

“The community and Crime — A Glance Backwards”

***The Honourable Mr Justice J. H. Muirhead**

It is a great honour to be invited to address you at the outset of this unique gathering in this beautiful city.

Today I live and work far to the north in this vast country, but it is in Adelaide I grew up, it is here I studied and practiced law, it is here that I was first appointed a Judge — an appointment that by its very nature brought me face to face with the many problems encountered by the modern Criminal Justice System. Those three simple words on the surface present a reassuring concept. The word “system” suggests an established social order. The word “criminal” suggests it deals with those guilty of crime, that it is a system concerned with the punishment of offenders and the word “justice” suggests that the social order is maintained by the exercise of authority in the maintenance of right.

So we could say the Criminal Justice System is an orderly social concept, maintaining the right by the punishment of the wicked. It thus assumes orderliness in its approach to the problems of crime, it assumes the effectiveness of punishment as a protection to the community and it assumes the word “criminal” is an adequate or apt description of those with whom the system deals. But when those three words are used to embrace the many facets associated with the struggle against crime and deviance (if it be a struggle), then they not only oversimplify the problem, they tend to raise inaccurate and invalid concepts.

It is not now appropriate for me to comment on situations outside this country but I believe it accurate to say that in Australia neither at State nor Federal level, is there sufficient cohesion or identification of purpose between the arms of government in this field to justify the classification of Police, Courts and Corrections under the word “system”.

The police do their task and the courts perform their functions. But at this first level of crime control these agencies who have common English heritage maintain a distinct and traditional separation of objectives and philosophies. The techniques and methods of police investigation cannot be designed only to prevent crime and catch offenders — they have to be tempered by understanding of the complicated evidentiary provisions and practices of the law, which many police may understandably regard as an impediment to efficient crime control. Detection without conviction may prove not only a hollow, but a most expensive and wasteful exercise. In the exercise of the police function, the police are today adopting techniques and forensic aids which have been revolutionised over the last 30 years.

But their efforts are then filtered through courts and judicial processes which have, in the criminal field, been almost immune from change. Comparatively there has been but slight legal modernism. The law, by reason of its very nature and its traditions, gains considerable immunity from the

assaults of critics be they academics, politicians or others. In Australia there is not the degree of co-ordination between investigation, prosecution and the courts that we find in some other parts of the advanced world. Perhaps this is not surprising.

It is all to do with our emphasis upon personal liberty. We have been taught to believe this can only be preserved by strict separation of the powers of government. Courts which alone have the power of depriving the individual of liberty do not do so lightly, and when they do approach the exercise cautiously and, on the whole, mercifully.

And we see evidence of lack of co-ordination between and within other agencies. Those working in prisons and those, perhaps of the same service, whose responsibilities are probation, after-care and rehabilitation may not think alike. Police, probation and parole officers may have very different views as to supervision and as to the public interest. Most of these people — those involved with strict crime prevention are employed by governments and being government servants they move upwards or sideways. Departmental heads come and go, ministers of government are here today and gone tomorrow and government policies may vary to the bewilderment of those who must act within the guidelines.

These are very real difficulties experienced by well motivated people trying very hard to run efficient services. Where a prison escape or a series of escapes, an episode of re-offending by a person on parole can, in themselves, cause bewildering pressures it is no small wonder that the progress of the corrective services in Australia over the last 30 years has been tentative. Despite the dedication of many to the task and despite some highlights it would I believe be accurate to say that our progress in prison management and improvement of the institutions has been disappointing. Prison escapes and expenditure on prisons bring no political advantage.

Over those years in this country there have been many influences which have not only impeded the efforts of workers in corrections, but which have given more general rise to cynicism and fear in the community. It is perhaps unwise for me, as an individual to rely too far upon my own observations and conclusions over the years, as views so expressed are likely to be proved erroneous by statistics if appropriate data can be found and evaluated.

But I mention a few factors as relevant and in so doing I suggest that despite much expenditure, genuine effort, rebuilding programmes, bureaucratic growth, increased academic input and public interest, the average person in the street would be less than complimentary if asked as to our national effort in containing crime. The influences are however inherent in the type of society we have developed.

First, we must not forget the changes in the industrial pattern of our culture, the drift from the country, industrialisation, emphasis on mechanisation and computerisation rather than individual skills with resultant job boredom.

The growth of union power, their confrontation with management and with each other, the man in the street as

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the meat in the sandwich. Apparent acceptance of illegal industrial activity.

The cry for more money, less work — symbolic perhaps of the dawn of computerised industry.

An era of significant unemployment associated with reports of record company profits, the long term predictions of minimal economic growth, depressing prognoses for the future.

Cynicism with government.

What has happened to work satisfaction, to job happiness, to community co-operation? This is relevant because bored young people, particularly those in urban environment who see no opportunities — are insecure and are likely to interest themselves in crime. Those without diversionary skills, hobbies, or interests are particularly vulnerable. It is not a new concept.

"In works of labour — or of skill
I would be busy too,
For Satan finds some mischief still
For idle hands to do." (Isaac Watts 1674-1748).

And then in this country we have experienced a fluctuating domestic and family situation. People talk of the nuclear family — a term I have never understood despite its unpleasant connotations. We have witnessed in the last two decades a fair amount of disruption, even within small families, loosely labelled the "generation gap". In Australia that cohesive group, the extended family has largely fallen by the wayside. In the cities we have become "detribalised" for many reasons including our housing techniques, our mechanical mobility and the TV screen. We have stopped talking to our neighbours or to each other.

I believe that today within the stable families, we are experiencing better understanding between generations, that we are becoming better aware of the value of each other. Yet the disintegration of families continues at a sad rate. It is too early I think to blame contemporary legislation, but the impact of Family Law legislation on an affluent restless society, where husband and wife do their individual work separately, and tend to go their own way and develop separate interests proves a recipe for disaster for many children. So in this area we are producing lonely insecure people — people who will be very much at risk.

So with this background, corruption in higher places, syndicated crime and above all with our basic national selfishness, it is not surprising that the past decades have been a testing time for those whose function it has been to protect our internal security. Nor is it surprising that society becomes fearful and horrified by the violence it sees and reads about. It is predictable that people will turn their faces against leniency to the convicted person, against the notion of rehabilitation.

Society will increasingly demand firmness in our dealings with crime, and unless we set the clock back pretty drastically, firmness in our society can only mean imprisonment and lots of it. This is a logical development in days when crime is of paramount concern — when crime and terrorism occupy so much of our daily reading — not by choice, but by exposure. But we are becoming a community obsessed by violence, not by experience, but by absorption.

Walk up to any paperback stand, look at the film reviews. Depiction of violence is almost compulsory wrapping paper. Thirty years ago crime was not of major concern in our community; it was an interesting phenomena, but no threat to our way of life and our safety. The courts dealt quietly with the situation. The death penalty for murder, imprisonment and a few whippings were principal punishment for other serious offences. Prisoners were submissive, there was really such a thing as "hard labour", there was not much discussion

about training and rehabilitation, the repetitive offender was affectionately called the "old lag".

The social problems attaching to the prisoner when he "came out" and experienced by his family when he was "in" were of little concern. We relied upon people like the Salvation Army to salvage not only souls but bodies. The hardships of the 1930s, the losses and sorrow of war, were too close to cause people to worry about prisoners of all people.

It was only when the first stirrings of the crime problem, particularly recidivism, were felt that some people — social workers, welfare officers, churchmen and lawyers — began to think about our methods and started to worry about the trend. They talked and wrote and quite quickly there emerged philosophies which were put into effect by legislation.

Imprisonment was not necessarily the thing — after all people who go to prison generally come out again. Did they come out penitent and resolved to lead a life both straight and true? Or did they come out, better educated in crime, more bitter, more disadvantaged or less likely than ever to find a lawful niche, a job, some happiness? In those days implementation of the death penalty and whipping were virtually abolished.

Thinking people persuaded governments that other methods, probation, work release, community work orders, suspended sentences should be placed within the powers of the courts. And governments were not difficult to persuade because the prisons were very full and with the growth of social and welfare services including unemployment relief, and support of prisoners' families, the costs were a positive embarrassment.

Governments gained no good marks for spending millions on prisons, the people preferred kindergartens and schools and hospitals. And it was found that once you built prisons they had a habit of filling up and you then needed more prison staff. And prison staff as well as prisoners had their demands and security became a very costly business.

And we found "minimum prison standards" talked about in the forums of the United Nations. So we experimented with modified institutions for young and old, with prison farms, minimum security, medium security, better classification methods, as well as tighter security for the recalcitrant "hard core" prisoner. So it was we found, new concepts and we tried new methods. We talked of rehabilitation, we tended to look at the prisoner or the man in the dock as a person who might have problems which we could do something about.

These were the days when, in Australia the voices of criminologists, sociologists, psychologists were heeded, if not altogether accepted. It was in those days that the Australian Crime Prevention Council was set up by concerned people, when governments appreciating that we had a crime problem and knowing how little we knew of crime, became interested in setting up an Australian Institute of Criminology. And those were the days when the courts were given greater powers, probation grew, when halfway houses, and work release schemes were set up — when there was much examination and expenditure on ways and means of dealing with deviant children.

The initiatives largely came from outside, but governments were left to implement the systems and schemes and direct government employees were vested with the tasks.

These years of exploiting alternatives to imprisonment. of seeking new sentencing techniques have, I think, come to an end, not only because we are experiencing crimes of new dimensions (and at times ferocity), not only because some consider policies of leniency have failed, but because we have run out of further options. The courts now have great sentencing discretions. We have a few modern custodial centres.

We have alternatives to imprisonment which are regularly exercised. We have developed probation and parole. But crime is still with us — it has not gone away — some tell us things are getting worse. Apart from building bigger and better Police forces, what can we do?

When I was first a judge, now ten years ago and despite much criticism the courts in South Australia exercised policies of constructive leniency. The Supreme Court here made it abundantly clear that one did not lightly imprison a young first offender. I grew up with that policy and inevitably it has influenced my approach as an individual. It does not negate the right of the community to protection but it recognises that the problem of the police and the problem of society is the recidivist; it recognises that the average individual especially the immature is more likely to be harmed than helped by imprisonment and it recognises that he will return to society. The welfare of the community must as a matter of logic be the primary consideration in the sentencing process. So surely the question in the mind of the sentencing judge should be "How best can I protect society from this person?" and that question must be posed with an eye on the realities of life and the realities of prisons.

Surely the best protection is to ensure he will not offend again, surely society will benefit if he becomes a self-sufficient worker, rather than a person who preys on others. The notion that by imprisoning people we deter them and others likeminded to offend is a simple and attractive one.

It is enshrined in the law — it is applied day by day — but its validity has not been proved. David Biles, Assistant Director (Research) with the Australian Institute of Criminology has recently concluded "... that there is no support for the proposition that the high use of imprisonment (by either specific or general deterrence or by incapacitation) leads to lower crime rates. If anything, the opposite seems to be the case." (*Federal Probation* Vol. 43 No. 2 June, 1979).

The prospects of apprehension and punishment as such must in a general way operate as a deterrent. But the constructive approach is to keep the early offender out of prison under conditional release unless the gravity of the crime is such that the law cannot exercise that option to that offender. I recall the days when some judges who regarded prison conditions as being none of their business appeared to hold the view that prison discipline would deter the offender — would straighten him up — would teach him the error of his ways. The penitent prisoner emerging from the penitentiary. But I believe I am accurate in saying that few today who have the task of sending a person to prison, really believe that person will benefit or that we will deter him as an individual from offending when he comes out. We understand something of prisons and something of the people in those prisons. We know it will not be good for his soul, we know he will spend much time in anguish and frustration, we appreciate when he is released he will find the path back to his family, to his old friends and to employment a confusing and difficult one.

One who knows something of prisons, does not equate them to motels, merely because sport is permissible or TV sets available, one understands how destructive and long reaching the compulsory associations there encountered may be. In my view the true justification for imprisonment is not rehabilitation or deterrence — it is punishment — the punishment laid down by the law, and it is here to stay. I do not concede that the past policies of finding alternatives have failed nor do I believe that policies of leniency have jeopardised the security of law abiding Australians. Criminologists can talk more of this. But in view of what our society has experienced over the last 30 years it may well be that the policies have succeeded, that without those policies our prisons would have mushroomed with no corresponding

increase in public safety despite huge expenditure. History may prove that governments have not done badly.

But the fact is that the problem remains and the options, the alternatives to imprisonment seem to be drying up. There is modern emphasis on compensating victims and this is good. It is right and proper that offenders should be required to work in community projects but such schemes can only be applied to very limited numbers because of our industrial structures — especially in times of unemployment.

So we must face the fact that our prison population is likely to increase, our prisoners are likely to be more difficult. We must assume that unless corporal punishment, banishment or processes of public humiliation are to be introduced as punishment, society will have no alternative other than to continue to utilise imprisonment as the principal punishment. This sounds a pretty barren dismal prospect for an affluent advanced society.

You are entitled at this stage to say "when is he coming to the point — when will he talk of the role of volunteers in the quest for freedom from crime"? Do not despair. A little history has been necessary to see where we stand in Australia today.

In this paper I have talked of prisoners, of courts, of government and its agencies because they have on the surface been the principal actors. The volunteer has been in the background. It is my firm view that in the fight against crime the resources of the Australian community have not been tapped, the value of volunteers neither recognised nor utilised. The natural ties within families and the community have not been exploited. Valuable work has been done by associations such as Prisoners' Aid. In limited sections of this country volunteer probation officers have proved their value, but this has been the exception rather than the rule; a valuable exception as they have demonstrated what can be achieved when government aids volunteers not only financially but, where necessary, administratively.

During this conference you will deal in detail with the role of volunteers in various areas, their philosophies, management and relationship to government. We have found in this country that too often the best organised schemes of government prove ineffective, not because of lack of motivation of the people concerned, but by the clog on efficiency imposed by bureaucracy, the regulated fetters to quick and flexible decision making, the mobility of the government worker who so often is moved on when he attains familiarity and efficiency in one area.

Furthermore, when we are dealing in crime and rehabilitation we are dealing with people many of whom have little trust in the system and government is identified with that system. The counselling and supportive role in the field cannot be fully effective if clock watching is necessary. The volunteer, provided he is balanced, motivated by interest, understanding and compassion has much to offer the person in trouble with the law. His individuality and availability at all times is a precious asset. The counselling and supportive role will not be fully effective if too much clock watching is involved.

Can it be denied that Australian gaols are the repository of many who are there because they have failed to attain and maintain a standard or norm of behaviour demanded by society? I think not. Then if this is so, is it not true that many failed to maintain those standards because they themselves, somewhere along the way, have been let down by society, so often by their own parents. There is I suggest no fear or misery so bleak as that suffered by a child who witnesses the break up of his home, no insecurity so deep rooted as one caused by basic loneliness. If these observations are valid it seems to me that we fail because we don't act early enough, we have failed to recognise the warning signs.

Once people reach the "gaol" stage society tends to put

them into the category of "failed — past redemption" — and they in turn find the only people who understand their situation and with whom they can associate and communicate are those similarly labelled. So it seems to me that those who do nothing and smugly say "let justice be done", or "let the law take its course" are espousing a hollow philosophy if that justice and that law is guided only by the traditional agencies of government without the intervention of the ordinary man and woman who alone I suggest, can lend a hand to rebuild confidence, establish trust and restore some dignity or purpose.

My submission ladies and gentlemen is that our main hope in the fight against crime lies in the involvement of the local community, an involvement aided but not controlled by government. I envisage people participation at all stages; when difficulties are experienced by youngsters and their families, at first police or aid - panel contact as part of the corrective process. I envisage that support being maintained during imprisonment and of course during the post-release stages. It is not for me now to deal with details. I picture a decentralisation of responsibility. Is it not time local government thought more in terms of people problems as well as streets, traffic and neighbourhood beautification.

Why should our sources of care and welfare be so remote from the people? We have a nucleus upon which to build. We have the service clubs, the "Y" groups, the outreach programmes. We have the people. We are entering an era of early retirement by many comparatively fit people — we have there a great resource. We have too a concerned society evidenced by the interest shown by the victims of crimes, evidenced by the growth of the Australian Crime Prevention Council, evidenced by groups such as SPELD who can understand the problems confronting their children.

There is I suggest no shortage of people adequately trained to set up and run youth shelters, neighbourhood centres, post release centres, outreach and diversion programmes. Such programmes have long been regarded as interesting, as of potential value, but speaking nationally I believe they have suffered from lack of funds for basic administration, they have been put on the fringe of government welfare and corrections. I suggest we need vigorous grants in aid programmes, localisation of effort and mobilisation of volunteer resources more than growth of government welfare. Clearly it is a modern responsibility of government to be well involved in the welfare of society, but if government can utilise resources to encourage citizen participation, can assist programmes rather than control them, then I believe more will be achieved and above all we will rid ourselves of that crippling attitude that responsibility towards those who do not conform, who are not average, who are not predictable, vests in the government.

In this field the phrase, "the government should do something about it" illustrates not only a buck-passing mentality, but of more concern is symptomatic of a society which expresses concern, but has really abrogated responsibility. And, ladies and gentlemen, it is just this lazy complacent attitude which in fact makes it so politically hazardous for governments to change the course that has been sailed over the last 30 years with little regard for those winds of change we hear of so frequently.

J. H. MUIRHEAD

Darwin, Northern Territory
August, 1980

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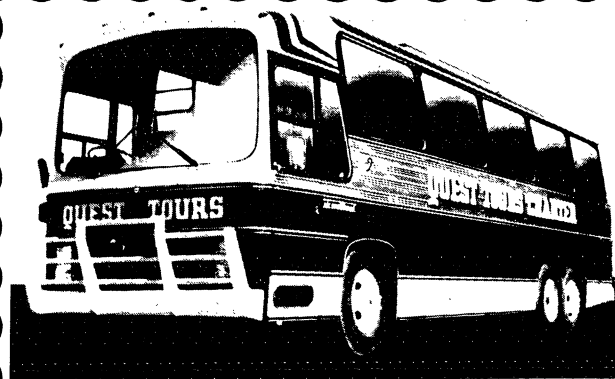
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