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**PROCEEDINGS**  
of the  
**INSTITUTE OF CRIMINOLOGY**

**No. 39**

**STATE, DIRECTION AND FUTURE OF  
CORRECTIONS: PART I — PRISONS**

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**INSTITUTE OF CRIMINOLOGY  
SYDNEY UNIVERSITY LAW SCHOOL**

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**THE INSTITUTE OF CRIMINOLOGY  
SYDNEY UNIVERSITY LAW SCHOOL**

**Proceedings of a Seminar on**

**STATE, DIRECTION AND FUTURE OF CORRECTIONS  
PART I — PRISONS**

**CHAIRMAN:**

*Associate Professor Gordon Hawkins  
Assistant Director, Institute of Criminology*

20th September, 1979  
State Office Block, Sydney

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## FOREWORD

*Associate Professor Gordon Hawkins*

The first of these two seminars organised by the Institute of Criminology under the general heading State, Direction and Future of Corrections dealt specifically with Prisons. Those invited to present papers were asked to deal with the topic in the light of the Report of the Royal Commission into New South Wales Prisons (the Nagle Report).

All of them were persons who were in one way or another involved in the Royal Commission. Mr. Kelly as a solicitor of the Supreme Court of New South Wales had for two years acted for two parties (The Council for Civil Liberties and the Penal Reform Council) at the Royal Commission. Mr. Todd was Chairman of the Prison Officers' Branch of the New South Wales Public Service Association. Mr. Jewson was Secretary of the Prisoners' Action Group and had attended the Royal Commission throughout as an observer. Dr. Sutton is Director of the New South Wales Bureau of Crime Statistics and Research which the Royal Commission report had nominated as the appropriate body to carry out evaluative and policy research in relation to the operations of the Department of Corrective Services.

It will be seen that both the papers themselves and some of the contributions to the ensuing discussion are more outspoken and polemical in tone than anything which has appeared in previous volumes of these proceedings. That this should be the case is due in part, of course, to the fact that the authors of the papers and many of those who spoke later were in some sense interested parties.

It has to be remembered also that the seminar was held within months of the publication of the Nagle Report. That report was accurately described by *The Canberra Times* as "an appalling dossier", "a horrendous exposé of man's inhumanity to man" and "an indictment of concealment by the N.S.W. Department of Corrective Services of brutality, oppression, injustice and the violation of human rights". And it is notable that Mr. Todd in his paper candidly acknowledged that "Prisoners in the past have been subjected to punishments that should not have happened, there have been cases of cruel and sadistic treatment of prisoners by officers", adding that "This must never be allowed to happen in the future".

In the circumstances it is not surprising that many participants in the seminar felt strongly and expressed themselves forcefully about the matters under discussion. Nor can it be said that strong feelings and emotions are out of place in relation to such matters as the "brutal, savage and sometimes sadistic physical violence" which the Nagle Report states was inflicted upon prisoners in New South Wales.

This is not to say of course that the Institute of Criminology endorses all the statements of opinion to be found in the report of the seminar which follows. Indeed it could not do so without falling into contradiction for many of those opinions are mutually opposed or inconsistent with one another.

Moreover the function of the Institute is not to pass judgements or adopt policies but rather to provide a forum for discussion and the free expression of opinion.

In this case it was amongst other things, intended to provide such a forum for groups such as prisoners, prison officers and prison reformers whose views are frequently obscured or garbled in their presentation to the public by the media. It seemed to us important that they should be clearly heard at a time when we had reached what Dr. Sutton, in one of the more dispassionate contributions to this seminar, described as "a watershed in the administration of prisons in New South Wales".

## REACTION TO THE NAGLE REPORT \*

*Thomas J Kelly, LL.B.,*  
A Solicitor of the Supreme Court, N.S.W.

We have seen some most curious occurrences in New South Wales prisons this year. The Commissioner was sacked. Criminals are alleged to have attempted to break into one jail. The prison officers' industrial union has been responsible for mass strike action deplored by a Labour Government and endorsed by a Liberal Opposition.

For as long as I have been actively interested in prisons I have been told that there are no votes in prisons. The political decline of John Maddison and the events of this year which have varied from the disputed figures on the number of escapes to which government authorised Grafton prisoner Laurie Baxter to go shopping, should have refuted this.

In spite of my misgivings at the direction of more recent publicity of the prisons issue I believe that no change, whether progressive or regressive will occur without politicising the issue.

As a solicitor, who acted for two parties with general leave to appeal at the Royal Commission for two years, attempting to gauge reactions to that Royal Commission report has not been easy. At the Royal Commission the parties had to produce documents as well as subject their members to enquiry and examination.

I have considered press reports, Hansard and law reports and personal conversations with various persons including Departmental employees and prisoners in attempting to appraise reactions to the report of His Honour Mr. Justice Nagle who enquired into the policies, faculties and practices of the Department of Corrective Services. I have attempted to identify the hearsay and rumour.

### Reform Groups

*The Council for Civil Liberties* appears to be the only organisation which fully supported the Nagle report publicly. There is no doubt that of all the parties that appeared at the Royal Commission its submissions were most reflected in the report.

In considering its reactions it took the view that although some of the recommendations were not to its liking (e.g. reopening Bathurst for maximum security) a general endorsement of the report was the most effective way of achieving the implementation of the majority of recommendations which it supported.

The Council publicly urged the removal of all prison officers who bashed prisoners, and early parole or licence for those prisoners who were

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\* This paper was received immediately prior to the Long Bay disturbance of 22nd August 1978.

bashed or are serving sentence for property damage to Bathurst Gaol during the 1974 riot. The Council's relative lack of publicity since the tabling of the report does not reflect a timid nature but its refusal to denigrate the report.

A delegation from the Council met Mr. Wran in July to discuss the Royal Commission report. They received a sympathetic hearing but no concrete undertakings.

In spite of Mr. Justice Nagle's recommendation on legal visits it had no success when corresponding with Mr. Downs when Acting Commissioner of Corrective Services to obtain undertakings that members of its panel can visit any prisoner who contacts the Council. This was resolved satisfactorily in correspondence with the new Acting Commissioner, Mr. Day, soon after their delegation raised it with the Premier.

### *The Prisoners Action Group*

Its initial reaction was one of outrage that The Royal Commission would not consider the abolition of imprisonment or the knowledge of crime and its causes. Mr. Tony Green stated "the findings are a bandaid solution and the report is a sham" (*Telegraph* 5/4/78).

It strongly urged the prosecution of prison officers who were found to have bashed prisoners and, when this was not forthcoming, Mr. Green commenced a private prosecution against Prison Officer Morgan who Mr. Justice Nagle found had assaulted Gary Allen at Bathurst in 1974. Mr. Allen, who had not been consulted about the prosecution, still had a considerable time to serve and was thus concerned about the action which, for that reason, was dropped.

The Prisoners Action Group does however support many of the more progressive recommendations of the report. This is reflected in a letter of Mr. Bob Jewson supporting the closure of Katingal and illustrating how so-called intractable prisoners were successfully dealt with by humane treatment in Barlinnie Prison in Scotland (*Sydney Morning Herald* 8/6/78).

A delegation also saw the Premier to discuss the report.

### *Close Katingal Committee*

This was formed prior to the tabling of the Nagle Report. The Council for Civil Liberties was never involved with it and the Prisoners Action Group was, but only briefly, and it soon became dominated by radical feminists and could generally be described as anarchist.

Among their activities to draw attention to the issue they:—

1. Painted slogans over various city buildings, mostly in the vicinity of the law court area (early April 1978).
2. Held a demonstration at Central Court where several Katingal prisoners were appearing and when some members were arrested (10/4/78).

3. Were involved in a scuffle with police at Central Court when they set fire to a model of Katingal (2/5/78).
4. Draped a sign across the Harbour Bridge briefly disrupting traffic and resulting in the arrests of four participants (7/5/78).
5. Camped outside Long Bay Gaol and attempted to harass prison officers.
6. Disrupted a speech of Federal Opposition Leader Mr Hayden; abused Premier Wran and kicked his car; twelve members invaded the grounds of Long Bay Gaol near Katingal (22/5/78).

The committee's efforts did not stop the Premier carrying out his promise to close Katingal.

### **Probation and Parole Officers Association**

Has expressed considerable displeasure at the recommendation that its members are to remain part of the Department of Corrective Services and at the possibility that others shall prepare pre-sentence reports. It has made detailed submissions against this to the Government and has sought support from at least one member of Parliament and The Council for Civil Liberties.

The Association is reported to have written to the Premier expressing concern about the performance of the Minister, Mr. Haigh, and expressing disappointment with his understanding of the role of the Probation and Parole Service. The Association is reported as particularly concerned at his response to their desire to see Community Service Orders introduced. In July, the Minister was reported as saying that such a system is not necessary as weekend detention was available (*Sydney Morning Herald*). Implementation of Community Service Orders is a recommendation of Mr. Justice Nagle.

Its concern that its interests are very much a secondary part of the Department, starved of funds and personnel, so forcefully submitted to Mr. Justice Nagle (and accepted by him) has not lessened as a result of the great publicity given to recent occurrences in the Department's institutions.

### **Prison Officers**

When examining the prison officers' reactions it is necessary to examine their views when they were anticipating the report well before it was tabled.

These had five facets:

- 1) the prisoners are violent and bashing the officers;
- 2) the prison officers are demoralised;
- 3) the prisons are understaffed;
- 4) the prisons are overcrowded with too many prisoners;
- 5) the need to build more maximum security prisons, as per Bathurst Gaol.

These themes waxed and waned from week to week. Upon the tabling of the Report all energies were diverted to keeping Katingal open.

Their campaign has been conducted by a less than honest use of the media and by industrial action.

On four occasions they refused to receive new prisoners. On two occasions they walked out leaving only a skeleton staff. The industrial campaign culminated on May 4th over their opposition to the proposed closing of Katingal when, for the first time ever, they all walked out of Long Bay.

It is also worth nothing that Mr. Barry Todd and Mr. Tim Hickie were elected Chairman and Secretary/Treasurer respectively the Prison Officers' Association in January 1977. In late August 1977 the Association's final written submissions prepared by Messrs. Todd and Hickie were given to the Royal Commission. With the exception of the reopening of the Bathurst Gaol none of these issues were raised and there was no mention of the desirability of using Bathurst as maximum security.

However Mr. Todd was setting one of these themes as far back as September 1977 (just after he authorised those submissions) when he said "The morale of the warders is so low many could not care less if any number of prisoners go over the wall or not" (*Daily Mirror* 7/9/77) which was hardly flattering to his members.

On Christmas Day, 1977 there was a disturbance at the Central Industrial Prison, Malabar. The prison officers publicly called it a riot. The views of some prisoners and prison officers I've spoken to do not accord. In any event the prison officers made the most of it.

Mr. Todd stated it was caused by "a shortage of staff and overcrowding" (*S.M.H.* 28/12/77) and "There would have been no riot if we could have been able to move troublemakers to another top security gaol" and "They were armed with home made weapons including petrol bombs". (27/12/77) It was reported soon after that prison officers were searching for weapons and illicit drugs. Mr. Todd said "we'll miss nothing not even Katingal". (*S.M.H.* 28/12/77).

It was subsequently reported that prisoners who were affected by drugs had merely taken valium and passed out.

Mr. Todd stated on New Year's Eve that he feared another riot next day, "I have never known a situation as tense. The Government has sorely underestimated the position. We are going to see officers in the morgue and prisoners too". (*S.M.H.* 31/12/77), Mr. Hickey said "Bathurst could be reopened this afternoon". (*S.M.H.* 31/12/77). Mr. Todd spoke of an alleged prisoner's death list. The report continued "Mr. Todd who is married with one child said he was terrified of being on duty to-morrow but he would not ask a fellow officer to stand in for him" (*S.M.H.* 31/12/77).

There was no disturbance on New Year's Day nor has there been any further trouble in that prison up to the time I write.

Meanwhile back at the farm... on 29th December 1977 prison officers walked off Mannus Prison Farm because of a dispute with the superintendent and claiming that drugs and alcohol were being smuggled in (*Sun* 29/12/77).

The atmosphere at Long Bay was described both as "unusually quiet", and "electric". (*S.M.H.* 2/1/78)

The Public Service Association wanted "a high security area in one of the State's prisons possibly Grafton". (*The Australian*, 4/1/78)

On 5th January prisoners staged a sit down strike at Parramatta over conditions. Mr. Todd states "some prisoners were armed and ready for violence. The prisoners were showing their contempt for prison officers and their readiness for violence." (*S.M.H.* 6/1/78)

On 17th January all prisoners were locked in their cells as the prison officers wanted all prisoners moved. (*Telegraph* 18/1/78)

On 4th February a dispute about Mr. Todd's public statements between the Prison Officers Association and the parent union, the Public Service Association, led to Mr. Todd's suspension from his position and stopped entry of new prisoners at Parramatta, Cooma and Long Bay.

On 17th March (two weeks before Royal Commissioner's Report was due for tabling) prison officers refused admission of new prisoners to Malabar as they alleged a prisoner assaulted a prison officer. (*S.M.H.* 17/3/78)

On 2nd April (two days before the Report was tabled) Mr. Todd stated "Cessnock is like a luxury hotel and prisoners are better off than some people in the community." (*Sun Herald* 2/4/78)

Two days after the Report was tabled someone gave the *Daily Mirror* the prisoners' menu from Long Bay which, it described as "a mouth-watering collection of fine foods cooked by some of the best chefs in the land". (*Daily Mirror* 6/4/78)

Mr. Justice Nagle in his Report stated "The menus are not always adhered to. They fall short of that implied in the Department's literature". (R.C.p. 487)

On the 27th April the *Sun* ran a similar article headed "Gaol meals equal to many leading hotels", stating "Prison officers say prison food better than their canteen food".

Mr. Todd was reported on the proposed closure of Katingal "we will not accept it. You might find for the first time ever all prison officers walk out". (*Telegraph* 5/4/78)

Meanwhile back at the farm:  
"80 Cessnock Prison Officers threaten to walk out if the Superintendent is not replaced". (*Telegraph* 5/4/78)

The front page story of the *Daily Telegraph* on 6th April was headlined

"They must stay, say warders" referring to Katingal prisoners. Someone had provided photos of 9 inmates. One is named and referred to as "The Red Rat". Another photo states "Bernie Mathews — warders say he is uncontrollable" (he has since been removed from Katingal and is in ordinary discipline at Parramatta). The story quotes prison officers: "The Government will have to move the brutes of Katingal themselves".

The front page article of *The Sunday* newspaper of 16th April 1978 was headed "Juanita, I confess". It stated *inter alia* "A prisoner at Katingal Gaol admits being directly involved in the disappearance and murder of Juanita Nielsen. James Kerr in an exclusive interview inside Katingal promised to write down the full story and give it to me in 2 weeks time". The article quotes Mr. Kerr:

"I realise this could mean a life sentence for me but my bible studies in Katingal have made me want to do something to put right the wrong I did... Her body and skeleton were cut up... Everyone is scared of him (the Sydney businessman). I'm not scared here in Katingal. My treatment by Prison Officers in Katingal with respect and kindness have made me want to do something right for once in my life — I want to show people Katingal can help people like me. I want to stay in Katingal because I'm afraid of what I would do if I'm transferred. I know I would end up trying to escape and kill an officer or another prisoner".

I am informed by the journalist who wrote the story that the newspaper was contracted by police officers from Maroubra and that the interview took place with great cooperation of Katingal prison officers in the coffee room in Katingal in the presence of two prison officers.

Mr. Kerr never did supply the statement he promised giving particulars of the alleged murder.

On the 28th April Mr. Todd said no gaols would accept Katingal prisoners. (*Telegraph* 28/4/78) He also claimed that a named prisoner attacked two prison officers at Malabar (2/5/78). When he was not moved to Katingal 400 to 450 prison officers at Malabar walked out, as well as prison officers from Cessnock, Grafton, Parramatta and Maitland (a total of 1500 including all from Cooma). The Government acceded and he was moved to Katingal. However he was merely on remand and his bail of \$500.00 was paid and he became the first prisoner bailed out of Katingal. When free he stated that a number of prison officers attacked and provoked him.

One wonders if Spike Milligan leaked the story of 30th April in the *Mirror* which stated "escape bid foiled after Katingal prison officers find amazing cardboard replica of a pistol".

Prison officers stated there had been an incredible increase in assaults by prisoners on prison officers since the tabling of the Nagle Report (*S.M.H.* 3/5/78).

On 4th May, Long Bay union leader, Noel Lanham, claimed to the media that prisoners rioted, started fires and attempted a mass escape when his officers walked off the job. This was denied by prisoners when the strike ended and reporters who were allowed into the prison could see no sign of damage (*S.M.H.* 6/5/78).

Although the strike ended prison officers refused to accept new prisoners until 11th May.

The Prison Officers Association said "staff morale at Long Bay is at an all time low. Five have resigned since 4th April and two more have lodged resignations" (*S.M.H.* 11/5/78). Parts of an emotional letter of resignation were quoted.

The Minister, Mr. Haigh, denied this. He stated "there are 64 vacancies at Long Bay compared with 123 in July 1975. 32 applications have been received since 1st May 1978" (*S.M.H.* 12/5/78).

The Minister's figures were never denied by Prison Officers Association

A senior prison officer stated non action against demonstrators at Long Bay has given "killers and dangerous rabble-rousers a green light on the road to anarchy and bloodshed!" (*Mirror* 18/5/78)

After the Katingal break-in attempt Mr. Todd said "a determined gang could take over Maitland or Parramatta in a night".

When four former Katingal prisoners refused to leave a yard at Maitland Mr. Todd stated "If any officer is injured the Government can look forward to more trouble". (*Mirror* 6/6/78)

When two prisoners escaped from Long Bay prison officer Bill Woodage, who was charged with neglect of duty, claimed "I'm just a pawn in the power play between the union and the politicians". (*Mirror* 15/6/78) As a result of this charge the prison officers banned the intake of new prisoners.

I can only believe the prison officers' motives in all of this to be extremely cynical. Initially they intended to stampede Mr. Justice Nagle who was writing his report and succeeded to the extent that the Premier had His Honour agree to finalise it by the end of March in the wake of the alleged incidents at Long Bay, Cooma and Parramatta in January, and to cause the Government to preempt the Report.

The allegations of prisoners bashing prison officers can only have been motivated by their anticipation of Mr. Justice Nagle's findings and comments on prison officer brutality.

Any increase in staff has the effect of promoting those in the job before such increase. The reopening of Bathurst and the building of new prisons would also have this effect. Any reduction in the number of prisoners in maximum security results in the abolition of posts and reduction of overtime.

Additionally Katingal prison officers received \$22,000.00 a year which is 20% more than the average.

The officers' desire to have Bathurst and Grafton used for "difficult" prisoners must, in view of the history of those places, be viewed with alarm. It may be coincidental that the decline of industrial and anti-prisoner activity from the middle of the year has coincided with Mr. Todd's extended overseas holiday.

If the prison officers sought to kill publicity in respect of the findings of brutality and the impetus of the many progressive recommendations which they did not approve by publicising the closure of Katingal they succeeded brilliantly.

My suspicions seem to be shared by the Government. On 16th April the *Telegraph* reported that the Government feared prison officers would allow an escape during the transferring of prisoners out of Katingal.

On 23rd June Mr. Wran stated "It is almost too coincidental that so many escapes and other incidents have occurred at Long Bay recently" (*The Sun* 23/6/78). During the three days prior to this Opposition spokesman, Mr. Viney, had alleged there was a male brothel at Malabar and Mr. Hickie said "last night one or more prisoners were raped" (*S.M.H.* 1/6/78) a prisoner whose brother was a prison officer escaped from Long Bay; and there was a bomb blast in the Metropolitan Remand Centre there.

The importance placed by the prison officers on promotions is illustrated

Prison officers at Maitland Jail are threatening industrial action if prison officers "displaced" by the closing down of Katingal jail and the special operations division receive promotional preference at Maitland over other officers.

Positions had to be found for about 60 officers, 32 of them from Katingal, when it and the special operations division — an anti-riot squad — were closed recently.

These men are normally placed into vacancies without the positions being advertised to other officers. The Maitland officers say this would affect opportunities for promotion of other officers.

The N.S.W. secretary of the Prison Officers' Branch of the Public Service Association, Mr. Tim Hickie, said last night that Parramatta, Silverwater, Grafton and now Maitland jails had indicated that they will not accept displaced officers. (*S.M.H.* 7/8/78)

The above item may also shed more light on their opposition to the closure of Katingal.

### **The Opposition**

On the 14th May 1977 Mr. P. Coleman M.L.A., Opposition spokesman on prisons (as he then was) said:

One of the Government's first acts was its basic blunder in prison policy by cancelling the former coalition's plans to build a high security prison at Silverwater. If these plans had not been cancelled the prison would now be built and we would not have the overcrowded and explosive prison situation (*S.M.H.* 14/5/77)

When speaking in the Legislative Assembly on 7/6/77 Mr. Coleman also said:

The Government has failed to proceed with the building at Silverwater of a high security prison which would have solved not only the overcrowding problem but other problems as well. Overcrowding in the prison system means that dangerous prisoners are held in low security establishments and they become a danger to the community.

This Government is directly responsible for the large number of escapes from prisons such as Emu Plains, Tumburumba and elsewhere. The prison staff is demoralized and the prisons are overcrowded. The fact remains that the Government deferred building a maximum security prison at Silverwater and so created overcrowding. Further it ruined the Royal Commission as originally set up and caused the demoralization of the staff of the prison service. (*Hansard* 7/6/77)

It is interesting to compare these statements with those of Messrs. Todd and Hickey in 1978.

On 10th November, 1977, Mr. Coleman moved an urgency motion in the Legislative Assembly relating to:

1. concern for increasing rate of escapes of dangerous prisoners from high security prisons,
2. condemning the reducing of the size of the Corrective Services establishment, and
3. the need to increase the number of officer in high security prisons.

He said:

The matter is urgent because we still do not know how Cox achieved the fantastic and escaped from Katingal. The matter must be debated now, especially in the light of a statement by Mr. Todd, chairman of the prison officers branch of the Public Service Association, and Mr. Hickie, the secretary of that branch, that the only hope of high security prisoners for any variation in the routine of their prison lives is "to annoy, pester and try to corrupt prison officers". That statement was made to the Royal Commission into prisons. The public and prison officers want to know why those two officers, Mr. Todd and Mr. Hickie, were forbidden to visit Katingal yesterday to attend a special meeting of officers called to discuss the Cox escape. What is the Minister or the Premier covering up at Katingal?

It is urgent because the Government has caused this problem of escapes

by a deliberate policy of reducing the size of the Department of Corrective Services establishment. The Government says — and the Treasurer said this in his budget speech — that public service ceilings are being increased by 1 per cent. But in the Department of Corrective Services there is no increase whatever, not even 1 per cent. In fact there is a reduction: a ceiling for 1977-78 is 28 below the actual establishment: the ceiling is 1975 people and the establishment is 2003. (*Hansard* 10/11/77)

Obviously Mr. Coleman was well prepared when he said on 29/12/77 of the Christmas Day incident at Long Bay:

Riot conditions are being created in New South Wales prisons by Government refusal to recruit enough warders or provide sufficient prison accommodation. Government must take full responsibility for any riots or escapes because of cutting of funds.

Mr. Coleman's reaction to the report itself was less than enthusiastic. Back in January, 1978, when the interim report relating to Mr. Genner was tabled he referred to "The Judicial Lynching of Mr. McGeechan" (*Hansard* 25/1/78).

When the final report was tabled Mr. Coleman was warned by the Speaker to be cautious when he elaborated "It gets to such an extent that at times there is something approaching malice in the treatment of the former Commissioner".\*

Mr. Coleman elaborated on his defence of Mr. McGeechan's administration along the lines of Mr. McGeechan's defence at The Royal Commission which was rejected by Mr. Justice Nagle.

Mr. Coleman is at times quite critical of the report e.g. the recommendations for riot plans in all gaols and monitoring of conversations with visitors. He states "the Report plainly lacks perspective".\*

Mr. Coleman spent some time patronising the Report — "if at times it seems a little superficial — it is difficult for one man to achieve that range and to comment on it in any depth at all".\*

"The report contains much that will be helpful".\*

"A number of recommendations dealing with health and hospital services will be a useful guide".\*

"Some of the recommendations are a little difficult to follow".\*

Some parts of his speech clearly misrepresent the report: "The Royal Commissioner recommends the scrapping of the project survival programme because it has not been evaluated".\* Whereas the Report said of project survival: "All this makes the running cost for 46 participants of \$1700 a head for a course of 6 weeks. This expenditure for such a few prisoners is unwarranted. The scheme should be abandoned" (R.C. 674)

\* Quotations are from the report of Mr. Coleman's speech in *Hansard* 4/4/78.

Mr. Coleman stated:

When the Royal Commissioner describes the unsatisfactory and extremely repulsive aspect of some of the situations in Grafton prison he neglects to mention that it was on Mr. McGeechan's advice that I closed down Grafton Gaol as a prison for intractables\*

whereas the report states:

Mr. McGeechan said that it was his dissatisfaction with conditions at Grafton which led to his decision to establish Katingal (R.C. 209)

Curiously Mr. Coleman made no comment on Mr. Wran's announcement in Mr. Coleman's presence in the Assembly minutes before to act on the recommendation to close Katingal.

However the newspapers next day were not short of criticism from both Mr. Coleman and the prison officers on this:

"Closing Katingal is idiotic. There's nowhere to send dangerous prisoners from Katingal" (Coleman, *Mirror* 5/4/78)

"Katingal is needed for the future to accomodate terrorists" (Coleman, *Sun*, 5/4/78)

Two months after he said this an attempt to break into Katingal almost succeeded.

Even when the last prisoner left Katingal Mr. Coleman said "This is a capitulation to terrorism" (2/6/78).

Of the 25 prisoners in Katingal when the Royal Commission's report was tabled (4th April) none, of course, are now in Katingal. By July 1978 nineteen were in normal discipline in other gaols. With the exception of several who did some damage to a yard at Maitland which they refused to leave for some days, there appears to have been no problems with any of them.

Mr. Coleman has pledged to reopen Katingal if he becomes Premier.

Minor identities associated with the Opposition have also made statements. Backbench Country Party Member, Mr. T. Fischer, stated "The recommendations would pamper prisoners" (*Sun* 12/4/78). He was referring particularly to recommendations about telephones and reading matter.

Opposition candidate for the Government held seat of Parramatta, Mr. Roy McAuley, after some Katingal prisoners were transferred to Parramatta had "fears for the safety of residents near the gaol" (*Mirror* 6/6). He claimed Katingal prisoners were a danger (*Telegraph* 8/7/78). After more of the same appeared in the local Parramatta paper that paper ran an article stating:

Prisoners transferred from Katingal... to Parramatta gaol were

\* Quotations are from the report of Mr. Coleman's speech in *Hansard* 4/4/78.

settling into routine prison life a senior jail official said. Reports that warders were in fear of their lives and had refused to guard the Katingal convicts were absolutely ridiculous he said.

A leaflet distributed by the Liberal Party during the Legislative Council Referendum on 17th June, 1978, has as the party's main election policies, better roads; reform of the education system; more exploitation of mineral resources; and a new prison policy. Pandering to the phobias and prejudices of the electorate it says "The Labour Government seems most concerned about the comfort of prisoners. Gaols are no longer a deterrent to crime. We believe that prisons must be made secure. Not to pamper the inmates but to protect the rest of us".

This approach was pursued by the Opposition in the Earlwood by-election without apparent result.

None of the issues raised by the Liberals, public transport, freeways, education, prison escapes and even the socialist bogey produced a significant response in Earlwood. (Ian Davis, *Financial Review* 17/7/78)

However the Premier's approach in the months prior was hardly permissive in respect of prisons.

Public activity by such opposition members as Messrs. Moore, Viney, Fischer, Milton Morris (whose electorate includes Maitland gaol and who has expressed concern at the transfer of Katingal prisoners there), and would-be member McAuley contrasts with the silence of government members other than the Premier and the Minister. It especially contrasts with the public silence of all previous governments prior to 1975. The current openness merely supports their leader. The silence of George Petersen illustrates the impotence of backbenchers. But at least when he was in opposition he was prepared to initiate debate and raise genuine complaints and not merely echo his leader.

### **The Department**

The circumstances relating to the removal of Mr. McGeechan from the Department are public knowledge. Mr. W. Weston who had been Deputy Commissioner for many years was lucky enough to be promoted out of the Department in 1977. A junior clerk, Mr. P. Genner, has also left the Department as a result of Mr. Justice Nagle's report. In all other respects it appears to be "business as usual". The promotion of persons at the top of the Department singled out for criticism by Mr. Justice Nagle is worthy of consideration.

Noel Day spent a decade as Assistant Commissioner and was shifted to Cessnock Gaol when it opened, reputedly because of conflict between himself and Mr. McGeechan. He was criticised by Mr. Justice Nagle for his failure to implement a riot plan at Cessnock (R.C.p.273). Mr. Justice Nagle referred to Mr. Day's work as the agent of Mr. McGeechan when departmental

psychologist, Mr. Len Evers, was persecuted for complaining about bashing of prisoners. (R.C. pp.286-288). Mr. Justice Nagle referred to some of Mr. Day's evidence about relationship between prisoners and prison officers as "a most curious reply". (R.C. p.329).

Mr. Day applied for Mr. McGeechan's job and was appointed Acting Commissioner on 15th June, 1978.

Barry Barrier was Assistant Commissioner for four years and was at Bathurst Gaol on 3-4 February, 1974, at the crucial time the prisoners were released from the back special yards but failed to attend when this occurred. Mr. Justice Nagle said:

Mr. Barrier, although he believed that there was no point in trying to talk to the prisoners in the Back Special Yards, told the Commission that he also offered to speak to them but was advised that it would not be worth while. The Commission's view is that the two "outsiders" sent to be Mr. McGeechan's "eyes and ears" in the gaol failed utterly to see or hear. The danger to both had they gone to speak directly to the prisoners in the Back Special Yards is obvious enough. But there was nothing to prevent them or either of them watching, or even speaking with a loud hailer, from the safety of No. 6 Tower. But they did nothing — because the very officers they had been sent to watch advised them against it. (R.C. p.169).

Mr. Barrier was promoted to Deputy Commissioner with the transfer of Mr. Weston.

Jack Nash was promoted to Director of Establishments during the course of the Royal Commission. Since the tabling of the report he has been promoted to Assistant Commissioner. Mr. Justice Nagel stated:

The Commission does not accept this, nor does it accept the evidence of the present Director of Establishments, Mr. Nash, who was a prison officer at Grafton between 1952 and 1964. He denied knowledge of a reception biff or any other brutal treatment of intractable prisoners during that period. It is impossible to believe that any officer could spend some years in an institution where violence was admittedly the order of the day without being aware of it. (R.C. p. 204)

Ian Sanders spent a considerable time in the witness box justifying Katingal for which he was responsible. Mr. Justice Nagle's view on him in this context can, *inter alia*, be seen at pages 225 and 228.

Mr. Justice Nagle also said:

Recently, there seems to have been some disorganized attempts to try to correct the position in New South Wales by introducing a proper training scheme. Very little would appear to have been achieved. Mr. Sanders, who as Chief Staff Development Officer was at one stage responsible for training within the Department said that when he took

over in 1973, the training was inadequate. When he gave evidence, some four years later, he said it was still inadequate. (R.C. p.333)

as well as:

Mr. I. Sanders, who was in charge of the planning of the M.90 project at Silverwater, said that no thought was given to conjugal visits in designing it. The Department it would seem is giving voice to reformative sentiments which are not to be found in the substance of its planning and activities. (R.C. p.47)

He also said:

Some had gained experience as probation and parole officers but one wonders whether a gentleman who has spent the greater portion of his life as a member of a religious community — in fact twenty-eight years — with qualifications in “theology and biblical science” is the most suitable person to occupy one of the Department’s most difficult appointments, the Directorship of Special Security Units. (R.C. p.270)

In June 1978 Mr. B. Smith, the Department’s Public Relations Officer, stated that Mr. Sanders was working full time on the Nagle recommendations.

Mr. Justice Nagle stated:

Notwithstanding the very large part of the blame Mr. McGeechan must take for the state into which the prison system has degenerated over the last few years, many of the senior officers of the Department cannot avoid their share of responsibility. Mr. McGeechan’s replacement will not of itself be a solution to the problem.

The disease is deep-seated. (R.C. p.698).

The fat cats seem pretty healthy.

However, I do understand that some public servants in the Premier’s Department are also working on the Nagle recommendations. I am unable to say how many there are or of what seniority and experience. Nor can I say whether their work or influence is meant to or is likely to subvert or dominate that of the Department in the implementation or non-implementation of the recommendations, although there is no doubt that their ministerial head has dominated the Minister responsible for prisons.

In February 1978 Alan Penning, Deputy Superintendent of Grafton Gaol, was transferred to Goulburn. Mr. Penning gave evidence to the Royal Commission and Mr. Justice Nagle said of him:

Mr. Penning went to Grafton in 1972 as Principal Prison Officer. He later became Deputy Superintendent. The advertisement for his job indicated that the successful applicant should be in good physical condition, and would receive an ‘environmental allowance’. On arrival,

he was handed a baton and told by Mr. Frame that he must be prepared to use it when prisoners became violent, and to forestall any attacks by prisoners. It was stressed that he would be dealing with prisoners who could not be controlled by any other means.

From the evidence of the prisoners in Grafton during Mr. Penning's time, it appears that he did use his baton and his fists on many occasions when there was no violence or provocation by the prisoners. He denied these allegations, but they were so numerous and so consistent that it is impossible not to give them some credence. He presented himself badly in the witness box. He was reluctant to admit to any form of violence at Grafton, and did so only when the evidence supporting such violence was so overwhelming that it would have been foolhardy to deny it. (R.C. p.193).

The Department should not have been surprised by this opinion as it opposed Mr. Penning's unsuccessful appeal against his failure to be promoted to Superintendent of Grafton Gaol prior to the tabling of the Royal Commissioner's Report.

Soon after Mr. Penning's transfer to Goulburn prison reform groups and parliamentarians received a number of allegations of assaults on prisoners by prison officers. As a result of representations by George Petersen M.L.A. to the Minister, Mr. Haigh, an enquiry was held in May 1978 by the local Clerk of Petty Sessions who exonerated Mr. Penning.

A similar enquiry by the Department's legal officer, Mr. Eris Quin, in 1971 into the Bathurst Bashings of October 1970 caused Mr. Justice Nagle to say "It was not an auspicious beginning to such a practice" (R.C. p.109) . . . "The ubiquitous Mr. Quin" (R.C. p.114) "His methods of interrogating them were unfortunate" (R.C. p.115). "He unnecessarily harassed Mr. Hanrahan" (R.C. p.121). "The enquiry was just a big cover up" (R.C. p.121). Mr. Quin was appointed a magistrate before the Royal Commission and still practises as one. Prison Officer John Ristau was Chairman of the Prison Officers' Association in the early 1970's. Mr. Justice Nagle describes various incidents where the Department attempted to intimidate and victimize Mr. Ristau for his stand against the bashing of prisoners at Bathurst in 1970 (R.C. pp.128,129,141,284-6). Mr. Ristau also gave evidence to the Royal Commission, of misconduct by Mr. Braddley who was the Superintendent of Milson Island place of Detention. The Departmental enquiry which dismissed Mr. Ristau's allegations was criticised by Mr. Justice Nagle who found them proven (R.C. pp.262-7).

Soon after the Royal Commission report was tabled Mr. J. Ristau was charged by the Public Service Board for delaying to report an escape from Milson Island. He was fined \$200.

At the time I write he has been accused of associating with an ex prisoner. He denies the allegation. Although he lives at Brooklyn on the Hawkesbury River he has been transferred to duties at Silverwater where Mr. J. Braddley is Deputy Superintendent.

Mr. Justice Nagle wrote of "The ruthless determination by the Department's Head Office to suppress criticism" (R.C. p.288).

### The Government

If the reaction of the Opposition is clear and unambiguous that of the Government is more complex. The Premier recalled Parliament for a one day special sitting to table the report.

As well as using the report to beat the previous Government about the head Mr. Wran also used with effect those parts of the report which referred to the former Commissioner McGeechan who he had sacked three months previously.

However, Mr. Wran's general support of the report was as strong as anyone could have hoped.

After having spent considerable time on a litany of the similarities between recommendations of the Report of Mr. Justice Nagle and the report of the late Mr. Justice McClemens which the previous Government ignored the Premier stated\*:

I assure this House and the public that the recommendations of this Royal Commission will not be swept under the carpet.

He went on to say:

This is a good report. The dedication of Mr. Justice Nagle is illustrated not by the size but rather the quality of the report. His Honor has performed an outstanding service to this State.

Strong stuff indeed.

He did qualify these accolades to this extent. He said:

Without prejudicing all the recommendations this report will serve as a fine blueprint . . . . . Implementation of the report will not be achieved overnight . . . . . Years of work will be required to eradicate the problems . . . . . no government is in a position to spend unlimited funds for any one purpose.

On 12th April Mr. Wran was reported as saying that he would not accept the recommendation on pay phones (*The Sun* 12/4/78).

He further stated to Parliament . . . .

before Parliament resumes the Government will announce its decisions on the Royal Commissioner's report and the progress of the implementation of the recommendations. (*Hansard* 4/4/78).

\* Quotations are from the report of Mr. Wran's speech in *Hansard* 4/4/78.

On 30th May Mr. Wran was reported as saying that he will make a submission to Cabinet within the next few weeks on how the Nagle recommendations should be treated. It also stated that the Premier had the reports from the Department of Corrective Services and the Public Service Board (*The Sun* 30/5/78)

In this regard Mr. Wran stated to Parliament when tabling the report "within four weeks of the tabling of the report the Department of Corrective Services and the Public Service Board should report to me as Premier on the implementation of the Report". (*Hansard* 4/4/78)

If supporters of the report were less than enthusiastic that the Department which Mr. Justice Nagle described "as a whole is inefficient, disorganised and badly administered" (R.C. p.698) was to report on the report, those who read a circular sent to all prison officers were suspicious indeed. This was headed "Report of the Royal Commission into N.S.W. Prisons — Establishment of Committee to examine recommendations", and commenced "It is desired to acquaint officers . . . of the method which is to be followed to examine, and *where appropriate, implement the recommendations* contained in the report" (the italics are mine) (Circular No. 4302). Prison officers were invited to contact one of two sub-committees whose members were named. The Committee which was to give final consideration was comprised of Messrs. Downs, Barrier, Day, Furniss, Lukes and Nash. The views of Mr. Justice Nagle on three of these are set out elsewhere in this paper. Additionally, Mr. K. Lukes was a member of a Departmental Committee of Enquiry into allegations about Milson Island. Mr. Justice Nagle also investigated these matters and was critical of this Committee of Enquiry (R.C. Chapter 10).

I will have to reserve any final views on the Government's reaction to the report until it makes the announcement referred to above which should be well before the date of this seminar.

At the time of writing this paper my examination of press files reveals the following have been implemented:

- Katingal was closed and is now being used by the Special Operations Division.
- A Commission as recommended was accepted on 15th June 1978 in the wake of the escape of prisoners Stratton and Mullen from Long Bay. Mr. Coleman stated "it is another cosmetic operation and an attempt to take the heat off the accident-prone Haigh". At the same time Mr. Wran announced the appointment of Mr. Day as Acting Commissioner. The position of Chairman of the Commission and of members has not been advertised. Does this mean the position of Chairman will be made from those who applied for Mr. McGeechan's position in February and for which Mr. Day was the successful applicant?
- On 2nd May Mr. Brian Smith, former press secretary to Sir Eric

Willis, was appointed Departmental Public Relations Officer.

- Messrs. Genner and Newling have been prosecuted in accordance with Section 56 of the *Public Service Act*.
- On 11th July the quarter horse stud closed at Cessnock (after contract of \$233,000 let for new stables in February 1978).
- One day's jail is now penalty for default in payment of \$25.00 in fines (previously it was \$5.00).
- "Action has been taken to draw up riot plans" (Wran — *Hansard* 4/4/78).

I have heard that at some gaols, at least some of the other recommendations have been implemented to some extent, e.g. some relaxation on quantity of letters and range of reading matter. If this is correct the fact that there has been no publicity as at the time I write about them is contrary to Mr. Justice Nagle's recommendations.

The secrecy which has surrounded its (the Department's) activities can fairly be described as obsessive. (R.C. p.649)

Perhaps this will all be included in Mr. Wran's promised public statement. Perhaps an announcement will only be made in response to some controversy (as was the case with the acceptance of the recommendation on the Prisons Commission).

I believe that some comment on the administration of the Department since the tabling of the report is relevant.

As a result of the involvement of work release prisoner Lawrence Byrne in an attempted robbery no new prisoners were allowed into work release pending an enquiry by the Advisory Council. On 7th June 1978 it was announced that the following were to be disallowed entry into work release:

1. Manslaughter
2. Malicious wounding
3. Rape
4. Indecent assault female
5. Armed robbery, including:
  - (a) armed assault and rob
  - (b) armed robbery with wounding
  - (c) attempted armed hold-up
  - (d) assault with intent to rob whilst armed
  - (e) robbery in company
6. Robbery with striking
7. Robbery, includes steal from the person
8. Sell drug of addiction
9. Import prohibited imports

Of work release Mr. Justice Nagle said.

The Commission's view is that work release should be extended to enable more prisoners to participate in the programme. It seems extraordinary that places available at Silverwater are presently taken by prisoners working at the Parramatta Linen Service (who usually, if not invariably, are not eligible for work release). Most prisoners should be given the benefit of this programme for some period before their discharge. (R.C. p.624).

It is a pity this programme has not been extended to a greater number of prisoners. The Department should not permit the recent well-publicized failure of one prisoner on a work release programme to limit its future use. (R.C. p.669)

In late June prisoner John Chater failed to return to Malabar from his technical course. On 30/6/78 Mr. Haigh said that the system for outside courses was "too loose". On 3rd July stricter criteria for selection for outside warrants was implemented:-

To do Technical courses a prisoner must now have been sentenced for a crime of non-violence and served one third of his head sentence or 10 years of a life sentence. That minority of prisoners classified to a non-maximum security prison usually have non parole periods of about a third of the head sentence and is usually paroled soon after the expiration of that non parole period. The average life sentence is about 12 years. Accordingly few are eligible for technical courses.

As a result of the new criteria 26 of the 59 doing technical courses at the Metropolitan Training Centre had them stopped. Some had been doing them since 1973.

To be allowed day leave from non maximum security institutions under the new criteria a prisoner must have served one third of his head sentence or eight years of a life sentence.

As former prison psychologist Len Evers said "The move is counter productive to prison reform and can only cause heartbreak and unrest" (*The Sunday Newspaper* 9/7/78)

Mr. Justice Nagle said:

Undeniably, there are security restrictions in the implementation of both educational and vocational training programmes, but the Department appears to be far too prone to use these as excuses in cases where the security risk is minimal. Elsewhere in this Report, attention has been called to the overwhelming evidence that the vast majority of prisoners do not represent a security risk. There are examples of minimum security prisoners who have been refused leave to attend

external training institutions. The reasons for refusal by the Department have been both vague and inconsistent. (R.C. p.451).

The question of selection for outside courses is currently being reviewed by the Advisory Council. On 19th July 1978 a single delegate of that Council carried out investigations at the Metropolitan Training Centre. He was Professor K. O. Shatwell, former Dean, Faculty of Law, Sydney University who was one of the proponents of Katingal and who apparently kept this fact secret from the other members of the Advisory Council.

Professor Encel also gave evidence that the Advisory Council had not been consulted about the construction of Katingal and its members were not aware of its erection until November, 1973. Mr. McGeechan replied that the Advisory Council was not in existence when the plans for Katingal were drawn up, but that Professor Shatwell, later to become one of its members, had seen the plans. When the members of the Advisory Council visited the Malabar complex in 1972, no reference was made to the proposed building. (R.C. p.357).

The Government has been mute on the various public calls for removal of the prison officers who bashed, and early release for those prisoners who were bashed or sentenced for property damage to Bathurst Gaol in 1974. The longer nothing is done the less likelihood there is of anything being done.

A classic example is prisoner Gary Van Heythuysen. Since before the tabling of the Report he has merely been serving a sentence for his part in the riot at Bathurst in 1974. For a considerable time he has been successfully attending a painting and decorating course from Malabar Training Centre. Mr. Justice Nagle said:

*Van Heythuysen* was hit with batons by Prison Officers Miller, Gunning and Clark on the rear of the shoulders, the buttocks and back and behind the legs. The medical evidence supported his claim. The denials by Miller and Gunning are not accepted. (R.C. p.179).

In spite of favourable reports from Long Bay his application for a licence from Minister Haigh was recently refused.

Contrast this with the regular reports of government proposals to release on licence Peter Huxley who is not eligible for parole for 3½ years. The latest stated:

The State Government is considering releasing Peter Huxley who misappropriated \$1.8m. but not until after the State election. (*Mirror* 9/8/78).

The Royal Commissioner would not make any recommendation that prison officers be prosecuted for bashing of prisoners at Bathurst:

These events occurred more than seven years ago. Although the truth was hidden from the public by the Department until they were

eventually examined by this Royal Commission, they have now been well ventilated. Retired prison officers (such as Mr. Pallot) are no longer subject to the jurisdiction of the Public Service Board, which in any event has power to impose no more serious a punishment than dismissal from the Public Service. The fact that these men are no longer employed in the Prison Service avoids the need to remove them from any position where they could err again. This Inquiry itself constitutes a powerful deterrent against other officers making the same mistakes. The Commission sees no purpose at this late stage of recommending criminal prosecutions. (R.C. p.88).

The Premier said:

The report contains a number of references to the conduct of prison officers, some of whom are named and some of whom are still employed in the department. The Government is shocked at the behaviour described in the report, much of which occurred some years ago. The Government, however, does not propose that this report should become the basis for a witch hunt in respect of what has happened. (*Hansard* 4/4/78).

However, although Mr. Justice Nagle did not recommend prosecution of Grafton officers for bashing he did not recommend against it.

Consistent with the intention expressed earlier that it did not propose specifically to recommend the criminal prosecution of prison officers at Bathurst, it does not propose to recommend action against the officers who served at Grafton during the relevant time. The names of these officers would be available to the appropriate authorities, and, as previously, the Commission leaves to them any consideration on their future. (R.C. pp.210-211).

On 16th July a Grafton prisoner, Brett Collins, was declared "intractable". He had never even been placed in Katingal when it was in operation. There is no doubt that Mr. Collins is a demanding prisoner and would be considered a nuisance by most departmental employees he comes in contact with. I understand that prison officers Buckley and Wenczel supervise him in the intractable section of Grafton. The latter is named in the Royal Commissioner's report:

The brutality and savagery with which the intractables were contained at Grafton was evidenced by two witnesses who had no motive to misrepresent or exaggerate their claims. Both spent short periods as local prisoners in Grafton Gaol, one for a marijuana offence, and the other for failing to maintain his wife. (R.C. p.200).

His Honour quoted one of those ex prisoners:

One afternoon . . . I was marching through a walkover near a small yard, and looking towards the pound. I saw officer Wenczel and a prisoner, who was against a wall. Mr. Wenczel was flogging him with his

baton across his back and shoulders. I saw five to six blows, and the prisoner turned and was struck heavily across the head. Blood spurted from his forehead which was split. He fell to the ground. The prisoner had his shirt off and blood was appearing on his body. I walked away from the scene. (R.C. p.201).

Both are named in a similar vein on numerous occasions in the evidence heard by the Royal Commission.

Mr. Justice Nagle stated:

It is surprising to find how many reputable and distinguished citizens have been banned from entry to prisons. They include the present Premier, Mr. Wran, other members of Parliament including some who are now Ministers of Cabinet, barristers and solicitors, members of the public interested in prison reform and representatives of the media. This restrictive policy is incomprehensible. (R.C. p.12).

In February 1976 the opposition spokesman on prisons, Mr. T. Moore, was refused access to any New South Wales prison. Mr. Wran stated this was to prevent "fermenting more unrest among warders and inmates".

The right of parliamentarians to visit prisons was one of the few issues before the Royal Commission that caused no disagreement between all the parties.

### Chaplains

Two days after Mr. Wran tabled the Report and promised to close Katingal, Father W. Meecham stated publicly "Don't close Katingal. . . Judges talk about prisons but don't know anything about them" (*The Sun* 6/4/78). He referred to Katingal prisoners as "these outlandish people who cannot fit into the normal system". (*S.M.H.* 15/4/78).

A more balanced view was publicly expressed by the Anglican Chaplain, Dr. K. Marr, "It helps a few, most accept it, many should not be there, and if they stay too long it would have serious effects".

Neither of them attempted to put any of their views to Mr. Justice Nagle.

Both have been prison chaplains for very many years contrary to Mr. Justice Nagle's recommendation "Chaplains should not serve in prisons for extended periods". (R.C. p.372).

### The Judiciary

Judges and magistrates usually do not make public statements on such matters. One must look to statements made in court.

Two cases dealt with while the Royal Commission was proceeding may have been anticipated in Justice Nagle's report. *Fraser v. Regina* established

the right to appeal to a District Court Judge from a determination of a Visiting Justice. *Regina v. Pulbrook obiter dicta* of a Supreme Court Judge sentencing a prisoner for murder "those needing psychiatric treatment are unable to get it in gaol". (Maxwell, J. Dec. 1977).

On 11/8/78 Coroner Mrs. M. Sleeman S.M. committed Phillip Nevill for trial for murder. During the committal proceedings there had been considerable evidence of the defendant's adverse psychiatric condition. In refusing bail Mrs. Sleeman said she had no evidence of the prison system being at fault. She said "It is certainly not a system I am prepared to criticise".

Mr. Justice Nagle's criticisms of psychiatric treatment are set out in Chapter 24 of the Report.

In asserting the need for an inspectorate Mr. Justice Nagle said "vague mention also was made of visits to the prisons by judges of the Supreme Court and the District Court" (R.C. p.351). A proper form of inspectorate has not yet been implemented. The right of judges to enter prisons still exists (*Prisons Act S.11*). The Department produced a list giving details of the paucity of such judicial visits. The Royal Commission made findings of horrendous brutality. I wonder how many judges have taken advantage of S.11 since then.

Mr. Justice Nagle sharply disapproved of the result of the decision of the New South Wales Court of Appeal in *Dugan v. Mirror Newspapers* (R.C. pp.561-2) which prevents most prisoners instituting civil proceedings. However Dugan's appeal to the High Court on this has been reserved for an extraordinarily long time (since February 1978). Until the matter is finally determined one way or the other by the Courts it seems unlikely that the legislature will implement Mr. Justice Nagle's recommendation.

Prior to the tabling of the Royal Commission Report prisoner Edward Smith commenced civil proceedings in regard to the visiting facilities at Katingal of which Mr. Justice Nagle strongly disapproved (R.C. p.231). The New South Wales Court of Appeal dismissed this action on 14th June 1978. The judgment of Mr. Justice Hutley was followed by his two fellow Judges Moffitt and Glass J.J.A. I do not intend to canvass the legal reasoning of this decision. However it is of interest to compare the approach of that court and statements which were merely *obiter dicta* with comparative passages of the Royal Commission Report.

Mr. Justice Nagle stated "there are occasions when Courts provide the most effective venue for a prisoner to protect his rights. This may involve approaching the Courts for such remedies as *Habeas Corpus* or for declaratory relief". (R.C. p.564). He specifically disapproved of *obiter dicta* of Sir Owen Dixon (High Court 79 C.L.R. 8) which Mr. Justice Hutley quoted with approval.

If prisoners could resort to legal remedies to enforce gaol regulations responsibility for the discipline and control of prisoners in gaol would be in some measure transferred to the courts administering justice. For if statutes dealing with this subject matter were construed as intending to

confer fixed legal rights upon prisoners it would result in applications to the courts by prisoners for legal remedies addressed either to the Crown or to the gaolers in whose custody they remain. (at R.C.).

In his Judgement Mr. Justice Hutley considered the geography of the "coffee room" in Katingal which he states would not comply with the law as "There are parts of the room which are not within his (the prison officer's) sight." However he does not refer to Mr. Justice Nagle's views on legal visiting at Katingal nor any part of the Royal Commissioner's report.

The *ratio decidendi* of Smith's case is stated by Mr. Justice Hutley and endorsed by his two brother Judges: As

The question as to whether the accused has a Counsel with facilities to enable him to perform his function can only be determined by the Judge who is in charge of the trial and in the case of committal proceedings the magistrate who has the conduct of such proceedings.

Prisoner Eric Heuston has recently been charged in connection with a bomb blast inside Long Bay. When his solicitor, Mr. Ian Dodd, quoted the above to Mr. Lewer S.M. on 13/7/78 and Mr. B. Brown S.M. on 21/7/78 at Central Court in an attempt to have his client kept in a metropolitan prison to facilitate preparation of his defence he was told by both these magistrates that they had no power to make such an order.

Mr. Justice Hutley spent some time distinguishing decisions of American courts on legal visits. He went on to quote with approval a recent English decision of Denning M.R. (*Becker v. Home Office* 1972 2AC 418) "If the courts were to entertain actions by disgruntled prisoners the governor's life would be made intolerable. The discipline of the prison would be undermined." Lord Denning's obiter is merely a value judgement. Mr. Justice Hutley made no attempt to see if Lord Denning's prediction had been borne out in the United States by virtue of the decisions he refused to follow.

Perhaps we should be grateful Mr. Justice Hutley was not appointed the Royal Commissioner.

### **Legal Profession**

Two aspects of the Report should be of particular interest to the legal profession:

1. Unrestricted legal visits to prisoners
2. Unrestricted access to the Courts by prisoners.

My enquiries of both the Law Society and the Bar Association reveal they have taken no action on nor adopted any attitude to the Report.

The lack of interest of the legal profession in prisons and prisoners is exemplified by the answers members of the profession gave in the recent survey on the legal profession to questions on the time we spent visiting clients in prison. (Tomasic & Bullard, *Lawyers and Their Work* p.169).

However the Society of Labor Lawyers did write to the *Sydney Morning Herald* on 19th April urging that prison officers who bashed be removed, that all the recommendations be implemented and all sentences of all prisoners who were bashed be reviewed.

### Prisoners

From my conversations with prisoners, their wives and public servants in contact with prisoners, it appears that the failure by the Government to take any action in respect of prison officers' brutality has produced an overall reaction of guarded cynicism. In those institutions affected by more recent hard line policies this view has been reinforced.

The public campaign by the prison officers has engendered bitterness. As one prisoner stated: "Many recommendations were made in the Report. They may or may not be implemented."

It must be admitted that some few recommendations have been acted upon. The closing of Katingal is the most important of these. This was achieved after a rear-guard action by warders. This was a gain. However the most basic matter of all has been glossed over. No action will be taken in regard to the warders who were proven by the Commission to have perpetrated the "most vicious and programmed brutality in this country in this century". Not one of these warders will even be dismissed". (D'Arcy Dugan 13.7.1978).

Prison officers claimed that the ex-Katingal prisoners who refused to leave their yard at Maitland had said they were being used as political footballs (*S.M.H.* 8/6/78).

There is no doubt that the only recommendations which universally excited the prisoners were those on remissions and parole. Anyone who knows anything of prisoners' obsessions with their release dates could appreciate this.

In fact at two institutions it is accepted that these recommendations will be implemented. This has been reinforced by statements to the prisoners by the prison officers, some of whom have claimed that the remissions recommendation will be implemented retrospectively to the date of tabling the report. There is a strong rumour in one prison that the Department has already recalculated the release and non parole expiry dates in anticipation of such implementation.

Winter is the traditional season for relative peace and calm in our prisons. Nearly all disturbances in the last decade have commenced with a sit down in and refusal to vacate a prison yard or yards.

Come the warmer weather this is a much more likely occurrence. In New South Wales, October has proven a very popular month for such occurrences possibly because it is the first occasion when the weather is appropriate for prisoners who have spent five cold and frustrating months in old maximum security prisons to stage a sit down.

In April 1978 the media reported five days of disturbances at Pentridge which culminated in a fire. This was two (2) weeks after the release of the Nagle Report. The Victorian Minister responsible for prisons may have been more honest than some former New South Wales Ministers when suggesting a reason.

"Since the report has been made public there has been trouble at Pentridge" (*Telegraph* 20/4/78).

The dangers of raising the expectations of 4000 incarcerated men and failing to fulfil them should be obvious.

If the Government does not take positive steps to implement the recommendation in the coming budget session of Parliament the Opposition may well make prisons an election issue.

### Postscript

On the evening of 14th August 1978 a 16 foolscap page press release was distributed to the media on behalf of the Premier. This was the statement he promised to make before Parliament resumed. It claimed that 88 of the 252 recommendations of Mr. Justice Nagle had been implemented and gave particulars.

Considering that it was more than four months since the Report was tabled it was hardly a comprehensive list of achievements. Many of the items included were negative or vague, others were platitudes. The volume of the release was deceptive as it comprised two lists of implementations each referring to the same matters in different ways. It has the style of a document prepared quickly and released at the eleventh hour for a Premier who had been absent from Sydney to attempt to fulfill a public undertaking. Uncharacteristically Mr. Wran did not hold a press conference.

The most publicised items related to capital works. Bathurst, Parklea and Mulawa proposals were in accordance with the recommendations. However the proposal to replace the O.B.S. suggests no timetable — Mr. Justice Nagle said it "should cease immediately" (R.C. p.690). It stated that "The building of a new remand centre will be incorporated in the long term programme" whereas Mr. Justice Nagle said "A remand centre should be built as soon as possible" (R.C. p.692). X Wings at maximum security gaols is accepted and the release goes on "Provision is being made at Bathurst" (it has the original X Wing!)

Other parts show an unqualified adoption of the Nagle Report e.g. superintendents autonomy, classification, food at Mulawa, periodic detention for women, language of migrants' letters, superintendent's powers, public relations officers, unlimited incoming and outgoing mail.

Some other aspects need at least explanation and amplification:

"The Corrective Services Commission legislation will be introduced this

session" — but when will it pass all stages in both houses if there is a State election? "The position of Chairman will be advertised in the next few weeks" — but why wait till then as the decision was announced on 15 June and will the other positions on the Commission be advertised?

By setting up The Advisory Council as a Statutory Body this will provide the opportunity to put new blood on it but will the Government do so? There is no mention when this legislation will be introduced. The Council "will have access to prisoners', officers' and Department files" — but without restrictions?

An Inspectorate is to be set up. The press release is silent on its composition.

Legislative action will be taken to set up a Prison Ombudsman. But there is no indication when.

Dispersal system is accepted. "Units are already in existence in Parramatta, Maitland and Grafton". Does this mean the old 'trac sections' and the circle will continue in use? "Construction of a dispersal unit has already commenced at Goulburn" — who was consulted for the planning or did the Department plough on as it did when building Katingal?

"The perimeter security of maximum security goals has been strengthened" but how?

"The Special Operation Division has been disbanded" or has it merely been dispersed? There is no reference to training of personnel as recommended by the Royal Commission.

"Incoming mail will be inspected for contraband". But what of outgoing mail? Will letters still be censored?

"Correspondence between prisoners and their legal advisers and Members of Parliament will now be privileged and private subject to security requirements" — some privilege! There is no mention of any general right of members of Parliament to inspect or visit prisons.

Some are nebulous. There will not be conjugal visits in prisons. These have never previously occurred nor did Mr. Justice Nagle recommend they should.

Others are vague general and enigmatic statements:

"The training of prison officers is in the process of being improved"

"Rule 4 which relates to use of force by officers has been rewritten".

"The recommendation that the prime objective of a prison industry should be to offer gainful employment to as many prisoners as possible has been adopted".

"The proposal for the formation of prisoner committees at all institutions accords with existing departmental policy".

"A special committee including a nominee of the Women's Advisory Council and two senior women employed in the Department has been established to review recommendations relating to women prisoners".

"An Inter Departmental Committee . . . to examine all the recommendations relating to the provision of medical services".

"Recommendations relating to alternatives to and variations of imprisonment have been agreed to in principle and are now being exhaustively examined".

Some are inaccurate or misleading:

"The 1956 Prison rules have been withdrawn". This was done by Mr. Coleman when he was Minister in March 1976. There is no reference to the fate of the 1972 Rules which were criticised by Mr. Justice Nagle.

There is no mention made of the recommendation on remissions. In respect of parole it is stated "The Parole Board of New South Wales, a statutory body, is reviewing the specific recommendations made and will report shortly to the government. I anticipate changes will then be made". As both these matters will require legislative action to implement any adoption of the recommendations I can see no changes this year.

## PRESENTATION OF PAPER

*Thomas J Kelly*

At page 25 of my paper I refer to the comments of Mr. Justice Nagle on the probity and bias of the former legal officer Mr. Quin who is now a magistrate. It has recently come to my attention that within the last few weeks the two legal officers of the Department, Mr. Maughan and Mr. Considine have been commissioned as magistrates.

Mr. Justice Nagle reflected upon Mr. Maughan's probity at R.C., page 208 in respect of an enquiry Mr. Maughan conducted into the bashing of a prisoner named Errol Manley at Grafton Gaol. Like all departmental enquiries investigated by the Royal Commission it failed to discover the truth. Mr. Quin was succeeded as departmental officer by Mr. B.D. Cleary. I note the Law Almanac lists a magistrate by the same name and I presume it is the same person. Mr. Quin was the first departmental legal officer; there have been a total of five. Four of them are magistrates. Only Mr. Hanrahan missed out — I don't know if he is dead. These appointments raise important questions in respect of the administration of justice in this State which at the magisterial level at present is under somewhat of a cloud.

The departments legal officers' jobs are as I understand it:

1. to advise the department on legal problems that arise,
2. to appear at court proceedings in which the department is involved in a minor way, such as answering subpoenas, and
3. to conduct enquiries, examples of which have been referred to by myself and certainly by His Honour Mr Justice Nagle.

In respect of their legal advisings Mr. Justice Nagle made reference to how the Commissioner of Corrective Services misused his power under Section 22 of the Act relating to the administrative segregation, (R.C. p.536). This coupled with the doubtful legality of the department operating under two concurrent but inconsistent sets of rules (R.C. pp.279-281) does not assist the legal officers' credibility problems. Are such men properly trained and equipped to now make difficult and momentous decisions as to whether or not to send an offender to gaol?

At the time I wrote my paper I made no reference to the Ombudsman. He has since reacted to the Royal Commissioner's Report in his annual report which was tabled about a week ago. On page 12 of this report Mr. Smithers stated:

I disagree with the Royal Commission in its recommendation that a special prison Ombudsman be appointed, and I personally do not see the need for such an appointment.

As will be seen from this report, a considerable number of complaints are received from prisoners and dealt with. Whilst the Commission seemed to consider that it was necessary for all prisoners' complaints to be dealt with by a personal interview and investigation of the complaint, my experience is that this is certainly not necessary and a large number of complaints, because of their general nature, do not warrant a special interview with the prisoner. Where necessary, inspections are carried out and prisoners are interviewed by one of my officers.

And he further stated, at page 10 of his report:

I have followed the general practice adopted in respect of other departments and authorities and in many cases in the first place request the Department of Corrective Services for a report. Inspections are carried out from time to time and the prisoners are interviewed by one of my officers. The general nature of so many of the complaints received from prisoners does not warrant, in the large majority of cases, a special interview with them.

Whilst it is probably due to the substantial increase in the number of complaints received, I regret to say that the adequacy of the information supplied to me by the department on many occasions leaves a lot to be desired and it has been necessary to go back for further reports and information. In addition, from time to time there has been considerable delay in the supply of information. I have brought these matters especially to the notice of the present Commissioner.

Consider this in the light of Mr. Justice Nagle's report at page 533:

A more important limitation on the Ombudsman's effectiveness has been his practice of 'investigating' prisoner complaints simply by writing to the department and leaving the investigation of the complaint against the department to the department itself. It is not surprising that the prisoner feels less than confident that their complaints are being examined impartially or at all. A prisoner, who obviously associated the Ombudsman with government interests including those of the Department of Corrective Services, said: "It is no use having an Ombudsman if he is not going to carry out his investigations." He described the Ombudsman's response to a complaint this way: "He did not wish to be involved you know. He said that he had seen Mr. McGeechan about it and Mr. McGeechan denied it, and that was as far as it went. Mr. McGeechan could deny anything. If that is as far as it is going to go, it is no use complaining".

The Commission understands that recently some changes have taken place in this method of investigation but they are not sufficient to remove the impression among prisoners that the Ombudsman's investigations are free of departmental involvement.

Now Mr. Justice Nagle obviously felt very strongly about this as he stated in his interim report in March 1977 recommending procedure for

dealing with complaints to the Royal Commission that:

He or any investigating officer appointed by him should be obliged to interview each complainant personally in order to elucidate the details of his complaint. I regard this personal contact as a vital element to any such investigation. The person appointed should not proceed by calling upon the department, or its officers, to investigate and report to him the results of its or their investigation. He should conduct his own investigation and in order to do so should be given by Statute the powers given the Ombudsman relating to investigation of complaints, including the employment of staff, engagement of expert assistance and availability for his use of the services of any public authority.

I have recommended the appointment of some person other than the Ombudsman to investigate the remaining complaints by prisoners and others in preference to a straight out reference of those complaints to the Ombudsman for a number of reasons.

With these antecedents, Mr. Smithers, if he were a prisoner, would risk being declared habitual. I do not think he has even considered the reasons for the period of calm in our gaols during the hearing of evidence at the Royal Commission. In his press release dated the 14th August 1978 Mr. Wran stated: "The government accepts the principle that there should be a prison Ombudsman." It is silent on who it is to be and when it will occur.

My paper was written immediately prior to the Long Bay disturbance of the 22nd August 1978. In my paper I predicted the occurrence of such a disturbance although I did not think the first would happen quite so soon. I would like to look briefly at that disturbance in the light of the Nagle report.

One of the first things Mr. Justice Nagle stated in his report at page 8 was:

It has been said that the study of a gaol riot illuminates the general workings of a prison department. The Bathurst Riot (in 1974) illustrated the general and continuing workings of the Department of Corrective Services: idle inmates, unsuitable and badly trained superintendents and staff, poor morale, arrogant enforcement of petty restrictions, the unfair application of disciplinary rules, and, finally, an unsympathetic Commissioner with an administration of selected senior officers remote from their charges.

When considering the Long Bay Riot of the 22nd August 1978 one can't help feeling a sense of *déjà vu*. It has been publicly alleged and not refuted that prior to the riot there was:

1. An increasing incidence by prison officers of arrogant enforcement of petty restrictions, searching of cells late at night, long delays in unlocking gates, and granting medical treatment to prisoners.
2. Increasing incidence of unfair application of disciplinary rules.

3. Idle inmates with little work to do which was exacerbated by overcrowding.
4. Deplorable visiting conditions exacerbated by the prisoners knowledge that the newly completed visiting facilities were being used for storage.
5. The transfer out of the prison the day before the riot of all prisoner delegates to the official prisoners grievance committee. (Mr Justice Nagle criticized arbitrary and unnecessary movements.)

In fact, the act precipitating the riot was the refusal of authorities to allow prisoners to remove numbers from their clothing, which was a recommendation of Mr. Justice Nagle.

I doubt that there was a coincidence that the riot occurred less than a week after the Premier made his long awaited public statement giving particulars of which recommendations the government had or intended to adopt. It became publicly clear that in the five months since the tabling of the report only a few inconsequential recommendations had been implemented and there was scant evidence of commitment to the balance.

Furthermore, Brian White's comment in the *Daily Mirror* the day after the riot is worth noting:

The Department and the Government have simply failed to show that they intended making anything but temporary repairs despite the tremendous criticism in the report of the Royal Commissioner, Mr. Justice Nagle. A number of senior officers who were criticised by Mr. Justice Nagle have all since been promoted in spite of what the Judge had to say. Word of that has swiftly got around the gaols and sparked unrest.

I made detailed reference to this in my paper which was written before Mr. White's article. However, I was incorrect when I stated at page 22 that Mr. Genner had left the department. I have recently ascertained that, incredibly, Dr. Prentice is still the medical officer who visits Grafton Gaol. Of him Mr. Justice Nagle said at pages 201-202:

Of all the outsiders who must have known what was happening at Grafton, the local medical officer was the most obvious. He visited the gaol at least three times each week, conducting routine examinations of prisoners as well as dealing with specific ailments. Many prisoners said they were still badly bruised when they first saw the doctor. Some of them required treatment as a result of their beatings.

The conclusion became inescapable that the doctor must have realised how these injuries were caused but he had apparently resolved to turn a blind eye. One prisoner, unaware of the local rule that the doctor was to be saluted, failed to do so. He was punched by an officer in the doctor's presence. Other prisoners said that the doctor ignored the baton marks

on their bodies. One said that the doctor told him he was lucky that they were not worse.

The sense of *déjà vu* did not diminish after the riot with the Gung Ho reaction of Mr. Wran and Mr. Haigh:

They (meaning the prisoners) created the inconvenience and they will have to suffer.

Among the hundreds of prisoners there are the hard core anti-social intractable prisoners who are a feature of every prison in the world.

The Minister patted himself on the back because the damage was not as serious as that done at Bathurst in 1974. This ignored the fact that there was a skeleton staff at Bathurst and many extra staff at Long Bay at the time of the respective disturbances. The Long Bay disturbance was anticipated by the authorities who, if they had learnt anything, would never have allowed it to happen.

Perhaps we should be grateful that there was no publication of allegations like the following:

"I believe it could be part of the world-wide prison activist movement whose base objective is to destroy the prison system of most countries."

They are the words of Mr. J. C. Maddison, then the Minister responsible for Corrective Services, *Daily Telegraph* 5.2.74.

No comfort can be taken if there is a change of government after the elections. Mr. Coleman merely used the incident to promise that he would reopen Katingal. The inevitable departmental enquiry was to be held by Mr. J. Nash, who was a prison officer at Grafton for twelve years, and whose evidence that he knew nothing of the brutality at that prison was vigorously referred to by Mr. Justice Nagle and quoted in my paper; and by Mr. B. Phemister who will enquire into the disturbance at the prison of which he was superintendent until about two months before the disturbance.

Of course, there is to be the inevitable police enquiry to see if any of the prisoners can be charged with criminal offences in connection with damage to the gaol. All this whilst the prison officers who were responsible for what Mr. Justice Nagle described as: "... practices utterly opposed to normal standards of decent human conduct" are still in the service.

It gives me no pleasure to sound like the prophet of doom but as things stand now the only significant change in our State prison system is likely to be the burning of our gaols. I only worry when the first life will be lost during such an occurrence.

## PRISONS — IMPROVEMENTS IN PROGRESS?

*Barry O. Todd*, Chairman, Prison Officers' Branch,  
Public Service Association of New South Wales.

### The Past

The need for a Royal Commission was first pressed by prison officers after the Bathurst riots in 1970, and again after the 1974 riots. Even though such a Commission might have nothing to offer prison officers except chances of dismissal, or possibly a gaol sentence, the officers believed there was something seriously wrong with our prison system.

The New South Wales prison system is the subject of debate by academics and do-gooders. This is not so unusual you might say, prisons are the subject of debate around the world! The difference in New South Wales is that the sociologists, psychologists, behaviourologists, and every other "ologist" who has the *answer* has had a go at our prison system. They have been allowed to poke and prod and experiment with the system, at the expense of at least one prison officer's life and many serious injuries to prisoners.

I am not an academic, I do not profess to know all the things that are wrong with our system. What I do know is that the blame for riots and industrial unrest can be laid squarely at the feet of one man, the same person who was blasted in the Royal Commission by Mr. Justice Nagle, Mr. W. McGeechan. The prisons "Great Leap Forward" began when Mr. McGeechan tried to update our prison system. In my opinion he had the right ideas but the wrong methods. Mr. McGeechan created the Division of Physical Resources which took away all the employment for prisoners in maximum security. Mr. McGeechan created the Special Operations Division which turned the humble escort into an undercover secret operation which terrified prisoners. Mr. McGeechan created the monster of Katingal which went against most penal practices in Australia, Queensland excepted. Mr. McGeechan had prisoners uncertain of their position, he had superintendents under his personal control and direction, he had prison officers fighting against each other, he demoralised every officer in the State by continually taking away every vestige of authority that prison officers had. No one knew what might happen next, what changes, would be made or in what direction we were going.

For ten years the prison system operated in what could be described as a state of siege. The worst thing that occurred as far as prisoners and officers were concerned was that there was no consistency, a distinct lack of direction and control. For people to consider that ten years of misdirection can be corrected in short time is foolish.

### The Present

The Department of Corrective Services is presently in a state of limbo. Everyone is trying to make their stand. McGeechan's "yes men" are trying to prove that they know the answers and that they were not "yes men" at all, and

probably they will end up running the administration. There has been a riot in the Central Industrial Prison caused by a desire by prisoners to "try on the new administration". There are only a few anarchists in the prisons with the aims of destroying the prison system. They use other prisoners but they in turn are used by the Prisoners Action Group and others. There is no real gain to the "stirrers" in the system, except the chance to identify with the reactionaries on the outside, who in my opinion could not give a damn how prisoners spend their time. Those reactionaries simply want to tell the world what a nasty lot of people prison officers are.

I work in the Metropolitan Reception Centre as an Activities Officer. My "sweeper" clerk is typing this paper, if he refused to type this paper I would bash him with my baton. It matters not that he is a 15 stone Maori. Those of you who believe that the prisoners are fearful of officers and that prisons run on fear and terror are out of touch with the real world. Prisons operate by a routine, by things being the same day after day, month after month, year after year, with faces changing often but "the system" changing only slowly. In this present age when everything must change every day, when it is wasteful not to do something, prisons must be affected, and they are affected by the rush.

At least 85% of prisoners try to do their time as comfortably as possible, and do. Changes can occur in prisons without complete disruption. Prisoners are treated as people. They do have rights, they must be able to challenge authority without the fear of intimidation. There must be moves towards recognising individuality but not at the expense of chaos and human lives.

### **The Future**

Alternatives to imprisonment will continue to expand, such as periodic detention, work release schemes, parole, and probation. These schemes have left and will continue to leave a hard core of maximum security prisoners in the gaols. They will become harder to keep under control, and prison officers will need to be highly trained to keep up with changes in criminal procedures. There will be more escapes, some quite dramatic, there will be more terrorist tactics occurring within the gaols, hostages may be taken, drugs will continue to be a problem in the gaol. Prisoners and prison officers will be increasingly vocal in echoing the need for change. The administration will continue to grow, there will be armies of psychologists offering their help. There will continue to be experts in every field offering their services.

Prison officers are presently the most underestimated and under utilized employees in the Department of Corrective Services. I, as chairman of our union will continue trying to persuade the authorities to listen to us and convince them that we are essential not only for security purposes but also as moderators and listeners. Prison officers are generally family men who identify with prisoners. We are on the same social level as prisoners. It is accepted by officers that experience and commonsense is the greatest asset of prison officers. It is also recognised that some officers attain rank exceeding their capabilities.

The future of the penal service is not bright but I personally believe that moderation, consistency, and meaningful employment will at least create the

basis for change. Government should abandon the idea of building large gaols. Smaller gaols catering for about 50-100 prisoners is the ideal, and this ideal should be pursued. Legal officers should be accessible to both officers and prisoners in every gaol. The Royal Commission recommendations should be fully implemented.

### Conclusion

The first recommendation was to remove Mr. McGeechan from office, and that was done. The second recommendation was to create a Board of Commissioners. That should have occurred first but did not and as a result the upper echelons of administration, who are trying to make their place on the Board, tried to please everyone with the result that they pleased no one. Prisoners waiting for change were disappointed. Officers who thought that the administration would support them were disappointed.

Mr. Wran closed Katingal to please the "spray can activists", saying that it was a recommendation of the Royal Commission. The prison officers stated clearly every time we were questioned that Katingal was a mistake and should be closed. It should not have been closed until Mr. Justice Nagle's recommendations for dispersal units were created. Instead we went back to using the Parramatta circle (which Mr. Justice Nagle described as a dastardly place that should not be used) and the Maitland track section. It could surely have been possible to modify the \$3 million Katingal rather than have its complete closure. One of the few recommendations that expressed any sense of urgency was that the observation section at Long Bay be closed immediately. It is still operating in all its depressing Dickensian splendour filled with some of the most pathetic and unfortunate specimens of humanity who shamble aimlessly about mumbling incoherently to imagined companions. Almost without exception they are heavily sedated and on occasions restrained in a straight jacket. This is a disturbing place for both prisoner and officer, we would welcome its closure and recently have demanded that this be done.

The Royal Commission recommendations are not the panacea for all the ills of the system but sensibly implemented will hopefully put the Department of Corrective Services back on the right track.

As for claims that prison officers have caused the recent riots and disturbances, I would answer that the true cause was frustration due to prisoners finally finding out that the administration will not always accede to their demands. The government and administration have made it obvious to prisoners that they will listen to their grievances, and act on them if necessary, but that they will refuse to listen when their demands are accompanied by threat of riot or demonstration. I was once informed by an interested member of the public that "sit ins" and strikes should be permitted in gaols, but not riots. My answer to people who think this is that the difference between a "peaceful" sit in and a full scale riot is about two minutes. When officers allow demonstration of any type they have lost control and a secure gaol depends on prison officers being in full control.

That is not to say that pressure groups outside the gaols should not be allowed to campaign for better conditions. But the people who camped outside Long Bay recently, taking photographs of officers and shouting with loud hailer to prisoners, were simply trying to provoke officers and incite prisoners. These people are public nuisances, and no government should allow these people to break the law. If I decided to camp on a median strip for several weeks I am sure that I would end up in gaol. Life in gaol is depressing. It has always been depressing. Prisoners in the past have been subjected to punishments that should not have happened; there have been bashing, there have been cases of cruel and sadistic treatment of prisoners by officers. This must never be allowed to happen in the future, and it will not happen provided Government Ministers, Commissioners, and judges, ensure that prisons are open to public scrutiny.

Finally, I note Mr. Kelly's statement "that there is a world wide prisoners action group forming to abolish prisons throughout the world". If the *Gaol News* is any sort of indication of what the Prisoners Action Group can produce, then I am afraid we are in for a pretty sorry and frightening time. This type of publication goes out every week to visitors and to members of the public, and it is quite incredible that the photographs in it are not photographs of New South Wales gaols. Many of them are photographs of prisons or prison officers in other parts of the world. The accusations against prison officers are quite untrue in most cases. I will give you an example where a prisoner has written from his cell (I do not know how he got it out but it is there) stating:

On Friday Ray was in his cage when Buckley obscenely and grotesquely abused him. When Ray much more moderately replied Wensell ordered him locked up and Buckley strode into the cage grabbing him and dragging him out by the hair. Then Buckley, Wensell, Smith, Kastardis, Hollaway (ex blockhouse) and three other screws gave him the biff punch and kicking before the Acting Governor, Piggott, arrived and they finally put him in his cell. Ray and Brett have barricaded up and gone on strike against any cooperation with the screws until the external investigation occurs. Placards with statements like "Screws are the enemies of the people" and "Nazis then — Screws now" festoon their grills."

Whilst we continue with this kind of publicity to close down the gaols I do not think we can look forward to any sort of alternatives to prisons. It certainly puts prison officers in a very compromising position of having to defend law and order, and having to be attacked time and time again.

The recent riot in the Central Industrial Prison was, I believe, one of the last we are going to see for some time. The "stirring" that was occurring within the prisons has been slowly and surely slowing down because I believe the government has now put itself behind law and order. Prison officers are finding that the administration is supporting them. This is the way that reform must continue with governments and people pressing for change. It will occur within the gaols not by the use of the "spray can" pushing politicians one way or another, or by the types of publications quoted above, but by reasonable

means and by the use of the ballot box. There is naturally a need, of course, for further gaols to be constructed, and for a lot of money to be spent on the prisons. I think the stand taken by the prison officers to gain publicity, which has apparently been matched by the Prisoners Action Group, has been one way of ensuring we are going to have more money spent on prisons because we have been able to bring the prisons into the public eye and to let people see what is going on inside and what is needed for change.

## NAGLE REFUSED TO LOOK INTO THE FUTURE

Bob Jewson,  
Secretary, Prisoners' Action Group.

*All the miserable talk about improvement — moral improvement — that results from imprisonment is humbug. No man can improve in isolation. Improvement is inconceivable if not tested while living in social contact with other people.*

Reverend Sternhammer, Member of  
the Swedish Parliament, 1840.

*Criminals don't expect the key to the front gate. All they want, and all they have a right to expect, is that every decision that affects them can be shown to be fair and just.*

D'Arcy Dugan, Prisoner,  
Evidence before the Royal Commission  
into N.S.W. Prisons, 1977.

### The Correctional System does not correct

The record of corrections world-wide is abysmal; there has never been any worthwhile direction in corrections whatsoever and the future of corrections looks bleak unless we go right back to basics and look at the causes of crime, why people are sent to gaol and get the running of prisons out of the heads of party politicians.

An important section of Mr Justice Nagle's Terms of Reference in his commission to hold a Royal Commission into New South Wales prisons was:

To inquire into and report upon the general working of the Department of Corrective Services of New South Wales, its policies, facilities and practices in the light of contemporary penal practices and with the knowledge of crime and its causes . . .

"With the knowledge of crime and its causes"? A tall order you'll agree, but one that if it is ignored, makes any prescriptions you make for the future wholly suspect. Nagle totally ignored that part of his Terms of Reference in his report.

He did not ignore the role of rehabilitation in the "total" institution when he wrote with a certain amount of qualification:

This is not to say that attempts to rehabilitate should cease. All the

Commission quarrels with are the statements that a purpose of imprisonment is to rehabilitate the offender.

My quarrel with Nagle is his qualification. I don't want to go into the many studies that have proven that rehabilitative programmes have failed. For more information read, Lipton, D., Martinson, R., and Wilks, J. *The Effectiveness of Correctional Treatment: A Survey of Evaluation Studies*, (New York, Praeger, 1975) which I think is the best current work on the subject.

If we can rid ourselves of the notion that we can fix up the offender in a total institution, we are left with the brutal notion that prisons act as a deterrent. Again, Nagle had something to say on this subject when he quoted a report on Corrections by a United States National Task Force:

The failure of major institutions to reduce crime is incontestable. Recidivism rates are notoriously high. Institutions do succeed in punishing, but they do not deter . . .

If we go along with that, and I do, we are left with the proposition that the object, that is the real object, of imprisonment is to punish the offender.

Which brings us to what is punishment in prison? Nagle came out with the old cliché that you are sent to gaol *as* punishment not *for* punishment. He argued that imprisonment was enough — the loss of personal liberty was the punishment. However, as his report showed, the punishments in New South Wales gaols went from the sadistic brutalities of Grafton, through punishment without trial under Section 22 of the *Prisons Act*, to the petty nit picking of the prison officers.

### Should Prisoners Have Rights?

Nagle thought that they should have rights:

It is . . . important to ensure that the same degree of justice prevails within the prison walls as prisoners should expect outside.

There are many people who put forward the view that prisoners can't have equal justice including a former Minister of Justice in the State of New South Wales, Mr John Maddison,

The setting up of juridical processes mirroring those which prevail in the courts, or give access or recourse to the courts as of right, would create a monster which would undoubtedly destroy any system of corrections as previously structured.

Maddison's stand is carried on by the present Minister of Services, Mr Bill Haigh, when he supported the prison officers' union earlier this year in having appeals from magistrates hearings in prison stopped from going on to the District Court. Haigh's support of the prison officers' demands is at odds with Nagle's view

In July, 1977, the Court of Criminal Appeal unanimously decided that a penalty imposed by a Visiting Justice was a 'punishment' within section 122 of the *Justices Act*, and that a prisoner thus 'punished' was entitled to appeal to the District Court. This has opened the Visiting Justice's hearing to public scrutiny, and forced the Department to drop the secrecy with which such proceedings had previously been so jealously cloaked. It is a major advance, and should not be nullified by any legislative intervention, such as the Public Service Association urged in its submission to the Commission.

Within weeks of Nagle's report being tabled in parliament, Haigh had said he would change the law at the request of the Public Service Association.

### **Should Prisoners have the right to complain about the treatment they receive?**

(The following is an expanded version of an article of mine which appeared in the *National Times*, week ending September 2, 1978.)

It is costing the State of New South Wales millions of dollars in gutted jails and expensive prison inquiries to find out whether prisoners are allowed to complain about their treatment. Another \$120,000, at least, was added to the bill on August 22 when rioting prisoners in Long Bay's Central Industrial Prison set fire to the amenities section, medical clinic and some parts of the cell blocks.

The question would appear to have been firmly answered in the negative by N.S.W. Premier, Neville Wran, when he said after the latest riot he was fed up with prisoners and it was time to get tough with them. Similar sentiments came from his Minister for Services, Bill Haigh. He said the prisoners would not be allowed to run the jails.

The question of who is running the jails pops up every time prisoners complain. The usual practice (as seen in the Royal Commission) has been for the Department of Corrective Services not to listen to the complaints.

This was certainly the case in the Bathurst jail disturbance in October, 1970, which led to a riot in the jail; in Bathurst in October, 1973, which led to a riot and fire that destroyed the jail in February, 1974; in Maitland jail which led to the workshops being destroyed in November, 1975. And so on.

The latest disturbance at Long Bay is no exception. A few days before the riot, prisoners in the jail had begun a peaceful protest by removing the numbers from their jackets until such time as their grievances had been alleviated.

The grievances they listed were:

- Mail was taking too long to reach them.
- Their visitors had to stand in the rain while the recently finished visiting facility was used as a store.

- Discipline in the jail had become more oppressive.
- A 400 per cent increase in the number of prisoners charged with breaches of discipline.
- No work for more than 300 of the jail's 470 prisoners.
- The 300 non-workers were locked up in the one yard with inadequate seating and recreational facilities.
- The 5 Wing delegate who had been shanghaied to Maitland be returned.

As you can see they were not outrageous demands. The prison officers' spokesperson told reporters after the riot that discipline had been increased in the weeks before the riot and that the general movement of prisoners around the jail had become more restrictive.

This was despite of the Nagle report which quotes Gordon Hawkins,

... the only result to be expected from the implementation of a more punitive policy in prisons would be greatly intensified unrest, turbulence, riot and revolt, and a substantial increase in death and injury for both staff and prisoners.

The spokesperson told the reporters that the increased discipline was to show the prisoners that they were not running the jails. The prisoners claim they were harassed by the prison officers after they had removed their numbers.

On the day before the riot, two senior officers came to the jail but they didn't talk to the prisoners. That night 52 prisoners were moved out of the jail. The prisoners claim some of them were assaulted by the prison officers when they were being taken from their cells to the prison vans. There is some evidence to support this claim but as it will be part of the evidence at a future criminal hearing, I don't feel at liberty to reveal it.

On the morning of the riot, prisoners were told that they would not be given any breakfast unless they put their numbers on — some did. Prisoners claim that those that didn't were locked up. The prisoners also claim they were taunted by the prison officers until they broke out of the yards around 11.00am. The riot itself lasted a little less than an hour.

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Some three hours after the riot was over, the media were let into the prison. The *Melbourne Age* reported the tour this way:

A prisoner yelled, "Tell it like it is. We were provoked and have just about had enough!"

Others in cell block 6... started banging on doors and windows.

What they (the prison officers) didn't smash in their cells they knocked

off. "What about my television... my radio... everything." one convict said.

"They have... everything. Tell them about the ones who were kicked while they were down."

One way or another the jail was wrecked.

Nobody was prepared to estimate the damage... but it will be hundreds of thousands of dollars.

Earlier a prisoner had thrown two match boxes containing notes to journalists waiting outside the jail.

One said, "They smashed about twenty crims., even when they were down. Everything in their cells."

"The riot was caused because we had a silent protest about things they promised us which we never have seen."

"Guys who had nothing to do with the riot were bashed."

It all seems so much like the allegations we heard time and again before the Royal Commission. Allegations, of course, which the Commission found to be mainly factual.

However, whatever happened, the question still remains: can prisoners complain?

In his report Nagle was of the opinion that prisoners may complain:

When prisoners complain about various aspects of prison life, they are entitled to fair treatment and should not be dismissed out of hand by the Department as troublemakers and malcontents.

One of the few prison officers to give evidence before the Commission thought otherwise when he summed up the attitude of prison officers,

Why should inmates have grievances? They are in jail; they should be there — we didn't ask them to come to jail.

D'arcy Dugan agreed with Nagle when he told the inquiry, "Criminals don't expect the key to the front gate. All they want, and all they have a right to expect, is that every decision that affects them can be shown to be fair and just."

This whole sorry mess revolves around what is fair and just treatment. Of the 750 prisoners who made submissions to the Royal Commission, only 100 were heard.

During the 18 months the Royal Commission sat, there wasn't one disturbance in any NSW prison. This was mainly because the prisoners saw

the inquiry as a means to have their grievances heard.

Nagle, recognising that the prisoners expected to have "their day in court", made his first recommendation in October, 1976, when he announced to the Commission he was going to "sample the evidence". So he recommended to the government that somebody other than the Ombudsman be appointed to hear, investigate and alleviate the prisoners complaints.

He argued that that person shouldn't come from the Department, the magistracy nor from the public services because he had found during the inquiry that prisoners didn't trust persons from those groups. The State Government knocked the recommendation back, saying the Ombudsman could do it. Despite Nagle's argument that the Ombudsman had lost the trust of the prisoners because he didn't investigate prisoners complaints himself but invariably asked the Department to investigate the complaint and sent the Department's answer along to the prisoner.

Since the Commission stopped sitting last November, there have been eight disturbances in the jails:

Long Bay	2
Katingal	3
Parramatta	1
Maitland	1
Goulburn	1

And in only one of these disturbances was there any attempt by anyone in authority to ask the prisoners what the trouble was. This was during the disturbance at Parramatta in January when sacked prison boss, McGeechan, had a meeting with the prisoners. McGeechan promised the prisoners he would try to get them an "across-the-board" increase of 25 cents so they could catch up with inflation.

However, just before this meeting took place, Haigh's office released a statement saying the prisoners were demanding award wages and fresh fruit. Premier Wran, who had just returned from holidaying on Lord Howe Island, ordered McGeechan to stop negotiating with the prisoners. He said, "Prisons are not meant to be luxury hotels," and that the prisoners' demands were ridiculous.

At a recent meeting of the Press Council it found the release from Haigh's office to be a false one and that at no time had the prisoners demanded award wages or fresh fruit. But the damage had been done. For the first time ever someone had sat down and listened to the prisoners' complaints and had been ordered not to do it.

A week later, McGeechan was sacked. Which is a little ironic, for one of the major complaints Justice Nagle made about McGeechan and his administration was that he had ignored the grievances of prisoners.

And so, with no creditable mechanism for prisoners' complaints to be heard, the situation inside the jails has been escalating since the finish of the

Royal Commission. Nagle, in his report, set down the ingredients for a prison riot:

It has been said that the study of a jail riot illustrates the general working of a prison department. The Bathurst riot (1974) illustrated the general workings of the Department of Corrective Services: idle inmates; unsuitable and badly trained superintendents and staff; poor morale; arrogant enforcement of petty restrictions; the unfair application of disciplinary rules, and, finally, an unsympathetic Commissioner with an administration of selected senior officers remote from their charges.

He also quoted a passage from the inquiry into the fatal Attica riot in America:

The McKay Commission, which investigated the Attica riot, listed as one of the causes of the riot a series of prisoner grievances which had been disregarded by the prison authorities.

They were not unusual prison grievances. They arose from such things as complaints about medical care, food and recreational facilities; complaints about inability to communicate with the outside world, and rules that were "poorly communicated, often petty, senseless, or repressive and . . . selectively enforced".

Just eight days before the Long Bay disturbance, Premier Wran announced he would be appointing a prison ombudsman as recommended by Nagle. He didn't spell out the proposed ombudsman's powers. If his powers are limited by legislation that takes away from the prisoners the same rights as a person has in the outside world, we can expect more prison disturbances as prisoners try to have their complaints treated fairly and justly.

It's not a question of who runs the jails. The man with the key runs the jails. It is a matter of *how* they are run that is at question.

*The mood and temper of the public with regard to the treatment of crime and criminals is one of the most unfailing tests of the civilisation of any country.*

Winston Churchill.

## PRESENTATION OF PAPER

*Bob Jewson*

Unfortunately, before I begin I must start by defending the Prisoners' Action Group. I am afraid Mr. Todd has forced me into that position. He takes us to task for publishing letters that we get from the prisons where a prisoner claims to be being bashed. As we know, back in 1970 when the first information started to come out a lot of people (some of whom are at this Seminar) helped to circulate the information in Parliament, in the newspapers and on television. Six years later, as we all know, those allegations were proved true. Mr. Todd tells us we will never get rid of the gaol while we talk about the abuses, or the alleged abuses, within them.

Mr. Maddison when he first took over portfolio on prisons in 1967 said on ABC television that if we ever found out the causes of crime we would be able then to get rid of the prisons. This is why I say Nagle went far short of his terms of reference, which was to look at contemporary penal practice in the light of the knowledge of crime and its causes. Nagle did not bother to do this even though the Prisoners Action Group presented a large submission on that particular point. It is a point that we have to look at, and if it is ignored whatever we say about imprisonment makes nonsense.

In the same way, Mr. Todd is talking nonsense when he says the position of the prison officers of New South Wales is part of the system that defends law and order. I can think of two admissions that they made to the recent Royal Commission into prisons where they admitted to flogging some, if not all, the prisoners in Bathurst Gaol in 1970 — a number that went very close to 300 men. They systematically, and as Mr. Justice Nagle said "sadistically", flogged prisoners on admission to Grafton Gaol from 1943 to April 1976. A lot of those men are still working within the Department of Corrective Services. Men, whom we are told by Mr. Todd, are there to defend law and order. This is a most serious question, to have this duality within our criminal justice system where prisoners can be flogged, spat upon, treated with the utmost indignities and at the same time some sanctimonious people tell us that they are there to defend law and order.

Nagle also failed to consider another Prisoners' Action Group submission on contemporary penal practices where we wrote long and hard about the effect of imprisonment. We can all use cliché terms like "institutionalization" but what we all fail to look at is what are the effects of imprisonment. Gotham in *The Silence* calls the initiation into prison "the mortification of self", where the person is stripped of his former identity. It is not unlike the things that are alleged that the communists did in North Korea. When you strip a person of all his clothing you take away the things that are his props — if I were standing up here in the nude I probably would not be so confident, nor would any of you if you were stripped of your clothes and forced into a uniform that made you into prisoners. To give them a number and as the poem goes: "Forced to answer 'Here Sir' to all ungodly brutes", you have then to find your identity and the only way you can find it is with other prisoners within the prison and more so today when the prisoners look around

and the bashers of Grafton and of Bathurst and of other places are pointed out to you. You know what it feels like and if anybody has read *The Borstal Boy* there is a little section in that where Behan is bashed and his friend Charlie stands by and Behan tries to explain what the onlooker feels, the helplessness that he cannot do anything and how this cements the two together. And this is what is happening to prisoners today when they see these men going free. Men who are guilty of probably the greatest mass criminal conspiracy in Australia since we started slaughtering the Aborigines quite some time ago.

I do not think we fully realise the enormity of the crime that was committed in Grafton and Bathurst. The *Sydney Morning Herald* in an editorial soon after the tabling of the Royal Commissioner's report called it "The guilty men". It is worth reading it to see the list of those named as "guilty men", the politicians, the Public Service Board, the Department of Corrective Services, its employees, doctors and so on right down the line.

As Mr Todd said the Department of Corrective Services was found to be during the Royal Commission to be a "Department of Dirty Tricks". It is still the "Department of Dirty Tricks". On the 14th August Premier Wran put out a paper saying what recommendations of the Royal Commissioner's report would be implemented. The first one I will deal with is,

That superintendents will be required to submit monthly reports to the Commission on a general situation in the prisons.

In the body of the report Nagle argued that this was necessary because the superintendents in the prisons like Grafton and Bathurst did not report accurately. McGeechan said that there were only three of his superintendents out of thirty institutions, that he could trust. Funnily enough one of those superintendents he mentioned was Nash of whom the Royal Commissioner said he did not accept his evidence regarding Grafton, and it must be added that Mr Nash is now on the committee looking into how we can implement the recommendations of the Royal Commission.

However, on the 31st August the Department issued a circular No. 4365, and the comment on the bottom says "Superintendents are to report quarterly" so they only agree with 33 1/3rd percent of what Premier Wran had to say.

Recommendations 39-41 of the Nagle Report deal with setting up an inspectorate. The inspectorate's duties should include inspection of gaols, investigation to see that the policies laid down by the Prisons Commission are carried out, and looking into cases of allegation of misconduct by prison officers. Nagle suggested that a man trained in investigation from outside the department should head that. He suggested a senior police officer should be seconded from the police force. However, the Department will not accept the police officer, and so what they have is two superintendents (and Nagle said that three of the five that were at the Royal Commission could not be trusted) and two deputy superintendents (who gave evidence before the Royal Commission of whom Nagle said he could not trust one of them). So that is the type of person that the Department is putting on inspectorates to inspect themselves.

The major part of my paper deals with prisoners' rights and I think that until we solve the problems within the Department we ought to look very hard at the rights of prisoners and how those rights can be protected. Premier Wran has told us that he will follow Nagle's recommendation and appoint a prison Ombudsman even though he rejected a similar recommendation in 1976 when it came forward. We do not know what that person's duties will be or whether he will be doing the investigation himself, as Tom Kelly pointed out, but I would like to put something to you.

In 1972 there was a riot in Hull Prison in England similar to Bathurst, similar to the allegations that are now coming out of Long Bay, i.e. allegations that prisoners were bashed. P.R.O.P. a prison movement in England similar to ours set up their own private enquiry. The enquiry found that prisoners were bashed. On that enquiry were Q.C.s and respectable people in the law. Following that enquiry a Detective Superintendent was appointed to check out those allegations. It took him eighteen months and he interviewed 600 people. On the 25th August this year thirteen prison officers were charged with conspiring with themselves *and others* to bash the prisoners. The Deputy Governor of Hull Prison was further charged with failing to report that the prisoners were bashed. What I would like to ask you "Are we very different? Are we so much different that we will not look into these matters?"

These things are not very different from what we heard after Bathurst in 1970 and from what D'Arcy Dugan said when he was released from Grafton: "All things are to be proven to be right". As Tom Kelly said the two men investigating this for the Department are one Nash and one Phemister. Departmental enquiries have found out nothing in the past. What we should be looking at is setting up enquiries outside the Department of Corrective Services even though there is a police enquiry running concurrently with this one. However, if it is anything like the one Inspector Burnie conducted after Bathurst, 1974, where the Minister for Justice told him to stop investigating it because it was a matter for a Royal Commission, we have little to hope for.

This all ties in, of course, with the rights of the prisoners. Nagle thought they had the same rights as people do outside. Former Minister of Justice Maddison who said that when we look at the causes of crime and find them we probably will not need the gaols, also said that you cannot give prisoners the same rights as those outside because you cannot allow them to run the gaols.

It is a question that you all have to answer, because you are all answerable for what your elected members do and for what the Departments that are part of our public service do. To repeat the quotation from Winston Churchill who said in 1910:

"The mood and temper of the public with regard to the treatment of crime and criminals is one of the most unfailing tests of the civilisation of any country."

I just ask, "How civilized are you?"

## FUTURE RESEARCH IN THE N.S.W. PRISON SYSTEM

*Dr. A.J. Sutton Ph.D.*

Director, N.S.W. Bureau of Crime Statistics and Research

Any efficient organization must have clear objectives, consistent policy, unambiguous job descriptions, a system of information feedback regarding performance and a continuous review of objectives. The last requirement is particularly important where objectives are primarily related to the behaviour of people. In schools, colleges, universities, hospitals and prisons, the objectives of the organization are never so clear as that of a contracting engineering firm. They must review, evaluate and communicate, if the organization is to meet changing circumstances and to adapt to the wide range of individual behaviour and organizational demands. Policy research provides information for the analysis of objectives, data to monitor performance, studies and experiments to evaluate programmes.

In a sense every administrator should be his or her own researcher because policy research is simply the action of a rational person who, when faced with a problem analyses the situation, explores the alternatives, seeks information in order to determine the optimum procedure and finally implements and evaluates the chosen programme. Every administrator should apply these yardsticks to the operations which he administers, despite the day to day pressure for expedient decision. However, in large organizations it is necessary to supplement the critical awareness of the competent administrator with a research capacity consisting of persons trained to use specialised tools of data collection, analysis, interpretation and evaluation. It may seem unnecessary to have to justify the existence of research units in State Government operations but in fact the capacity to undertake research in the N.S.W. government is inadequate. It varies from department to department and is frequently located with a low level of status and insufficient access to the decision making authorities in the department. Frequently it is bound by the rigid requirements of the traditional annual report, unable to publish or comment on what it produces, discouraged from interpretation, consulted too late or not at all, asked to produce reports at an impossible speed and frequently ignored. This is not a criticism of any particular government research unit but rather a generalisation about what frequently happens. It is not a description of the situation of the Bureau of Crime Statistics and Research which has a unique position with respect to status, capacity to interpret and freedom of operation.

In the Report of the Royal Commission into New South Wales Prisons the research capacity of the Department of Corrective Services is discussed in Chapter 24. The research unit is criticised not so much for the quality of its research or its status or access to decision making but on the lack of breadth in the research and in particular the failure of the department to use it in an ongoing examination of broader policies. The Commission recommends that the Bureau of Crime Statistics and Research undertake research on these broader policy issues and also carry out evaluations of Departmental programmes.

It is the purpose of this paper to examine those aspects of the department's operations in which research seems appropriate. Such a review cannot be comprehensive. It is largely based on a critical review of the Royal Commission Report and on observations and discussions with officers of the Department. It is essential that a cooperative relation between the Bureau and the Departmental research unit be developed so as to permit even the beginning of an attack on the problems. A failure to adequately use research is of course not confined to the Department of Corrective Services and therefore my comments are intended to be a constructive look to the future rather than a catalogue of criticisms of the past.

### Objectives

Policy-oriented research cannot be confined to a mere study of what has happened after it has occurred nor to an evaluation of programmes which have been determined and laid out by someone else. Researchers should be involved in the development of objectives at the beginning of any programme not to take over the role of determining objectives, which is of course the function of chief executive of the organization but rather to contribute to a goal development by supplying another view detached from the authority structure, by outlining the kinds of procedure necessary to provide feedback of information for future reviews and evaluation.

In the third chapter of its report the Royal Commission into Prisons discusses the objectives of the prison system. It considers the view of Sir Leon Radzinowicz that perhaps concentration on establishing objectives may be unproductive and a more empirical approach to prisons as a "successful salvage operation" would be more desirable. Most prison reformers and in recent years many administrators of prison systems have stressed rehabilitation as their major goal. It is understandable that this should be so, since surely most of those involved in the administration of a system involving human beings would seek to stress the positive and forward looking side of their actions rather than the punitive and repressive. However, prison is also punishment, the outcome of a finding of guilt in the commission of a crime. Firstly, one must recognise that society is applying a tariff of punishment to mark disapproval of a condemned act. This is perhaps not so much retributory as, in a sense, a symbol of the stability of a society. The punishment of prohibited acts is an integral part of the actual existence of a society or organization, which contributes to the definition of the boundary or limits of membership of the society and emphasises for those who are members the responsibility of membership. This is a more complex and more general concept, I believe, than that of deterrence; although obviously part of the application of punishment is that it should deter the individual punished from committing the act again and deter others who might think that it is desirable to commit such an act. In Foucault's<sup>1</sup> words, in the economy of punishment it is desired to produce a punishment which is sufficiently, but just sufficiently, disadvantageous to outweigh the advantages of the criminal act. These three goals, reform, retribution and deterrence, together with the protection of society from criminals are referred to by Sutherland and Cressey as the four objectives of imprisonment.

1. Foucault, M. *Discipline and Punishment* (Pr. Sheridan) Allen Lane, London, 1977.

The Royal Commission discussed the failure of research to indicate any success for rehabilitative measures. They suggest that the first goal of the prison should be to punish the person who commits a criminal offence by the loss of liberty. They say that the offender must be held under conditions in which he is treated "humanely in a manner befitting his human dignity and so that the least possible harm should be done". They are then in a somewhat awkward position, for, having rejected rehabilitation as a successful goal, they recommend that rehabilitation procedures should continue to be tried in prison.

The problem of the so-called failure of rehabilitation is discussed by Gordon Hawkins in his book *The Prison*.<sup>2</sup> In chapter two on the "principal issues" his conclusion on p.54 and 55 is essentially adopted by the Royal Commission. However, research has focussed on simplistic global outcome measures such as recidivism. Further, the conclusion that such programmes generally have failed assumes that re-education and rehabilitative programmes are currently running at an optimal level. Finally, there has been very little adequate research on the "fit" between prisoner characteristics, prison officers attitudes and characteristics and the particular nature of the programmes at different institutions. It is hard to envisage how adequate morale can be maintained in the prison service if any measures taken to re-educate or rehabilitate prisoners are simply assumed to fail even if they are only offered on a voluntary basis as suggested by Hawkins and the Royal Commission. Rehabilitative and re-education programmes should be available as part of the humane treatment recommended by the Commission.

A prison should not be constructed simply with a passing reference to education, psychological and other programmes suitable for re-education or development. They should be an integral part of the concept of administering incarceration with humanity. This automatically follows from the values of a society which recognizes education as an important element in every human-being's existence. It is not a question of rejecting or accepting a particular programme because of the number of persons who do or do not recidivate, but of recognising that incarceration is the full extent of punishment and that the basic opportunities for health and education should exist in the prison as they do in the community.

### **The Prison System**

In an attempt to analyse the place of social science research in the prison system it is necessary to attempt to get a grasp of the system as a whole. My personal attempt is set out in the diagram on page 63. I include it with some reluctance because I am aware that often such synoptic diagrams are so much the product of an individual perception that they are not particularly communicative to others. However it provides a framework for discussion. The approach has been derived from close examination of the Commission's report and some of the submissions. It may therefore be incomplete in some aspects, certainly in questions of detail. The diagram essentially focuses on the path of an individual prisoner with the oval in the centre representing the prison. Although I have placed the Commissioner and the Administrative staff at the top of the diagram the key role of the

2. Hawkins, G.J., *The Prison, Policy and Practice*, University of Chicago Press, Chicago, 1976.

superintendent and the senior and other prison officers is immediately apparent. They administer the security of the prison backed up by the physical security inherent in the building and maintain the prisoners within the boundary in some condition of discipline. It is next important to consider what happens to the prisoners and what plans are made about his activities in the gaol other than the fact of his incarceration in a particular place. First, classification, in which security and apparently to a lesser extent other aspects of his activities in prison are considered. These latter matters are more the function of the programme committee which may determine apparently the kinds of education programmes and industrial work which may be suitable and/or available. Towards the conclusion of his sentence the question of calculation of remission and question of release at the time of expiry of non-parole period become significant. If the prisoner is a "g.p."\* or "lifer" then these two committees come into operation. Prior to release selected prisoners may be involved in work release or other pre-release arrangements of leave etc. At the bottom of the diagram the chaplain, medical officer, industry supervisor, visiting justices, and so on, in part determine the actual programme involved, the state of the prisoner's health, and matters concerning rights and penalties. In representing the path of the individual prisoner the diagram does not emphasise the importance of particular categories of prisoners, women prisoners, aborigines and non-English speaking prisoners.

The items of this diagram correspond approximately to matters considered by the Royal Commission. It provides a framework to examine the sort of research which appears desirable.

## Research

### *A. Statistics and Intelligence system*

Any research programme within the department should be associated with the formation and analysis of departmental objectives and decisions about their implementation. To provide the necessary basis for policy formation research papers should be produced based on a review of the literature in the area including a continuous survey of material from overseas and other States. It must be interpreted in relation to the operation of the existing system studied by close contact with administrators, officers and prisoners. In other words research should provide a generalised intelligence system over and above the one which specifies the number and location of prisoners or characteristics of the population. However, it should also monitor the system by the provision of such statistics.

It is important that statistics for research do not duplicate those collected for management. Both should interact with the other. The Department record system has been criticised by the Royal Commission. It is clear that the records for prisoners should show information on a comparable basis to enable comparison and analysis of the decisions of the Classification and Programme committees, the Parole Board, the G.P. and Life Committees, etc. Further the categories used must be comparable from year

\* Governor's Pleasure.

COMMISSIONER

Research

Records

Inspectorate

Administrative Officer

building

Planning

Superintendent

Prison Officer

Discipline

Programme Committee

Parole Board

Parole Officer

Remission

Classification Committee

Prisoner

Admission

Classification

Programme

Parole

Discharge

After Care

Women

Aborigines

Non english speaking prisoners

Psychologist

Chaplain

Medical Officer

Education Officer

Industry Supervisor

Pre Release Programme

G.P. and Life Committee

Work Release Programmes

Rights

Amenities

Security

to year and between other data collection systems, as recommended by the Royal Commission. It is not really possible to have an adequate description of the progress of particular programmes or the effectiveness of prisons with respect to particular goals unless the data which is collected is comprehensive, comparable and accurate. Such a system may well be computerised, possibly with on-line facilities. It cannot be too strongly emphasised that an adequate statistical and management data system is an essential pre-requisite for adequate research evaluation, and indeed adequate administration.

### *B. Role of Superintendent and Prison Officer*

The central roles of the superintendent and of the prison officers should be recognised by an adequate study of their tasks, problems which they face, conditions of service, and appropriate role expectations. Such a study should look at the relationship with other personnel in the prison system including parole and probation officers, officers concerned with education, industry and health, chaplains and service personnel. This kind of role analysis has a well-developed tradition. It has been effective in a wide variety of organizations, both public and private, enabling clarification of tasks for reduction of conflict between roles and a development of awareness and satisfaction with the tasks undertaken. The importance of this kind of research has been emphasised in my work as a member of a Committee at the Mitchell College of Advanced Education, which is reviewing its courses in Justice Administration in discussions with the Chief Staff Development Officer, and representatives of the prisons officers vocational branch of the P.S.A. It has become clear that a clarification of roles and adequate educational opportunities are an essential part of raising the status of the prison officer and contributing to the development of work satisfaction. There are ample precedents for this kind of role study, it has been shown to be effective and it seems urgently required. It should not of course be confined to any particular level but it should apply through to the superintendent level where some of the problems of role-definition and powers have been amply demonstrated in various chapters in the Royal Commission Report.

### *C. Classification*

The Royal Commission has firmly opted for a classification system based on security. In its response to what it perceives as the inadequacies of the existing system it has proposed to centralise the classification committee with an appeal structure. One can see that security is the first criterion for the initial classification. But it is also clear that other factors must play a part in the movement of the prisoners to a particular prison. Apart from psychological and other questions there will be consideration of education and industrial programmes. A programme committee looks at the prisoners subsequent education and industrial programme. Without detailed knowledge of the operation of classification and programme committees it is difficult to see how they can be adequately separated since it is clear that the range of programmes and security classifications are not distributed evenly throughout the present system. The whole question relates closely to the proposals in the Royal Commission Report that maximum security prisoners should be housed under the dispersal system. This suggests that in every prison or at least in a

range of prisons there would be facilities for maximum security. Presumably from time to time prisoners could be relocated in maximum security as a consequence of events within the prison. If as it is proposed the Superintendent should have more autonomy in this regard then the whole matter of classification via security, the availability of programmes, and institutional management, coalesce together. As an area for research it is very general and close to the sort of policy development which was proposed in section A above. One might work towards a set of institutional profiles which show clearly the kinds and range of educational, security, industrial and other arrangements available for particular prisons. Classification Committees could have information on the complete range of options available for a prisoner, backed up by a set of individual data concerning each prisoner. The result could be a more systematic, predictable and less stressful system for prison officers and prisoners alike.

#### *D. Pre-release and Work-release programmes*

The research division of the Department has carried out research into work-release programmes, but as yet a full evaluation is not available, partly because of lack of time elapsed since the commencement of the programme. However, a review which examines a wide range of options for pre-release including special leave, educational and employment advice, and adequate initial financial and social support on leaving the prison seems desirable. A first stage would be to specify a full range of options and to indicate their feasibility ie., to investigate the resources necessary for their implementation and their likely location. An estimate of the number and type of prisoners requiring each option would be necessary. A second stage would be to study the existing and new programmes and to undertake a careful evaluation of their effectiveness. Such evaluations should also include the semi-custodial detention system and any other variants of this which may be adopted.

The Royal Commission report encourages the development of such programmes and recommends their evaluation by the Bureau of Crime Statistics and Research.

#### *E. Parole*

It would appear desirable that the Parole Board be provided with the kind of research support which has been provided to Parole Boards in other countries. Some systematic study of the information used to make decisions and the outcome of the decisions should be made. There have, of course, been an extensive collection of statistics within the Board itself, but a review and evaluation of its procedures and method of operation seems desirable particularly in view of the recommendations in the Royal Commission Report. One such recommendation is that the existing functions of the Governor's Pleasure and Life Sentence Committees should be transferred to the Parole Board. Procedures should be developed with the goal of monitoring and evaluation established from the beginning.

### *F. Industry, Evaluation and Education Evaluation*

Prediction of instability for educational and industrial programmes could be examined together with the psychological and social effects of programmes. Research can also be directed towards the potential for the development of industry and education. The Royal Commission has been critical of the cost effectiveness of the existing industries. A rigid economic cost-benefit approach is undesirable as the social and educational benefits and costs should also be taken into account. The development of new industries and educational programmes is a clear case for the kind of feasibility studies envisaged in the Royal Commission report as being appropriate for research.

### *G. After-care*

Here research ought to be associated with development of innovative programmes. It is more a question of seeking out community support for after care than simply evaluating what exists as the existing programmes are so small in extent at least as reported by the Royal Commission. Information and research support should be available to voluntary agencies that wish to work in this area. Again a critical but constructive analysis of objectives, an adequate monitoring system and an evaluation of developed programmes is essential.

### *H. Non-Custodial alternatives*

This brief description of projects has not touched on the question of non-custodial procedures except in a reference to periodic detention. The Royal Commission sees the continued association of the probation and parole service with the Department as desirable and encourages the use of community service orders and other non-custodial alternatives to imprisonment. The emphasis that I have given to prisons might suggest that I see non-custodial as secondary to custodial methods whereas, in fact, as suggested in the Royal Commission report, a prison should be the last resort rather than the first alternative applied to a convicted person.

Just as a study of the role of prison officers and other institutional staff should be undertaken, it is clear from the evidence given before the Royal Commission that the role of the Probation and Parole Officer also needs closer examination. The place of pre-sentence reports and their increasing role in diversionary programmes has placed stresses upon this branch of the service. An examination of their role and interaction with the other elements of the justice system is a research project of high priority.

### *I. Related Projects*

In addition to these projects there are other related approaches. The question of sentencing is now being looked at by the Bureau of Crime Statistics and Research. The topic is also the subject of a reference to the Australian Law Reform Commission.

Our Bureau is also attempting to set up a study of defendants in Magistrates Courts with the purpose of establishing the degree to which

welfare oriented programmes might be developed in relationship with the court system.

## Methods

There has not been sufficient space in this paper to set down in detail the desirable methods for the proposed projects. Some reference has been made to the procedure of role analysis which carries with it the implication of a certain kind of interview schedule and objective approach to task behaviour and expectations. The evaluation projects should where possible be conducted within an experimental framework although I have doubts about the viability of control group methodology in field research. Sometimes where samples are large multivariate analyses using covariate designs are more effective. In any event a form of process evaluation in which the fit of the actual actions to objectives should always be carried out. The role analysis approach can be a valuable part of a process evaluation. The criteria of success of any programme should not be limited to recidivism. In after care the use of community survey and community development procedures is obviously desirable.

Above all methods must be based on free communication within the system, collection of adequate records as indicated above, and a willingness on the part of all members of the system to review their tasks and procedures. Researchers need to be sensitive to the needs of all members of the system and to recognize these in undertaking their work. They cannot just move in as if they were engineers constructing a bridge but recognise that the presence of the researchers themselves influence the situation and the attitude of the people whom they are researching. They must be part of a team which includes the administration rather than some independent body which is merely a nuisance adding extra work to the administrative system. Data should not be collected except when it is clear that effective conclusions can be based on it. Often researchers develop an uncritical desire to collect everything they can think of in the hope that some unanticipated pattern will emerge. This is partly because often the system is resistant to this kind of operation and when the researcher gets access to the system he then proceeds to collect as much as possible at once. This is grossly inefficient and counterproductive for future research. It is essential that policy research should be carried out integrally or in close association with the operation of the programme. Timing of the research is also vital. There is no point in conducting a three year research programme when critical decisions are to be made at the end of six months. Such long term projects are the proper province of universities and colleges, where they can be undertaken with a consideration of the broader issues. A government research unit should be geared towards decision making, either present or in the future.

It seems to me that the department has very little to lose by a critical approach to its operation. Nobody supposes that the administration of corrective services is easy. Provision of inaccurate and inadequate information to decision makers and to the public is counter productive. When people are aware of the problems they essentially begin to take responsibility for them and to recognise that it is part of the general community's necessary

functioning to administer the prisons efficiently and within the proper framework of government decision-making.

Hence the research component is not something you add after the event like morning tea at a meeting. It is not something to have if you can afford it. You cannot afford to be without it, it is an integral part of the development of policy, its implementation and its evaluation. Without an information and research system flexibility is seriously inhibited; the flow of information which assists in the clarification of objectives and of roles is absent and people's security in their jobs is reduced.

We are now at a watershed in the administration of prisons in New South Wales and the opportunity to make constructive changes now must not be lost.

## PRESENTATION OF PAPER

*Dr A. J. Sutton*

My personal value system with respect to our work is one of reform and change. It has to be. There is no way in which you can set up a research unit which is committed to collecting information and supplying information towards public policy unless you expect it to have an effect. Unless you can point to the ways in which statistics relate to change, in which they involve government policy and the commitments of others to change, then you will necessarily fail in that job. The unit cannot possibly justify its existence without that approach. On the other hand if it is part of the government system, inevitably such a unit must become associated with gradual change, with reform, because it is part of the structure, and to change the structure from within it is necessary to do it in a more gradual way than can be achieved by looking at it from outside. That is just something that one has to accept when one goes into a position of that sort. — it is part of the job. When the structure itself gets torn into conflicting groups then one's role becomes very much reduced. There is no call for research and reform in a war, or in a civil disturbance as in Northern Ireland, or in confrontational situations. In some sense the whole of the legal system is confrontational in its orientation and counterproductive towards the process of gradual reform because it exacerbates it.

There are two factors which I think lead to the present situation where it is indeed extremely difficult to bring about implementation of change. One is that we have had a lack of information for decades where secrecy has been the order of the day rather than openness, where documents do not necessarily reflect what exactly is happening, where distortions take place. I am quoting here from the Royal Commission Report and to its reference back over many years to the sorts of information which we have had. There can be no change and *no* reform without complete information about what is going on. It is not possible to do so. We are not conducting research here into the intelligence services, or into the total decay of law and order, but we are discussing what happens to people after they have been convicted of offences and placed in the care of the State. I can see no reason why the full circumstances of that care and treatment are not available to all at all times. Without such information you get a gradual tightening up of the system, a lack of flexibility, an inability to respond to new events and an inability to use the results of any research which is available. This is one of the inherent features of the whole of the criminal justice system inevitably because of its association with the principle of law and order and investigation and so on, which itself inevitably has an air of secrecy about it.

The second reason why we have reached a situation where it is very difficult to bring about implementation is that a Royal Commission is necessarily confrontational. After decades of silence, a structure is set up which is of a legal nature where people present evidence in the conflict atmosphere of a court. The whole operation is incredibly expensive — it was quoted to me to cost \$6 million — a sum that would actually keep the Bureau of Crime Statistics in operation for approximately twenty four years. Such a structure has to produce the one big block buster report, and then, of course, it

is very hard for people to read it. As a consequence, when the report was finished and I looked at it I thought to myself — "Now we are in for it. How in the hell do we implement this and especially when what is implied in some of the proposals is that we sack the Department of Corrective Services and start again?"

It seems to me that we made all the mistakes before, and now I can only talk about long term measures, I have to leave to other spokesmen to talk about the immediate changes. I am afraid that our commitment to reform has to be inevitably long term and, for the various reasons I have said, it is now very difficult to bring about those kinds of changes. Nevertheless we must look to the future — we cannot simply abandon that effort. There must be continuous review of these policies. We cannot just leave the Royal Commission as it stands with a single report of this kind. It has to be constantly reviewed. Each year there has to be an examination of all of the material which has been referred to, and information gathered and made public so that there can be an open discussion on what is to happen next in the various aspects of this administration. There has to be a commitment to rational planning. There has to be a commitment to collecting data, to looking at the range of information, at ranging up the alternatives, choosing the feasible, and preferably the optimal, but certainly, at least, the humane alternative and proceeding to implement it efficiently and then evaluate the action. Without such a commitment there cannot be any sound administration in the State. This is not just a criticism of this Department, of course, because it is something that we are only now working towards — an adequate supply of intelligence information as well as research information to bring about informed change. It is of critical importance in regard to prisons and in the non custodial alternatives under the supervision of the Department of Corrective Services.

In a sense this attitude must be present in every administrator. It is the professional responsibility of every public servant to ensure that all of the alternatives are considered, that all information is at their disposal, that the persons whom they affect by decisions are consulted and are taken into account, and that they place themselves in the position that they affect. The magistrate without the capacity to see the point of view of the person before him cannot administer justice without a sterile adherence to rules which is not in the interests of the State.

In my paper I set out a number of areas which I think we can look at. They are not comprehensive. I have explained why it is simply an attempt to look at the whole range, and suggest the most promising areas for research or study. When I say research I do not necessarily mean exercises of scientific research, but I mean the simple collection of information. I found that when I first became Director of the Bureau my academic colleagues suggested to me that official statistics and the like were a poor reflection on the state of society. I found that the statistics, and indeed the information, are so sparse in so many areas that it is not really a question of whether they reflect the state of society or not, but of simply finding out what we are doing in order to know what to do next in a rational sort of way. There has to be a collection of statistics within the Department that can serve that purpose and it has to be associated with the record system of the movement of prisoners so that it associates those

functions which any human being expects within a social structure, i.e. to be employed, to have some worthwhile opportunity to employ themselves, to feel that they are moving forward and developing themselves as individuals with some sense of worthwhileness, and to educate themselves to learn what might be required in skills required to move outside the prison. These functions are all associated with classification, with the climate of prisons, and with the role of superintendents.

I have also mentioned pre-release, work-release and parole, after care, non-custodial alternatives, all of which should have the ongoing study from within the Department, from outside the Department, and from policy units such as ours for the collection of information for the examination of alternatives, for the rational choice of those which are both humane and optimal in their application, and for on going evaluation and for open discussion of what occurs. Without that I am wasting my breath.

In conclusion it seems to me that rather than discuss the comments of politicians we ought to look at the functions of the Public Service in administering an important part of the State. One of the criteria of Public Service is openness and communication with those it is our responsibility to administer or to assist. A second is that it be rational and seeks alternatives and not simply adopts the first that comes to hand or those that are personally beneficial or those that define the territory of the Department more effectively. It must present feasible government policy and finally it must be professional. I use the word in a positive sense to mean a sense of responsibility to do things thoroughly, completely, and in the interests of the citizens of the State. Under those circumstances then one can be proud to be a public servant, but it seems to me in some areas we have a long way to go.

*Probation and Parole Officers' Association of N.S.W.\**

### THE FUTURE OF CORRECTIVE SERVICES IN NEW SOUTH WALES

The Royal Commission into New South Wales Prisons which was long overdue has at last taken place and the inefficiencies, illogicalities and worse aspects of the prison system have been given some public hearing. Nevertheless, the problems of the system are likely to continue unless there is a continued public pressure to achieve real reforms. On the evidence of recent departmental decisions and policy, all the efforts of the Royal Commission will be wasted because the fundamental changes of the Commission are not being implemented in the first place.

In Chapter 3 of the Royal Commission Report, Mr. Justice Nagle recommended:

It is essential that the department formulate a clear statement of its aims and objectives.

Nowhere is this apparent in the workings of the Department.

This Association agrees fully with the Royal Commission recommendation:

... Imprisonment should be used as a last resort and those imprisoned should be kept in the lowest appropriate security.

But this agreement needs to be taken further. The Department of Corrective Services by its very title is more than a Prisons Department. It has under the supervision of the Probation and Parole Service some 10,000 probationers, parolees and licencees while it handles on average less than 3,500 prisoners.

Therefore, the direction of departmental policy should not be restricted to the treatment of prisoners, but should include as a major feature, its treatment of criminal offenders in the community by non-institutional measures such as probation and parole and Community Service Orders (yet to be introduced into New South Wales).

The inwardlooking defensive attitude of the Department's administration, concentrating on prisons, will simply lead to more prisoners, more expense and riots, with no likely effect on the crime rate nor the rate of recidivism, nor the degree of public safety.

It will be easy for lip service to be paid to the Royal Commission's views on departmental aims and objectives, but experience has shown that when

\* Presented by Mark Robertson, President of the Association.

practical opportunities to implement these objectives have presented themselves, the administration has chosen otherwise.

The Royal Commission made a decision of fundamental importance when it decided to recommend that the Probation and Parole Service remain within the Department of Corrective Services and that it be up-graded. Recently the Department announced by circular that the composition of the Classification Committee would be a Director of Prisoner Classification supported by custodial and clerical officers. The custodial component will consist of a Superintendent Grade 1 who will be Deputy Director, an Assistant Superintendent and two Chief Prison Officers.

The Director is Mr. I. Sanders, formerly Director of Special Security Units and the Deputy Director, Mr. V. Pope, formerly Deputy Director of Cessnock Corrective Centre.

The Probation and Parole Service which is involved in the counselling of nearly all prisoners and in the operation of the parole system and which is the second largest staff section in the Department, is not represented.

Similarly, the Probation and Parole Service is not represented on the Inspectorate or the Work Release Programmes Committee, despite assurances given by the Associate Commissioner and the Acting Commissioner of Corrective Services that Probation and Parole Officers would be represented on all appropriate policy making committees and on non policy making committees within the Department of Corrective Services. This assurance was given to this Association and the Public Service Association when it met with the Management of the Department on 15th August, 1978, and discussed among other things, the up-grading of the status of the Probation and Parole Service.

The department committee deliberating on the Royal Commission's recommendations, is comprised of the following:

**Chairman:**

Mr. L. K. Downs,  
(Associate Commissioner)

**Members:**

Mr. N. Day,  
(Acting Commissioner)

Mr. B. Barrier,  
(Deputy Commissioner)

Mr. R. Furniss,  
(Assistant Commissioner (I & S))

Mr. K. Lukes,  
(Director, Probation and Parole)

Mr. J. Nash,  
(Acting Assistant Commissioner (A))

Mr. J. D. McTaggart,  
(Acting Director of Establishments).

The above committee is vital in the implementation of Royal Commission recommendations and is orientated toward prison matters despite the philosophy of "imprisonment as a last resort". The Director of Probation and Parole is in a minority position and may be overwhelmingly out-voted by the prison orientated members. The Committee includes several of the former senior administration criticised in the Royal Commission Report which stated (R.C.R. p.378),\*

notwithstanding the very large part of the blame Mr. McGeechan must take for the state into which the prison system has degenerated over the last few years, many of the senior officers of the Department cannot avoid their share of responsibility. Mr. McGeechan's replacement will not in itself be a solution to the problem.

The Royal Commissioner's plans to revitalise the administration has, therefore, fallen largely on deaf ears. The proposed Prisons Commission which was intended to start the revitalising of the Department, is shaping up in terms of the very officers criticised in the Royal Commission Report.

This Association strongly supports the appointment of a Chairman of the Prisons Commission from outside the present administration. It also supports the appointment of a full time Commissioner from the current Probation and Parole Service Staff. Unless a balance between prison and community-based philosophies is developed in the proposed Prisons Commission, there are unlikely to be initiatives to contain the prison population and expand the wide range of alternatives to imprisonment as recommended by the Royal Commission. Sadly, a reactionary trend is already apparent.

The proposed gaol at Parklea to cost \$13 million, might be justified as a replacement to existing old gaols as set down by the Royal Commission recommendation,

Old prisons which are made redundant by the construction of new institutions should be used for some public purpose or destroyed.

However, with the reconstruction at Bathurst and talk of other prison construction one wonders whether the Government is serious in attempting to carry out the clear intent of the Royal Commission that "alternatives to imprisonment should be used as extensively as possible, and prison should be used only as a last resort". The Royal Commission Report, (page 369), was of the opinion that the prison population showed evidence of decline. In fact, the prison population has not drastically increased and nor has there been a serious increase in crime whereby urgency is required. Why then, should there be an emphasis on expensive prison construction before the examination of alternatives to imprisonment which have potential to reduce the prison population substantially?

\* All references are from the latest printed edition of the Royal Commission Report.

In 1975-1976 there were 8,156 sentenced receptions into the prison system of whom 6,182 were serving less than twelve months (75.79%), the daily average number of prisoners in 1975-1976 was 3,252. At 30th June, 1976, 21.06% were serving less than twelve months (1977 Annual Report of the Department of Corrective Services). The unsentenced prison population averaged 436 during 1975 to 1976.

The gaol population figures supplied by the Department to the Royal Commission indicated that there were more accommodation places available than prisoners held and that over-crowding occurred because too many prisoners were wrongly held in maximum security gaols, (R.C.R. p.368).

There is ample potential in the situation indicated by these statistics to divert large numbers of minor offenders from imprisonment. New South Wales has lagged behind other States and countries in introducing a Community Service Order Scheme of which substantial claims have been made overseas that such Schemes help reduce prison populations. The Probation Service in New South Wales is still hampered by a lack of funding and restrictions on its staffing. The organisation of the administration and the lack of control over its funds effectively prevents the Probation and Parole Service introducing measures designed to be cheaper, more effective and more humane alternatives to imprisonment.

By comparison there are examples of massive expenditure in the prison area which apart from poor planning and administration, have had little effect on the operation of the Department other than to add to its expenses.

This Association does not advocate the closure of all gaols or the cessation of useful prison programmes which will reach a number of prisoners. However, it does regret the past expenditures on unnecessary prison programmes which could have been directed towards alternatives to imprisonment, if not, towards necessary security measures which have been shown to be lacking in recent events.

The Association is strongly of the view that no further expensive prison construction should be undertaken without first examining the alternatives. There is no point in building further prison accommodation which has a tendency to be filled and then looking for alternatives. It is in the public interests both in terms of effective correctional policy and in terms of cost savings to explore and expand alternatives to imprisonment. Already New South Wales imprisonment rate of 74.6 per 100,000 exceeds the national average of 64.9 per 100,000.

The views of the Association concerning parole were presented at the Seminar on Sentencing\*. It is our view that a full enquiry should be conducted, and that new legislation should be drafted as opposed to amending current legislation. The Probation and Parole Service on 2nd March, 1978, passed a motion stating that there appears to be good reason for considering

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\* *Syd. Inst. Crim. Proc. No. 35, Sentencing (1978) pp. 79-85.*

the introduction of legislation to provide fixed sentences with automatic release and parole supervision if such supervision is considered necessary by the original sentencing authority.

## DISCUSSION

*L K Downs, Associate Commissioner of Corrective Services, NSW.*

As this seminar is about the state, direction and future of corrections I should tell you what we are doing in connection with Nagle's report. I have not heard a great deal about the current state of corrections from the speakers tonight. Because this is a very voluminous report I think it will determine the state and future of corrections in New South Wales for a long while. There are a total of 252 recommendations and up to the present time we have approved, or we have implemented, or we are in the process of implementing on a continuing basis over 100 of those recommendations, and contrary to what Mr Kelly says I believe that that is some achievement up to this stage.

When the report was tabled in the Parliament the Premier stated that the Government was determined to do as much as it could as quickly as it could in implementing the recommendations, and I think that we are moving rapidly towards that objective. One of Nagle's main complaints about the Department was that directives and instructions had been issued by the Department and were still current which were in conflict with the existing Act, Regulations and Prison Rules, and that this created confusion in the minds of prison officers. This is quite a valid complaint, but critics of the Department do not realise that as the policies of the Department are reflected in the Act, the Regulations and the Prison Rules, when you come to implement Nagle's recommendations touching these you must go back and look at the state of the law and proceed to amend the Act or the Regulations or the Prison Rules. I think it is important to keep that in mind, because it emphasises the fact that you cannot implement these recommendations overnight.

Many of the recommendations involve the provision of substantial funds and the government has already shown its willingness to provide funds to improve the present prison system. It is setting out to rebuild Bathurst gaol, and funds are available to build a new prison in the metropolitan area.

I do not have time to tell you all that we have done in connection with the recommendations but I would like to talk briefly about the more important ones:

The government has decided to establish not a "Prisons Commission" but a "*Corrective Services Commission*" which will embrace the Probation and Parole Service. Draft legislation has already been prepared and it is currently being examined to set up this Commission comprising three full time members and two part time members. Mr Robertson spoke about the lack of any action on developing aims and objectives to the Department. I can assure him that the Corrective Services Advisory Council is actively looking at this and in the near future some recommendations should be available for the government to consider. It will be a very comprehensive document.

Another important recommendation was that *Superintendents* should have the primary responsibility for the good government, order and administration of their gaols, and that the Corrective Services Commission

should only be responsible for determining policy. In other words, the suggestion is that there should be greater delegation to the superintendents to run their particular gaols.

There will be a permanent *Classification Committee* stationed at Malabar. It will have the responsibility of determining the security classification of prisoners and will also have the responsibility of determining the placement of prisoners for training and rehabilitation purposes.

Another important recommendation is in relation to *remissions*. Mr Justice Nagle suggested that New South Wales should adopt the Victorian system of remissions. Our officers have been to Victoria and the Victorian officers tell us they would like to jettison their system and adopt the New South Wales system of remissions. We are therefore asking the Corrective Services Advisory Council to make some recommendations as to the type of remission system that should be introduced into New South Wales.

*Women prisoners.* There are a number of recommendations concerning women prisoners (Mr Justice Nagle was quite critical of the conditions for women prisoners). We have set up an inter-departmental committee to monitor the recommendations and to make their own recommendations in relation to the improvement of conditions for women prisoners.

The subject of *parole* is a difficult one. The Minister has asked the Attorney-General to make a Reference to the Criminal Law Review Division of his department to review the present *Parole of Prisoners Act*. The Parole Board support this, as the Act has been in operation for about twelve years it is time that an expert body examined it.

Considerable thought has been given to *alternatives to and variations of imprisonment*. Mr Robertson touched on this and I think he has some slight misapprehension which I will try and explain. Both the Department of Corrective Services and the Department of the Attorney-General and of Justice are looking at these. These are not options available to Corrective Services — they are options available to the courts. Corrective Services can do nothing about alternatives to imprisonment. There are fewer people in the gaols, but I must make it quite clear that the options are available to the courts, and Department of Corrective Services cannot be criticised for not implementing this aspect of the recommendations. We support it and we are preparing information that we will submit to the government, together with officers of the Department of the Attorney-General, so that the courts will have the opportunity of diverting offenders from the gaols.

Action has been taken to improve *prison security*. The Department sees the need for improvement in the working conditions and amenities for prison officers. Unfortunately this will be a long on-going exercise. It will involve the expenditure of a great deal of money. In many of the older institutions the facilities are either non-existent or terribly poor. Prison officers work in difficult situations and under great tension and it is our view in the Department that it is an urgent problem that should be faced. We are attempting to do this but money is involved.

In regard to Mr Kelly's paper, obviously he has gone to a lot of trouble in preparing (or someone has gone to a lot of trouble in preparing) the paper but quite frankly I am disappointed with it. I do not think it adds anything new to the debate on prisons. His segment as I understand it was to discuss the reaction to the Nagle report. The paper contains extensive quotes from the printed media, copious quotes from Hansard, and it is repetitive.

I would like to comment on this remarks about rumour. In the last three paragraphs of page 35 he talks about remissions and parole and goes on to say that at two institutions it is accepted that these recommendations will be implemented. He added that some prison officers have claimed the Commissioner's recommendations will be implemented retrospectively to the date of tabling the report. His paper goes on to say that: "There is a strong rumour in one prison that the Department has already recalculated the release and non parole expiry dates in anticipation of such implementation". That is nonsense. As a lawyer he knows this, and he confirms it in the last sentence of his paper referring again to remissions and parole when he says: "As both these matters will require legislative action to implement any adoption of the recommendations I can see no changes this year". Why does he throw rumour into something that adds nothing to the debate?

*G Petersen M.L.A.*

I would like to deal with the question of how prison reform is to be obtained. I think Dr Sutton is right when he says it is ridiculous to speak of prison reform in Northern Ireland having just come back from a visit there. In fact the only way to empty the prisons of Northern Ireland is to solve the Northern Ireland political situation, and perhaps we can say that the only real way to solve the problem of crime and punishment in our society is to abolish the concept of crime which means establishing a classless society (of which I am in favour as a socialist). But if we wait for that distant day to arrive before we do anything there will be many people suffering a great deal of hardship quite unnecessarily, so whether we like it or not and irrespective of our political views we must ask: "How can reform be obtained and what are the forces which can make for reform?"

I wish to challenge the assumption of Mr Todd that unions will do something about reform. I realise that the party to which I belong is based upon the Trade Union movement, but the only times I have seen unions really interested in prisons are when union members find their jobs challenged by the apparently cheap labour employed in prisons.

I would like also to challenge his statement that the Public Service Association was the first to call for a Royal Commission. It is true that the then Secretary in 1971, Mr John Ristau, a man of immense personal courage, did call for a Royal Commission, but I have had occasion to doubt the *bona fides* of the P.S.A. in this respect. In 1971 one of the building trades unions intended to raise the same matter on Labor Council but suddenly dropped the issue, and I later found out that the Public Service Association had brought pressure to bear on the officers of the Labour Council who in turn had "leaned" on the officers of the union concerned to bury the issue of a Royal

Commission. In effect the persons colling for a Royal Commission consisted of a number of ex-prisoners and a number of men and women of goodwill who were concerned about the 1970 Bathurst "bashing". Whilst there are undoubtedly people within the Trade Union movement who on humane grounds would call for prison reform, I do not think the unions themselves will be involved. I do not think reform will come from within the Department because it was my experience in 1970 to 1974 that the Department covered up for the actions that had taken place. I think all bureaucracies act in such ways and will continue to do so. Pressures must come from without. I do not think it will come from the prisoners themselves. I think that prisoners are consonant with what Rude' defines as "the mob" during the French revolution. Since they largely consist of people who are in prison for robbing in bad company rather than in good company, they are people who have taken the mores of our acquisitive society to its logical conclusion. They are necessarily bonded together as, for example, trade unionists are, in their struggle, and whilst they are capable of burning down a gaol I do not think they are capable of doing much else once they have burnt the gaol down.

In effect, I think the quest for reform will come from the political arena, and will be under the three main political parties in New South Wales. It is not likely to be supported by the Country Party — they are the people who increased the penalties for stealing cattle from five years to ten years when the price of cattle went up. That is their attitude to prison. The Country Party stands for two things: the defence of private property and keeping jobs in the towns which means having prisons in the towns. The Liberal Party, whilst it is basically oriented towards the defence of property and property rights, nevertheless, on odd occasions does produce the small 'l' liberal, and perhaps the best example of that was the former Minister for Justice, Mr Maddison, as he was quite rightly described when he opened his portfolio in 1967. When I first raised the issue of the Bathurst "bashing" in Parliament one of my major difficulties was my respect for Mr Maddison as an individual and as a human being, and a paper that was published at the time by Wendy Bacon drew attention to my dual attitude towards Mr Maddison. Unfortunately Mr Maddison found himself in a situation where either he had to defend his administration or else he had to act like a small 'l' liberal. Given the choice, he made what I consider to be the wrong choice and defended the administration. I believe that a conservative party, like the Liberal Party, when faced with such a choice will, in effect, have only one choice — that of maintaining the power of the administration.

I am considered to be something of a maverick in my own party, the Labor Party, I was not exactly overwhelmed with support in my demands for the reform of the prison system. In fact a number of people would prefer that I did not raise it at all. There were two reasons offered; firstly because we are the party based upon the Trade Unions and as I explained previously Trade Unions are not over enthusiastic about defending prisoners, and secondly in order to win a government we must win marginal seats, and in order to win marginal seats it is much more important to get the vote of the prison officers who do have votes rather than the prisoners who do not.

The conclusion to which I have reluctantly come is that, in fact, prison

reform is a movement by men and women of goodwill seeking change within the structure of the capitalist society. The criteria used must be those expressed by that great and good man, Mr Justice Nagle, in his report. That must be taken as a starting point. I am very pleased to read in Mr Justice Nagle's report that he rejects rehabilitation as a concept and that he is only after the much more modest demand that people are no worse when they come out of prison than when they went in. I think the Labor Party is the only Party that is likely to do anything about prison reform, and then only under pressure — it is then the job of men and women of goodwill to put pressure on that political party.

*Dr Ken Doust, Medical Director of the Commonwealth Health Insurance Commission.*

The defensive attitude that has been adopted by the Department and the various governments has, in fact, been associated with the normal defensive inverted hierarchical structure that occurs in the public service. I am quite sure in a situation where a particular section of the public service is threatened the utopian concept that Dr Sutton has of the public service may not always be the reality. The public service does not always appear to work 100% for the public but in fact it has a markedly protective interest for its own self, and I am quite sure that one of the aspects that was of concern to the prison officers in Bathurst during the riot was that they could see that their jobs were in jeopardy. I believe that this can be overcome by modifying the structure of the people who are working in the Department of Corrective Services. We need far more people who are interested in clinical psychology, social work and rehabilitation despite George Petersen's comment we should not rehabilitate people. We can allow people to return to the community with less adverse effects from their incarceration in prison if they first have the opportunity of an interpersonal relationship with some suitably trained social worker. It is essential that we look for more people who are trained to deal with people and interpersonal relationships rather than spend more money on prison walls.

As far as the further development of a philosophy is concerned I believe that it is necessary to be developed in association with the new commission. I am, however, quite pessimistic that any commission will be of any use whatsoever, and I believe that we will only see a repetition of the previous problems of the last fifteen years. The commission should be an open style commission, that has community interests represented and not constituted wholly and solely by public servants, similar to those constituted under Whitlam, particularly in the health field. I believe that such an open style commission is the only protection that the community as a whole has from the continued introverted personal interests of a particular public service department, and I believe that an open style commission is the only way that you will find any vast improvement of philosophical attitude of the management of this particular problem.

*Bill Scott, Probation and Parole Service*

While endorsing many of Mr. Jewson's remarks I felt that his argument waned somewhat when he chose to support quotes allegedly attributed to the

late Sir Winston Churchill and Mr. D'Arcy Dugan. I would like to point out that both seemed to change and did a "turncoat" when it suited them. Churchill, as quoted, had been a Liberal but later when it suited him changed his party, and Mr. Dugan, if the following quote can be believably attributed to him, stated "If you can't do time, don't do crime".

*R. J. (Bob) Downs*, Chairman of the Long Bay Sub-Branch  
Prison Officers' Association.

I find it necessary to defend prison officers in view of the tome of the papers from Mr. Kelly and from Mr. Jewson. I have not been a prison officer for very long. I am an ordinary working man and, I hope, a responsible law abiding citizen. I do the job in the gaols that we are given to do with other prison officers, and that job quite simply and basically is to secure containment of prisoners committed to institutions by courts of the land. It may surprise you to discover that we know that there is a great deal wrong with prisons, and that we have been saying so for a long time. I can tell you now that we believe that if you want to lessen the pressure of the population in gaols it is very easy; do not put people in gaol for not paying fines, but get the money out of them somehow; do not put a drunk in gaol, if he is an habitual drunkard, he is a sick man, put him somewhere else; do not put a drug addict in gaol; do not put the vagrant in gaol. Look at the bail system. Make it easier for silly young men to stay out of gaol during a remand period which may be as long as three, four and five months. We are aware of these things, and we fully support reform in these areas. It grieves me deeply when so called intelligent and educated people attribute to us only concern for our jobs and our livelihood.

It grieves me also when I hear a statement by Mr. Jewson where he said that the prisoners in Six wing shouted to the media and "Tell it like it is". Is that like it is? Do prisoners never lie? Is everything that they say to Mr. Jewson and Mr. Kelly and to every other sympathiser or radical reformer the truth? Of course, it is not the truth. Mr. Jewson said (from memory again) that the riot on August 22 in Long Bay Gaol started as a result of provocation by prison officers in face of silent demonstration in support of conditions that had not been granted. I will tell you how it started. It started by the emergence from Four wing of four prisoners wearing face covering balaclava helmets and carrying weapons who gave the signal that caused the other silent protesters to pour out of the yards and charge the front gates. And, I would remind you also, that in the "silent demonstration" before Christmas a very good friend of mine had his brains smashed out while he was in the gaol of his own volition trying to prevent prisoners from hurting themselves, other prisoners and prison officers. We must be, unjustifiably, the most vilified group in this State. We do not even have industrial rights. Because we have to care for prisoners twenty-four hours a day we cannot even hold a union meeting. We have to hold a stopwork meeting, and the first message that comes to us if we hold a stopwork meeting is "For heavens sake don't do that. We will have to leave them locked away and you know what they will do when they come out". Once in a while we reach the stage where we feel compelled to hold a meeting.

I did not want to speak like this at all. I am an advocate for reform in gaols. New South Wales prisons today are hell pits. They are dirty, they are

disgusting, they are old, they are overcrowded, they are unsanitary, they are breeding grounds for our big "heavies" of the future. I agree with Mr. Justice Nagle when he said that rehabilitation is out. Three quarters of these people are completely beyond the stage of rehabilitation, so why don't we concentrate on the young people and stop them coming in. The left wing theory is that if you change the environment, then you change the man, and if you change the man then you do not have crime, if you do not have crime, then you do not have any criminals and so on. You are not going to do it with the population of the New South Wales gaols or any gaol in the world. You are going to do it only with young people. If you want to start giving prisoners a break give them a break at the beginning, not when they are fully hardened criminals.

*Mark Stiles, representing Architects against Prison.*

I would like to make four points. The first is to support Mr. Robertson of the Probation Officers Association very strongly and I would like to remind this meeting of something he said that his Association said on page 74. He says:

However, with the reconstruction at Bathurst and talk of other prison construction one wonders whether the government is serious in attempting to carry out the clear intent of the Royal Commission that "alternatives to imprisonment should be used as extensively as possible, and prison should only be used as a last resort".

A little further down he says:

Why, then, should there be an emphasis on expensive prison construction before the examination of the alternatives to imprisonment which have the potential to reduce the prison population substantially?

I agree with the last speaker on the point about the need for reform of sentencing procedures. I believe that it is impossible to design better prisons, and that the attempt to design better prisons is misguided. The attempt to build so called "model prisons" is impossible. The proposed \$13 million to be spent at Parklea is money down the drain. We should be looking at policies and attitudes. Prisons are run by a set of regulations. Perhaps they, more than the physical environment, contribute to the tensions in gaols. I would point very strongly to the lack in the Nagle Report of any kind of background as to why we have prisons, and whether they are doing the job we have delegated to them.

As an architect I am extremely concerned that we go ahead and accept a brief like this all too readily without taking account of the very serious questions raised around the world about the desirability of building new fortress prisons. We still hear about the 300-400 person gaols and the demand for small units is rarely heard.

In concluding I would like to echo a call made in the United States in 1973 and in New South Wales in 1974 for a moratorium on the building of any new gaol accommodation until we come to grips with the questions "Do gaols

do the job that we assign to them? Do they rehabilitate? Do they deter? Are they punishment, and if so for whom?" I believe that until we look at prison in a very detailed way, asking who goes to prison and why they are there, then we are kidding ourselves by building new gaols. Unfortunately new prisons are very large and they are extremely expensive. They are, in a way, the biggest demonstration of our taxes at work, they are the best "undemonstration" of faith the government can make. If we are going to build new prisons it is going to be over a lot of opposition.

*Dan J. Brezniak, Solicitor, Supreme Court, NSW.*

The sort of reforms that have been outlined by Mr. L. K. Downs do not seem to me to have made any impact at all on the person who is inside the gaol, and that really is the decisive question.

I want to know too whether the report of the Royal Commission is in any of the libraries of the Central Industrial Prison for example? I do not think it is there. Does putting the report in the Central Industrial Prison and Metropolitan Remand Prison count as two proposals implemented?

On a visit to C.I.P. the other day I interviewed a prisoner who alleged he was bashed around quite severely. He still has great marks on his head where he was clouted with a baton. The allegation was that prison officers concerned are completely unidentifiable with a mask covering the face and other sorts of clothing that completely concealed the person, which makes it very hard for anybody helping a prisoner to identify who his assailants were.

*M. L. Rutherford, Barrister-at-Law*

I would like to compliment Dr. Doust who, when he was at Bathurst in the aftermath of the riot and saw brutality, gave a hand written note to the police as soon as he was able to, as opposed to the actions of Dr. Prentice over some 15 years.

The first question I would like to ask Mr. Todd is: What is the attitude of your union to the future of those prisons officers named by His Honour as having engaged in acts of gross brutality? I will not name them but some of those officers did attend the Royal Commission, did sit in the court, did hear some of the allegations made against them and instructed their counsel Mr. McAlary, Q.C., and his learned Junior who is now a judge at the Workers Compensation Commission. The witnesses who gave evidence respecting those officers were not cross examined in many instances so there is no suggestion that the allegations are false or exaggerated. Does your union feel that men of this calibre, who cannot be called law abiding or normal, should be allowed to have the status of prison officers?

The second question is to ask the attitude of your union to prison grievance committees bearing in mind the problems during the recent riot at Long Bay where prisoners alleged their grievances, whether they had them or not, and at Bathurst, where they transparently did in 1974 prior to the riot: Had there been an effective grievance committee might it have averted the riot

and at least would have identified the problems and adjudicated on them?

Thirdly, do your members at Long Bay or Long Bay complex insist on prisoners wearing numbers and if so — Why?

My last question is to Mr. Downs. You were the person who signed the minute from the Minister, Mr. Maddison, following the very detailed letters from the Commissioner of Police and Superintendents during the Bathurst committals detailing the allegations made by counsel's cross examination about brutality inflicted on prisoners by prison officers, in terms that the Minister had advised that these matters should await the Royal Commission. In retrospect, with the benefit of hindsight, would you now say that those matters should have been investigated immediately by the police and that that should be the policy in future?

*Garth J. Symonds, Solicitor, Supreme Court NSW.*

I would like to comment about the proposed prison ombudsman. Some days ago I had the opportunity to speak to Miss Ingar Hansen who was, for five years, the first prison ombudsman in Canada. She indicated to me that the prison ombudsman was a most worthwhile concept and had worked well, and she emphasised that it was important to have an ombudsman who was seen as being thoroughly independent. She further emphasised that it was important to have personal contact with the prisoners who are making complaints.

I think the volume of work that would be generated by adequately responding to prisoner complaints would justify the appointment of a prison ombudsman. In Canada with 9000 prisoners there were about 1400 complaints a year which Miss Hansen and her staff investigated. She was given quite substantial powers of investigation and she felt that that was important. In particular, she was able to have access to all files and minutes and other correspondence that she wanted. She was able to do spot checks of files and she found that very important to fulfilling her function. She concluded by saying that a prison ombudsman with adequate powers was an important part of any grievance procedure in gaols. In New South Wales we do not have an adequate grievance procedure at the moment — witness the succession of riots and disturbances that we have had since the Nagle Report was tabled.

I am somewhat confused by Mr Todd's remarks when he suggests that, in fact, we should put more money into the construction of gaols. I am not sure of the attitude of the Prison Officers' Association to this question. I would like to ask Mr Todd which of the Nagle Recommendations is his association opposed to?

*Roger Pryke, Department of Youth and Community Services, NSW.*

I am in the Residential Care Division of the Department of Youth and Community Services, and previously I was a parole officer. I would like to make two points. The first fact about prisoners is that they come from our

poor, they come from what was called a "web of disadvantage", and secondly up to 80% of prisoners in some gaols, and probably 60% of those in most gaols, have been through the Child Welfare or Youth and Community Service institutions. They come into prisons with a history of incarceration, some over a long period. I supervise one of our institutions at Tamworth and generally about 30 to 40 per cent of the boys there between the age of 16 and 18 have known one another at Mittagong, when they were in that institution when they were 8, 9 or 10 years of age. The problem has well and truly begun before the adult prisoners get into the adult gaols.

The other point that I would like to make follows Mr Bob Downs comments about trying to reform people when they are very young. In South Australia, for example, when I visited there recently there were no girls at all in what are called "training schools" (junior institutions). There were some in the remand section, but all girls who had been committed or received some court order were outside in the community. There were only 22 boys altogether in the training schools at that time, and I understood that that is the current average. By diverting young children from the legal system they are establishing one important way of keeping people out of gaols. This is done by the Juvenile Aid Panel, where up to 80 per cent of those who are investigated on first offences and minor offences do not come again either before the Juvenile Aid Panel or a juvenile court, and by assessment panels operating mandatorily. It is a mandatory obligation on the court to take account of the assessment panel that operates before a person is committed by the court or is committed to an institution of any description. These assessment panels normally can provide some community placement for each child where it can be satisfactorily held, contained and rehabilitated.

*Jo Melville, Senior Probation and Parole Officer and Executive Member,  
Life Sentence Committee.*

Mr Peterson, M.P., made reference to Mr Justice Nagle's rejection of the concept of rehabilitation in prison. I would stress that it is highly unlikely that there can be much achieved in this direction without adequate staff of sufficiently high calibre. History does not relate what staff was available to help prisoners in all of those overseas studies. In New South Wales we have never had sufficient Probation and Parole staff to work in institutions. First of all, I am not sure whether all people mean the same thing when they speak of rehabilitation and, therefore, it would be wise for me to spell out what I take the word to mean in the context of prisons. I consider it refers basically to the changing of a person's attitudes so that he can want to lead a socially acceptable life.

If Mr Justice Nagle is saying that there is no rehabilitation in gaol and that, in fact, the prisoner is likely to go out of gaol no better than when he came in, I would like to ask "On what basis are we releasing life sentence prisoners?". If there is no rehabilitation, surely none should be released.

I have had many years experience in working with lifers and contend that early contact with these people and frequent on-going counselling by

persons, who have a Social Work or comparable background, can help to bring about attitudinal change in many of these people. As a result of this, these prisoners develop positive goals for their future and develop alternative methods of coping with stress of different types other than by physical violence.

It was heartening to hear Dr Doust strongly advocating the need for social workers (and, I would add, those with a comparable background) in sufficient numbers to work in prisons. It will only be then that we can expect to achieve rehabilitation on any scale worthy of note.

*L. K. Downs, Associate Commissioner of Corrective Services*

In reply to the question that I signed a minute to Mr Maddison recommending that allegations about brutality inflicted by prison officers on prisoners await the outcome of the Royal Commission: that was a long time ago and I do not know whether I did or I did not, but for the purposes of replying I accept that I did. At that time I am sure that the terms of reference had not been settled and I see nothing wrong with giving that sort of advice on the assumption that the question of alleged brutality by prison officers on prisoners would be made a term of reference for the Royal Commission.

*Thomas J Kelly*

In reply to Mr Bob Downs I think the only way that you would really find out what happened out there during the last month would be to hold another enquiry. There seems little point in stating that Mr Justice Nagle looked into a number of prison disturbances and came to a conclusion that does not flatter Mr Down's members. There is no point in holding another enquiry if the results of the major enquiry are going to be ignored.

In regard to Dr Prentice, let me put it on record that Dr Prentice of Grafton was on notice about the allegations made, I wrote to him personally listing the 73 pages of transcript where he was named by various prisoners. He received the letter because he made a rather arrogant phone call to my office.

In respect of Mr L. K. Downs he makes no comment on the last chapter of my paper called "postscript" where I refer to the recent press release saying in detail that some aspects need explanation and amplification, some are nebulous (these are the so called achievemants of the implementation of some of the recommendednations) others are vague and general and anti climatic and some are inaccurate or misleading. He did however dwell on the last line where I say that there is no likelihood of the recommendations on remission or remands being implemented this year but he does not seem to appreciate the significance of that in respect of prison unrest. He mentions that a classification committee is going to be set up. He did not tell you that it is going to be headed by Mr Sanders who was mentioned in detail by Mr Justice Nagle and that is mentioned in my paper (page 23). He says in respect of the

remission recommendation that it is going to be dealt with by the Advisory Council. It seems that they are going to have the opportunity of overruling the Royal Commission report. I can see only two of that Council at this Seminar.

Mr Todd's comments are certainly inconsistent with his previous statements that I have reproduced in my paper. He seems to have moderated his stand considerably. Some of them do require some slight comment. In 1974 the Royal Commission was announced by the government within a day or two of the riot. It was a *fait accompli*. There was no action by the prison officers that assisted in that being set up. In 1971 a lone courageous prison officer named John Ristau who was then secretary of the trade union of which Mr Todd is also the secretary, made a public call for a Commission, but within months of him so doing he faced an election and was no longer the secretary. John Ristau has since been victimised and vilified by the Department as briefly set out in my paper (page 25) and set out in length at the Royal Commission.

I do not think my recollection is that the spray signs appeared around the city after Mr Wran announced that he was going to close Katingal. I do not think Mr Wran was influenced by Wendy Bacon and a few of her friends in that decision. He did denigrate the letter in Mr Jewson's organisation's newspaper from a prisoner who claimed he had been bashed by Mr Buckley and Mr Wenzel. If you look at page 31 of my paper you will see what Mr Justice Nagle had to say about those officers. They were the two worst most often mentioned brutes from Grafton who are still there, and if the letter referred to is to be believed are still at it.

Mr Todd suggests that it was my statement about the "international conspiracy". I was quoting Mr Maddison in 1974.

*Barry O. Todd*

First of all I would like to explain that I am the Chairman and not the Secretary of the Prison Officers' Association.

Mr Rutherford asked what is our attitude to officers who are named in the Royal Commission Report for offences against prisoners. The attitude of our branch would be the same as trade unionists in any organisation where members have been wrongly indicted for committing offences. It would have to be proved in court, and we would support all prison officers for their actions.

The second question that he asked was: "Do we support the prisoners' grievance committees?" My answer to that is "No". We do not support such committees because prisoners' grievance committees tend to look towards themselves formulating proposals to put forward to the superintendent. They will press these points before the superintendents and if they do not get what they want they will stage riots or sit ins. I was given a comment by a prisoner after the Christmas day incidents in the Central Industrial Prison. This prisoner came from another prison and he said the reason there was not any trouble in the Metropolitan Reception Prison was because the prisoners kept

the prisoners out of it. They said: "We have a good gaol here, and we are not going to let these other fellows mess it up for us. We are going to keep them in line". I would put this to you: If we have prisoners keeping other prisoners in line why do we need prison officers? Why do you need any sort of system there at all? It is a fact that you cannot have the prisoners running the gaols. The gaols should be run by prison officers and by a competent and open administration.

Mr Rutherford also asked if our members insist on prisoners wearing numbers within the gaols. Our members have formulated our attitude towards the recommendations of the Royal Commission, and I would say with few exceptions we are in agreement with all the recommendations in principle. Some need a final type of modification. They seem to be somewhere a little irrelevant to the cause that they were putting forward but basically we support all the recommendations and it is a matter of implementation. The matter of implementation of prisoners removing their numbers is not an easy one clerically. Prisoners have worn numbers for long time and until the administration decides that there will be another system then we support the wearing of numbers by prisoners.

I would like to reply to Mr Garth Symonds of the Council for Civil Liberties who said that it was hard for prisoners to identify prison officers because they were wearing coverings over their faces. For his information, those coverings were riot helmets which were preventing them from having prisoners strike them with heavy implements of destruction that they were carrying with them, and I would like to pose a question to him as a member of the Council for Civil Liberties. Would the Council for Civil Liberties provide assistance to prison officers who were photographed and had their car registration numbers taken at the gates of Long Bay Gaol, and who are generally provoked by the Prisoners' Action Group on numerous occasions, and who also have those photographs together with their phone numbers sold at Fetes with nice comments underneath, to prevent this type of thing occurring? I think that is an infringement of our civil liberties, and when prison officers' wives are followed home by the Prisoners' Action Group members outside the gaol I think that is an intrusion on our civil liberties.

I would like to comment on Mark Stiles remarks where he said that people seem to have gone away from the idea of smaller institutions. I agree with the idea of having smaller institutions, they can be readily converted from maximum to medium security, and it is my belief that prisons should not hold more than say 25 to 50 prisoners. This is a manageable number where people who within the institution can get to know the prisoners, the prisoners can get to know the administrators and the prison officers, and there can be a greater degree of cooperation between the two. Equally there is greater chance of being able to classify prisoners if they are held in smaller institutions.

Finally I would like to comment on the theory that prison officers' enforcement of petty rules causes riots. If prison officers enforced the rules as they now stand I am sure that every gaol within the State would be burnt to the ground, but the rules are not being enforced and have not been enforced for at least some four to five years, and the Act which is still in need of change has not yet been changed. We cannot stick to the rules — they are inapplicable.

The rules that we do enforce are the rules to maintain law and order and discipline within the gaols. It is a matter of record that the prison officers and the Prison Officers Union will continue to support law and order, moderation and consistency within the prison system.

*Caroline Simpson, Barrister-at-Law, President of the Council for Civil Liberties.*

I would like to say on behalf of the Council for Civil Liberties that we support the civil liberties of all persons of this State including prisoners and, of course, prison officers. If any prison officer, policeman or any person approaches the Council with a complaint that their civil liberties have been infringed the Council will look into that complaint and give what assistance it can. Our position up to date has been that the evidence that has come before the Council has indicated that the civil liberties of prisoners has been grossly infringed, and so far we have not seen any material to indicate that prison officers have been victimised to the same extent.

*Bob Jewson*

I always seem to start on a defensive note. First of all I have been maligned by the statement that the Prisoners' Action Group have photographs of prison officers together with their phone numbers, take the numbers of their cars, and we sell the information at Fetes. The fact is that this is not true at all. I do not think we have ever held a Fete let alone attended anybody else's. The information about increased discipline and the problems it has caused in the gaols came from Tim Hickey, Secretary of the Prison Officers Sub-Branch of the Public Service Association, who told the media that discipline had been increased within Long Bay Gaol prior to August 22nd and movement within the prison had become restricted.

Gordon Hawkins in his book on prisons\* wrote that if you increase tension by repression you are leading the way to create violence in the system. Nagle said it in his "recipe" for a prison riot, and it was the same in the McKay enquiry looking into Attica riots. There is a recipe for prison riot and if you follow the recipe you will have one. The Department of Corrective Services knows it well and follows it all the time.

Bob Downs asked the question: "Do prisoners never lie?" All I can say is read the Royal Commission transcripts and you will find out it is not as much as prison officers.

Mr L. K. Downs spoke about the implementing of the Nagle Recommendations. However, he did not tell us of the recommendations that are refused, e.g. in regard to recommendation No 46, the Department's Circular No 4365 of the 31st August 1978 states: "The Advisory Council should report directly to the Minister. All its reports should be made public." Comment following this is: "...adopted". It says that the Minister may publish a report. Now whilst Nagle made that recommendation in the body of

\* *The Prison: Policy and Practice*, Chicago and London: University of Chicago Press 1976.

his report he gave us reasons why it was necessary for the Advisory Council to publish its report because he commented how disturbed he was that the Advisory Council reports before would not have reached the light of day had there not been a Royal Commission; and he was also disturbed by the fact that the advice that the Department of Corrective Services was giving to the Minister was not known to the Advisory Council and therefore the Advisory Council could not put up alternative suggestions to the ones that had been knocked back. He also mentioned the Advisory Council in the United Kingdom whose reports are usually published in pamphlet form. He said the importance of this was that information about prisons, policies and philosophies should all be part of the public debate. I ask the members of the Advisory Council did they know about the plans for Parklea, because part of the charter for the Advisory Council is to look at future construction as well as policy? Also was the Advisory Council asked to report on the rebuilding of Bathurst Gaol?

I know I did not touch on parole and probation. For three years I was on parole and there is no way that any Parole Board can predict which person will recidivist. As they cannot do that, I do not think they "have a role in corrections". If they cannot predict, then what right have they to knock any person back after the sentence of the court. I think it is a problem all people in parole and probation should be asking themselves. They are the people who put out reports which include whether or not they recommend parole, and I should have them ask themselves what right have they got to do it. I think the Parole Board should be scrapped now.

Mr Todd when referring to the behaviour of members of his Association said there was nothing proved at the Royal Commission. I think he forgot that they admitted it themselves.

*Dr A. J. Sutton*

This situation started with many years of silence, of people dealing with others and no information being available. It reached a situation where confrontation developed, information came out, people defended territories. A Royal Commission is set up with the whole paraphernalia of legal confrontation applied, followed by an almost impossible task of implementing the recommendations rapidly, followed by further defence of territory, followed by further accusations and so on. It would be a very interesting study in conflict because it is almost identical with a dozen other situations where it occurs. The tragedy is that it is almost impossible for somebody in my professional situation to see a way to bring about the changes which obviously need to be made almost immediately. There has to be an enlightened administration and there has to be openness about it. It was suggested I was an idealist, I do not see much wrong in that. In addition I suggest that far from us being in a situation where we can put the things together and apply some necessary theory of rational problem solving (which I hope we might one day) surely it is time that we started to put together all the information that is available. Some ingenuity about conducting union meetings in relation to shifts could surely be adopted, some flexibility with respect to attitudes to prisoners working in relation to union movement and so

on. Those hundreds of recommendations could be looked at flexibly with plenty of information flowing both ways. Then, and only then, do I think will we get into a mode of action in which we can bring about the kind of changes that are obviously necessary.

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