolees	Rate ¹
Australia ⁵	25334	161.2	4878	31.0
Canada ³	—	—	7546	31.3
Fiji	—	—	195 ⁶	28.8
Hong Kong	3630	66.9	3675	67.8
*Japan	21861	18.1	8049	6.7
Korea (Republic)	8506	20.6	2089	5.0
Macau	—	—	62	15.5
New Zealand	6223	189.1	2311	70.2
Papua New Guinea	438	14.6	—	—
Sri Lanka	—	—	92 ⁷	0.6
*Western Samoa	266	167.3	66	41.5

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SENTENCING COMMITTEE VICTORIA

The Victorian Government has appointed a committee to inquire into sentencing. The committee has been asked to review current sentencing policy and practice in Victoria. The terms of reference are as follows:

1. A review of the current sentencing policy and practice in Victoria, other Australian states and overseas including a review of recent relevant literature in respect of such policy and practice.

2. An examination of the purposes of sentencing including a consideration of:

- (i) sentencing guidelines
- (ii) 'just deserts' concepts
- (iii) presumptive sentences
- (iv) straight sentences
- (v) other sentences.

3. The impact of custodial and non-custodial sentences and the length of such sentences on:

- (i) correctional administration including numbers in custody
- (ii) police administration
- (iii) prisoner morale
- (iv) staff morale
- (v) community
- (vi) victims
- (vii) the offender and his family.

4. The impact of remissions, pre-release, parole, temporary leaves, and other sentence shortening practices on:

- (i) correctional administration
- (ii) the courts
- (iii) police administration
- (iv) the community
- (v) the victim
- (vi) the offender and his family.

5. The framework for prisoners held during the Governor's Pleasure.

6. Sentencing to youth training centres.

7. Role of the media.

8. Information available to the courts and the impact of such information or lack of it on sentencing decisions and services and support available to persons sentenced by the courts.

9. To draft, if thought desirable, legislation to embrace all sentencing procedures within the state of Victoria.

10. To make recommendations in respect of the matters raised in these terms of reference.

Submissions are sought from members of the community, and may be made in writing or in person or both. Anyone wishing to make submissions should contact the committee on (03) 602 1817 or write to the Sentencing Committee, Box 2961DD G.P.O., Melbourne 3001. The closing date for submissions is 18 July 1986.

reporter

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