statistical report 18

minor offences — city and country

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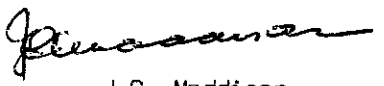
Foreword

This report illustrates what the Bureau is all about. It shows how valuable social discoveries can be made from a mass of figures. The report is important also because a representative of the magistracy - in this case the Chief Stipendiary Magistrate (Mr. M.F. Farquhar)- was involved in the preparation.

In their report Mr. Farquhar and the Bureau's Director (Dr. Tony Vinson) have launched themselves upon an ocean of data collected from all Courts of Petty Sessions and covering all crime dealt with by those courts. The writers, in charting their course, have made interesting and significant discoveries about contrasts between the attitudes of courts in different parts of N.S.W. towards minor offences.

New courses can be charted through the same sea of data and other and equally valuable discoveries can be made. Therefore, I hope this report will give incentive to other arms of the criminal justice system to seek the co-operation of the Bureau in investigating other problems and perhaps suggesting solutions.



J.C. Maddison
Minister of Justice

Background

One of the advantages of maintaining a statistical series like that based on the New South Wales Courts of Petty Sessions is that apart from providing annual statistics, the data can be analysed from many points of view. One illustration of this flexibility is the feedback to Magistrates of comparisons between the penalties imposed in their particular circuit and the remaining Courts of Petty Sessions. Another application which has attracted the attention of social planners is the identification of geographical areas with a high incidence of particular social problems. Similarly, the court data can be used for calculating the extent to which certain types of cases go undefended in specified localities.

The particular application with which we will be concerned in this paper involves variations in penalties. In recent years, the inner-Sydney courts have increased the use of non-punitive methods of dealing with quasi-criminal matters (for example vagrancy and drunkenness). These developments have involved more than magisterial determination to use a remedial approach. Their ability to adopt this approach has depended to a large extent on the availability of alternate ways of dealing with such cases. The question has been largely one of the availability of health and welfare resources (e.g. the services of doctors, social workers and representatives of social agencies in attendance at the courts).

The fact that these arrangements do exist has had important consequences for minor offenders before the city courts. New opportunities to make a fresh start and more adequate social and material supports are among the benefits experienced by this group.

It is important to question the extent to which these benefits are localised or distributed across the entire state. In simple terms, is the city drunk or vagrant more likely than his country counterpart to receive some form of social treatment from the court and is the country drunk or vagrant more likely to receive a term of imprisonment?

Method

Courts of Petty Sessions were divided into three groups:

(i) inner-Sydney,
(ii) 'suburban' (balance of Sydney Statistical Division),
(iii) rest of State.

A listing of the Courts in each of these categories appears in Appendix A.

All cases of common assault, offensive behaviour, unseemly words and vagrancy which occurred during 1972 were tabulated in terms of penalties imposed by each of the three groups of courts* More recent (1973) data was available for drunkenness offences and has been used in the analysis.

* Other similar categories of offences (assault constable, 'other' assault, begging, consorting and indecent exposure) have not been included in the analysis because of the comparatively small number of convictions recorded. Betting offences have not been included because there were no regional variations in penalties. Invariably the matter was resolved by either the imposition of a fine or the forfeiture of recognizance. Soliciting offences were almost entirely confined to Sydney.

At the suggestion of the Law and Poverty Commission, a further series of analyses focused on thirteen country townships with substantial Aboriginal populations. (See Appendix B for a list of these towns). The penalties imposed for the abovementioned minor offences in these communities have been compared with those applying throughout the remainder of the State.

For the purpose of analysis, it was advantageous to compress the wide range of decisions the Court may reach into a more manageable number of categories.

The majority of drunkenness cases terminate with the forfeiture of recognizance, imposition of a fine (in default twenty-four or forty-eight hours imprisonment), a nominal fine or the 'rising of the Court', the imposition of a recognizance or referral for treatment under the provisions of the Inebriates Act.

The set of categories used for the analysis of the remaining offences ranged from a finding of 'not guilty' at one extreme to varying terms of imprisonment at the other:

(i) not guilty ('charges/informations dismissed after hearing'),
(ii) offence proved - discharged or dismissed (s 556A),
(iii) recognizance with or without fine,
(iv) fine,
(v) imprisonment - 14 days and under,
(vi) imprisonment - over 14 days, less than one month,
(vii) imprisonment - one month, less than three months,
(viii) imprisonment - three months, less than six months,
(ix) imprisonment - six months, less than two years,
(x) other (essentially 'recognizance forfeited' and 'charges/informations dismissed for want of prosecution').

Findings

The penalties imposed for several of the offences considered in the present study require some interpretation. For example, the consequences of fining an individual convicted of common assault may be very different to the impact of the same penalty on an impoverished chronic alcoholic convicted of drunkenness or vagrancy. In the latter case, the imposition of a fine is usually equivalent to imposing a short prison sentence.

Even with these complications broad differences still can be detected in the sentencing patterns of city and country courts.

Vagrancy

Sydney courts adopt a less punitive approach towards vagrants than country courts. Two out of five (40.7 per cent) of those dealt with by the inner-Sydney courts and a similar number (39.5 per cent) or those dealt with by suburban courts received a term of imprisonment.

In almost all of the cases not dealt with by imprisonment the defendants were freed without punishment. These cases lapsed for 'want of prosecution'. In other words, the person charged with vagrancy embarked upon a constructive course of action to remedy his situation, often with the assistance of a welfare officer associated with the Court.

The position in the country was quite different to that which prevailed in the city. The number of vagrants imprisoned by country Courts (73.2 per cent) was almost double the two Sydney rates:

Table 1 – Penalties imposed for vagrancy by area

	Inner-Sydney (N=2584)	Suburban (N=389)	Country (N=739)
	%	%	%
Not guilty	0.7	4.4	2.4
Offence proved-discharged/ dismissed	1.4	7.5	4.3
Recognizance with/without fine	1.9	6.7	3.3
Fine	1.5	0.8	1.8
Imprisonment			
14 days and under	17.1	9.6	25.3
over 14 days, less than 1 month	6.7	7.8	18.9
1 – 2 months	13.6	18.5	24.4
3 months	3.3	3.6	4.6
'other' (essentially lapsed for 'want of prosecution')	53.8	41.1	15.0
	100.0	100.0	100.0

Drunkenness Offences

The majority of people charged with drunkenness spend a few hours sobering up in custody and then go free on bail (generally a dollar). The most important variation in penalty concerns those cases where an individual does not enter into bail but receives a fine. Because these people are generally impoverished the fine usually means one or two days imprisonment. The exception to this is where a person is unable to pay a nominal fine and, in default, is held in custody until 'the rising of the court' - usually a matter of some minutes later.

In recent times Sydney Courts rarely have imposed substantial fines in drunkenness cases. In the study period less than one per cent of cases were dealt with in this way. In suburban courts the figure was 2 per cent. In contrast, more than 1 in 5 (21.5 per cent) of drunkenness cases dealt with by country courts resulted in a fine, in default, 24 or 48 hours imprisonment:

Table II – Penalties imposed for drunkenness by area

	Inner-Sydney (N=16514) %	Suburban (N=8552) %	Country (N=18460) %
Recognizance forfeited	80.8	90.9	66.9
Admonished, discharged	4.9	5.9	9.3
Fine/24 hours	0.5	0.9	11.9
Fine/48 hours	0.4	1.1	9,6
Fine, rising of Court	12.5	0.7	0.8
Fine/recognizance	0.0	0.0	1.1
Inebriates Act	0.9	0.4	0.2

Common Assault

The offence category 'common assault' includes a large number of domestic conflicts. At all three sets of courts approximately half of the common assaults 'lapsed for want of prosecution'. This reflects the common practice among women who, having taken action to limit a man's aggressive behaviour, decide to take no further official action.

There were no major differences in the penalties imposed in those cases which did come before the city and country courts.

Unseemly words/offensive behaviour

Regardless of the location of the court more than two-thirds of unseemly words and offensive behaviour cases resulted in the imposition of a fine and/or recognizance. The only difference which could be detected in sentencing patterns was that people convicted for unseemly words in country areas were twice as likely to receive a prison sentence as their city counterparts:

Imprisoned for unseemly words

inner-Sydney (N=1252)	4.1
suburban (N=940)	1.9
country (N=1605)	8.2

Towns with Large Aboriginal Populations

Many authorities have observed that Aborigines make up a disproportionate number of those arrested for minor offences like vagrancy, drunkenness and unseemly words. The Bureau of Crime Statistics and Research has itself documented this fact in connection with a prison census (1) and the analysis of statistics from Courts of Petty Sessions.(2)

As yet data has not been collected on the penalties imposed on Aborigines compared with other groups of offenders. The most direct and satisfactory method of examining this issue would involve establishing the 'nationality' of each defendant. It is hoped that such data will shortly be collected.

Meanwhile, a useful interim measure involves comparisons between penalties imposed in those country communities with substantial Aboriginal populations and those imposed in communities which have not. However, as we have already seen, penalties for minor offences are generally more severe in the country than in the city. Therefore, it is more appropriate to compare the penalties imposed in 'Aboriginal' communities with those imposed in other country towns as well as Sydney (inner-Sydney and suburban courts).

(1) New South Wales Bureau of Crime Statistics and Research, Statistical Report 2, Aborigines in prison census 1971, April, 1972.

(2) New South Wales Bureau of Crime Statistics and Research, Statistical Report 11, Petty Sessions 1972, November, 1973.

The results of the most recent (1971) census have been used to identify the ten country Shires with the highest known concentrations of Aborigines. The number of communities selected was necessarily arbitrary but they were all within the ten local government areas of New South Wales with the highest percentage of Aboriginal residents.

The percentage of Aborigines in each area ranged from 32.8 per cent at Brewarrina to 6.5 per cent at Tenterfield. (The State figure is 0.5 per cent).

One other town, Wee Waa, was included because it is representative of those communities which periodically experience an influx of Aboriginal seasonal workers. Details of the areas included in the analysis are presented in Appendix B.

In all five offence categories the cases resulting in imprisonment in Aboriginal towns exceeded that in other country areas and in Sydney. A defendant charged with offensive behaviour before the courts serving Aboriginal towns was seven times more likely to receive a prison sentence than a defendant in other country towns and six times more likely to receive a prison sentence than his counterpart in Sydney:

Table III – Penalties imposed for Offensive Behaviour (i) Aboriginal Towns (ii) Rest of Country, (iii) Sydney

	Aboriginal towns (N=213)	Rest Country (N=1296)	Sydney (N=1885)
	%	%	%
Not guilty	0.0	2.5	2.8
Offence proved–discharged/ dismissed	7.5	7.1	8.4
Recognizance with/without fine	0.5	5.8	4.7
Fine	55.4	62.0	71.4
Imprisonment			
14 days and under	16.4	1.1	1.0
over 14 days, less than 1 month	7.5	1.0	1.2
1 – 2 months	1.4	0.8	1.5
3 months	0.0	0.6	0.4
Other	11.3	19.1	8.6
	100.0	100.0	100.0

The differences were only slightly less marked in cases involving unseemly words. The imposition of a prison sentence was seven times more likely in Aboriginal towns than in Sydney and four times more likely than in other country centers:

Table IV – Penalties imposed for Unseemly Words (i) Aboriginal Towns, (ii) Rest of Country (iii) Sydney

	Aboriginal towns (N=320)	Rest Country (N=1285)	Sydney (N=2192)
	%	%	%
Not guilty	0.9	1.0	1.9
Offence proved–discharged/ dismissed	2.5	4.4	5.5
Recognizance with/without fine	3.8	4.7	3.1
Fine	60.9	68.6	77.9
Imprisonment			
14 days and under	12.2	2.6	2.1
over 14 days, less than 1 month	5.0	1.2	0.1
1 – 2 months	4.4	1.1	0.6
3 months	0.0	0.1	0.3
Other	10.3	16.3	8.5
	100.0	100.0	100.0

In cases of common assault, differences between the three areas were less pronounced. The defendants in Aboriginal towns were respectively three and four times more likely to receive a prison sentence than those in other country

centres and Sydney. This difference reflected the greater likelihood of common assault cases proceeding to a court determination in communities with substantial Aboriginal populations.

Nine out of ten (89.8 per cent) vagrants before Aboriginal courts and seven out of ten (70.9 per cent) of those dealt with by 'other' country courts received prison sentences. In almost all cases the sentence was of less than three months. However, substantially fewer vagrants (40.5 per cent) were imprisoned by Sydney courts. In half of these cases Sydney Magistrates allowed the matter to lapse, usually for the reason that the defendant had embarked on a programme of rehabilitation:

Table V– Penalties imposed for Vagrancy (i) Aboriginal Towns (ii) Rest of Country (iii) Sydney

	Aboriginal towns (N=88)	Rest country (N=651)	Sydney (N=2973)
	%	%	%
Not guilty	0.0	2.8	1.2
Offence proved–discharged/ dismissed	1.1	4.8	2.2
Recognizance with/without fine	0.0	3.7	2.5
Fine	0.0	2.0	1.3
Imprisonment			
14 days and under	35.2	24.0	16.2
over 14 days, less than 1 month	30.7	17.4	6.7
1 – 2 months	21.6	24.6	14.3
3 months	2.3	4.7	3.4
Other	9.1	16.0	52.2
	100.0	100.0	100.0

The penalties imposed on drunkenness offenders represented perhaps the most distinct differences between the Courts serving Aboriginal and other communities. The fact that Sydney courts can draw upon a wider range of welfare agencies and resources has made it unnecessary to use imprisonment as a means of protecting or deterring chronic alcoholics. However, the table below shows that country courts used the fine, in default 24 or 48 hours imprisonment penalty nine times as frequently as their Sydney counterparts. The proportion of cases dealt with in this way in Aboriginal towns was thirty-four timesgreater:

Table VI – Penalties imposed for Drunkenness (i) Aboriginal Towns (ii) Rest of Country (iii) Sydney

	Aboriginal towns (N=4572)	Rest Country (N=13888)	Sydney (N=25066)
	%	%	%
Recognizance forfeited	37.6	76.5	84.3
Admonished, discharged	10.3	8.8	5.2
Fine/24 hours	24.5	7.8	0.7
Fine/48 hours	23.7	5.0	0.7
Fine, rising of Court	1.1	0.8	8.4
Fine/Recognizance	2.6	0.6	0.0
Recognizance	0.1	0.2	0.0
InebriatesAct	0.1	0.3	0.7
	100.0	100.0	100.0

Comment

To achieve a balanced interpretation of the foregoing figures it is necessary that a few words be said about the law touching the duties of a magistrate and the social and community situation of a provincial magistrate.

It has long been good law that among the many other factors to be considered by magistrates and judges when passing sentence is the prevalence of the particular offence in the district where they are operating. To this end judicial officers are expected to make themselves acquainted with what is going on in their districts.

Prevalence itself demands more than a passing look. By way of example 250–300 arrests in a 24 hour period for public drunkenness in a city of almost 3,000,000 people may be thought to be of small moment. On the other hand 5 or 6 arrests in the same period in a town of 1500 to 2000 people will attract much more attention. The level of visibility of a particular class of offender is related to the amount of community disquiet generated. Visibility may be much lower in a large city than in a small provincial town.

It is the concern of a magistrate, so far as he can, with the means available to him, to secure public peace and good order. He attempts to achieve this by his handling of individual cases and hopes that others may, thereby, be discouraged from offending in like manner. Again he believes that what he does will be known to proportionately a much greater number in provincial towns than in great cities.

The use of punishment is an important means available to the magistrate for combating problems which are prevalent in

particular areas. However, it is appropriate to recall the observation of the Baroness Wootton in Crime and the Criminal Law, when she said that since we must apply punishment we should take care to apply only so much as we think necessary to achieve our goal of deterrence.

Latterly in Sydney it has been possible for magistrates in some cases to lay aside punitive measures in favour of an approach emphasising social-support and attempted rehabilitation For example, a group of medical and social workers attend the part of the Central Court of Petty Sessions which deals with those accused of public drunkenness. These workers are often able to persuade a significant number to attend at the social agencies able to provide the most appropriate form of treatment.

The medical and social workers assisting the Court are backed by government and voluntary organisations of considerable resource. If such community supports were available in country towns, especially the smaller ones, they would be of considerable help in widening the range of options available to the magistrate in his handling of difficult social problems.

Appendix A

Courts included in the study

Inner City	Suburban	Rest of State
Balmain	Bankstown	All other Courts of Petty Sessions in N S W
Central	Blacktown	
Glebe	Burwood	
Newtown	Camden	
North Sydney	Campbelltown	
Paddington	Campsie	
Redfern	Fairfield	
	Hornsby	
	Kogarah	
	Lidcombe	
	Liverpool	
	Manly	
	Parramatta	
	Penrith	
	Richmond	
	Ryde	
	Sutherland	
	Waverley	
	Windsor	

Appendix B

Country towns with substantial Aboriginal Populations

Aboriginal Towns
Brewarrina
Walgett
Lightning Ridge
Collarenebri
Bourke
Peak Hill
Coonamble
Gulargambone
Wilcannia
Moree
Boggabilla
Tenterfield
Condobolin
Wee Waa

D. West, Government Printer, New South Wales 1983