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The Scottish Journal of Criminal Justice Studies

The Journal of the Scottish Association for the Study of Offending

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Volume 12, July, 2006.

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EDITORIAL

This is the twentieth volume of the **Scottish Journal of Criminal Justice Studies**.

In future volumes of the **Journal**, I hope to continue to publish as articles those papers presented at Branch Meetings or Day Conferences that Branch Secretaries think are worth offering to a wider audience. Original articles will also be considered for publication. There is no copy deadline, but they must be with me by the end of each May if they are to be considered for inclusion in that year's **Journal**. Branch Secretaries are invited to send suitable articles to me (in Word – or earlier versions - or in .rtf format) by attaching them to an email to me (jasonditton@lineone.net). All original articles will be reviewed by two members of the **Editorial Board**.

Jason Ditton

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In stimulating research and services and making new findings and practice more widely known, the International Review of Victimology will be priority reading, not only for all those involved in academic research, but also for practitioners working with victims, as well as policy makers.

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The use of corporal punishment against children

Repeat victimization

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The Editors welcome contributions. Please write to **Joanna Shapland**, Department of Law, University of Sheffield, Crookesmoor Building, Conduit Road, Sheffield S10 1FL, U.K. (j.m.shapland@sheffield.ac.uk). Instructions for contributors are at <http://www.sheffield.ac.uk/ccr>

Subscription rates per volume of 3 issues: £169/US\$279 (special introductory rates for individuals who have no access to institutional funds £69/US\$129). **Subscription enquiries should be sent to AB Academic Publishers, PO Box 42, Bicester, Oxon OX26 6NW, U.K. (jrnl@abapubl.demon.co.uk).**

CONTENTS

	Page
Editorial.....	2
Conference Papers	
From “Crime and the Media” SASO’s 36th Annual Conference.	
“Media, crime and law and order” by Robert Reiner.....	5
“The press and crime” by Tom Hamilton.....	22
“Crime reporting and its effects” by Duncan Campbell.....	28
Original Articles	
“Alternatives to Prison” by Sir Anthony Bottoms of Cambridge and Sheffield Universities	34
“Prisons, prisoners and criminal justice as an instrument of social policy” by Roger Houchin of Glasgow Caledonian University	38
“Promoting desistance and resilience in young people who offend” by Lucy Robertson, Anne-Marie Campbell, Malcolm Hill and Fergus McNeill of the Glasgow University Centre for the Study of the Child.....	56
“Electronically monitoring offenders in Scotland, 1998-2006”, by Mike Nellis of the Glasgow School of Social Work, University of Strathclyde	74
Obituaries	
Audrey Chisholm	97
Lord Hunter.....	98
SASO	
Name change.....	103
Objects and Membership	104
Office Bearers	104
Branch Secretaries	105
Chairman’s Report	106
Starting a new branch	109

Media, Crime, Law and Order

By Robert Reiner of the London School of Economics

Introduction

On the 24th April 2006 the then Home Secretary Charles Clarke delivered a much publicised lecture at the LSE on ‘The Media and Civil Liberties’. This castigated the media for undermining the forces of law and order because of a misplaced emphasis on civil liberties. The following week Mr Clarke lost his post in the wake of a media furore concerning the Home Office’s failure to consider the deportation of prisoners from overseas when they were released at the end of their sentences.

At the end of January 2006 the Metropolitan Police Commissioner Sir Ian Blair faced a chorus of calls for his resignation from conservative politicians and newspapers following remarks about the media coverage of crime that he had made at a meeting of the Metropolitan Police Authority. Sir Ian had accused the media of ‘institutional racism’ for giving less prominence to reporting murders of minority ethnic victims, and expressed puzzlement over the huge attention paid to the Soham murders by contrast.

These recent incidents illustrate concerns about media representations of crime and criminal justice that have very long histories. Do the media undermine authority and order? Do they exaggerate and misrepresent the risks of crime, fanning fear and encouraging support for authoritarian solutions? Such anxieties have stimulated not only endless argument but also substantial social science research industries. This article will briefly summarise the huge literature on these topics, which has sought to analyse the content, consequences, and causes of media representations. It will then report on a historical study of changing media representations of crime since the Second World War. It will conclude that there have been fundamental transformations in media discourse about crime in the course of the last thirty years, corresponding to wider changes in political economy, social structure, and culture, crystallised in the rise of the politics of law and order.

The Media-crime debate

There is a centuries-long history of anxiety about criminogenic consequences of the mass media, a central part of perennial ‘respectable fears’ about

supposedly declining moral standards that Geoffrey Pearson has traced back over the last few centuries (Pearson, 1983). We can call this the 'desubordination' thesis: the media tend to represent crime and criminal justice in ways that undermine authority and encourage deviance.

There is also a long-standing liberal/radical concern about media representations of crime. In this view the media exaggerate and distort the threat of crime, thus bolstering fear and stimulating public support for authoritarian solutions. We can call this the 'discipline' thesis.

A more complex view can also be distinguished: the media are an arena of contestation between different interests, pressures and perspectives, and cannot be seen monolithically as either desubordinating or disciplining. This approach has been called 'liberal pluralism' (Greer, 2003), and it tends to be supported by research, especially on 'effects' and on production processes, which portray a messy world of conflicting influences.

The Content of Media Representations

'Content analysis' usually refers to statistical studies within a positivist paradigm, that – in the words of one practitioner – provide an 'objective and quantitative estimate of certain message attributes' (Dominick, 1978: 106). There are many problems with this claim however (Sparks, 1992). The categories for counting categories reflect the researcher's theoretical conceptions of significance, not intrinsic characteristics of an objective structure of meaning in the text itself. Items deemed as identical by the analyst may have very different meanings to different audiences. It is not possible to read off the significance of media narratives from their content, even though such inferences are frequently made. Because of these problems analyses of content must be interpreted reflexively and cautiously. Nonetheless it is noteworthy that the many studies of the content of mass media representations of crime and criminal justice, at different places and times, whether the focus is on purportedly 'factual' representations (news, documentaries) or fictional, tend to concur on certain fundamental themes (Reiner, 2002 is a detailed summary).

A broad convergence of results of content analyses can be discerned, that can be called the 'established model'. The following are its key features: There is first of all the prominence of crime stories. News and fiction crime stories are prominent in all media. There are, however, significant variations according to medium, market, methods of research, historical period and cross-culturally. There is also what has been called the 'law of opposites'

(Surette, 1998). The pattern of representation of crime and criminal justice is in many respects the reverse of that portrayed by official statistics. Media representations are characterised by these features:

- An overwhelming overemphasis on serious violent crime against individuals;
- The risks of crime are exaggerated quantitatively and qualitatively, though property crime is relatively downplayed;
- There is a concentration on older, higher status victims and offenders;
- There is a generally positive image of the effectiveness and integrity of policing and criminal justice (e.g. most cases are cleared-up) and there is little focus on corruption or abuse;
- Most stories are about individual cases, not trends, analysis or policy.

Consequences of media representations

There is a huge volume of research seeking to measure the ‘effects’ of media representations of crime (Reiner, 2002 offers a more detailed summary). The longest standing concern has been with testing possible consequences of media representations of crime for offending and violence. More recently there has also been considerable work on the impact of the media on fear of crime (Sparks, 1992; Ditton and Farrall, 2000).

As with content analysis, the bulk of this work has been conducted within a positivist paradigm. A typical approach has used social psychological laboratory research: an experimental and a control group are exposed to some media content, and measured before and after this to ascertain the ‘effects’ on behaviour or attitudes. This vast body of research has yielded little for the enormous expenditure and effort involved. The following masterpiece of agnosticism is typical of the findings: ‘for some children, under some conditions, some television is harmful. For some children under the same conditions, or for the same children under other conditions, it may be beneficial. For most children, under most conditions, most television is probably neither particularly harmful nor particularly beneficial’ (Schramm, *et al.*, 1961).

This is not to say that the media have little or no consequences for crime. Some criminogenic effects are likely. The media figure in most theoretical accounts of crime, and ‘field’ studies of the introduction of new media in practice do suggest effects on crime rates (e.g. Hennigan, *et al.*, 1982, an econometric study of the spread of television in the USA in the early

1950s). But the measurable *direct* effects of media on crime are small. This is because the predominant social psychological research paradigm is geared to testing a most implausible hypothesis, that media representations have immediate effects of a uniform kind immediately. A more plausible approach is that the media are an important dimension of cultural formation, but working interdependently with other processes, differently for different sections of audiences, and slowly over time. 'The study of enculturation processes, which work over long time periods, and which are integral to rather than separate from other forms of social determination, would not ask how the media make us act or think, but rather how the media contribute to making us who we are' (Livingstone, 1996: 31-2). This model is hard to test, of course, and certainly cannot be the subject of laboratory experiments!

The media's exaggeration of the threat of serious violent and sexual crime has often been seen as leading to unrealistic, disproportionate, 'irrational' fear of crime (Gerbner, 1995). As with the research on the criminogenic effects of the media, studies of the relationship between media and fear of crime are equivocal about the strength, direction, or even the existence of a causal relationship between media consumption and anxiety (Ditton and Farrall, 2000; Jackson, 2004; Ditton *et al.*, 2004; Farrell and Gadd, 2004; Chadee and Ditton, 2005).

Even if though the media are not a straightforward cause of 'fear of crime', media representations are important in framing public discourse about crime, and have played an important part in the rise of the 'politics of law and order'. They are the principal source of information about crime and criminal justice for most people who have little or no direct experience of offending or victimisation. The media frame debate about 'law and order', in conjunction with politicians' campaigning and broader shifts in culture, social structure, and political economy. It has been shown that fluctuations in public concern *follow* media and political campaigns (Beckett, 1997), not statistical crime trends. The media played a central role in the politicisation of law and order, by Richard Nixon in the 1968 US Presidential election, and by Margaret Thatcher in Britain in the 1970s. They undoubtedly are an important explanation of what the Home Office and police leaders have referred to recently as the 'reassurance gap': the failure of public confidence to respond to the crime drop since the mid-1990s (Hough, 2003; Roberts and Hough, 2005).

Causes of media representation

The pattern of media representation of crime can only be explained to a limited extent as a direct reflection of the ideologies of media owners, producers or

reporters. It is true that most media organisations are large corporations, and their owners predominantly conservative. Specialist crime reporters in the past tended to be self-consciously police groupies (Chibnall, 1977), working closely with detectives, but this is much less true of the current breed of home affairs, legal or even crime correspondents, who often have an explicitly civil libertarian or human rights perspective (Schlesinger and Tumber, 1994). Even the old-fashioned crime reporters who had a close relationship with the police shared a ‘watchdog’ ethic, and would be keen to hound out wrongdoing (they would certainly be alert to the news interest of stories of police or other official corruption).

Much research on the work of reporters has emphasised the importance of the professional sense of ‘newsworthiness’, the values that are seen as making a good story. As classically formulated by Chibnall, these are: ‘dramatisation, personalisation, titillation, novelty’ (Chibnall, 1977; Jewkes, 2004, chapter two, offers an up-dated expansion of this list). Crime stories similarly offer the narrative virtues of clarity and closure, as well as the thrills of vicarious danger and ‘edgework’, making them popular as fictional entertainment.

The underlying structural pressures of news production are a fundamental basis of the pattern of representation of crime and criminal justice. The police and courts are reliable story suppliers. The economic pressures governing the allocation of scarce journalistic resources leads to a concentration on such predictable sources. The police in particular become ‘primary definers’ of crime news. Safety and other constraints also lead to reporters or broadcasters of crime news becoming ‘embedded’ with the police.

Changing Content Since 1945

In earlier sections the predominant pattern of media representation of crime, the ‘established model’, has been analysed. This section addresses the question of whether this has changed over time, and if so, how? It reports some results of a historical content analysis of cinema crime films and news stories about crime (Allen *et al.* 1997, 1998; Reiner *et al.* 2000, 2001, 2003). The study analysed in detail a random sample of 84 out of the 196 crime movies released in Britain between 1945-1991 that featured in lists of the annual box office hits, and also estimated the shifting proportion of crime films overall by examining a 10% random sample of all films. The news analysis was based on a 10% random sample of home news stories in the *Times* and the *Mirror* between 1945 and 1991, and a closer qualitative reading of a smaller sample of the crime news stories published on a randomly selected 10 days in every second year over that period.

The quantitative analysis of both the films and the news stories suggests that most features of the ‘established model’ were found throughout the period, but with an intensification of the ‘law of opposites’ (Surette 1998): the focus on serious violent crime grew stronger. The criminal justice system became more controversial, however, with more negative representations of the integrity and effectiveness of the police in particular (the police are overwhelmingly the most commonly depicted part of criminal justice).

There was no clear trend in the proportion of films released since 1945 that were primarily crime stories (Allen *et al.* 1997). There were fluctuations from year to year, but generally about 20% of films released could be classified as crime movies. There was, however, an increase in the prominence of crime news after the mid-1960s. Until then the overall percentage of home news stories that were primarily about crime averaged about 10% in both the *Times* and the *Mirror*. Since the late 1960s this has doubled to around 20%. The proportion of stories about the criminal justice system also increased after the late 1960s in both papers (from around 3% to 8%), corresponding to the politicisation of law and order in that period (Downes and Morgan 2002).

The pattern of representation of crime has changed since World War II in ways that can broadly be described as a reinforcement of the ‘established model’ i.e. the disproportionate focus on the threat of serious violent crime has intensified. This is indicated by several statistical trends.

Table 1: Principal Crimes in Newspaper Stories

THE MIRROR

%	1945-64	1965-79	1980-91
Homicide	29	28	31
Violence	24	28	24
Property	16	8	9
Fraud	5	2	4
Against State	10	7	6
Public Order	5	6	4
Drugs	-	4	8
Sex	7	4	8
Traffic	-	5	5
	N=112	=166	N=140

THE TIMES

<u>%</u>	<u>1945-64</u>	<u>1965-79</u>	<u>1980-91</u>
Homicide	44	29	37
Violence	16	38	25
Property	21	5	5
Fraud	10	22	8
Against State	13	4	3
Public Order	6	6	5
Drugs	-	3	3
Sex	3	1	6
Traffic	4	-	1
	N=99	N=77	N=63

Table 1 shows the principal crimes that are the focus of the newspaper stories in our sample. In both newspapers, homicide and violent crime constitute the largest category by far in all three sub-periods, but to a slightly increasing extent. The reporting of ‘volume’ property crimes in which there is no element of violence diminishes considerably over the period.

This is also true of cinema films as Table 2 shows. The majority of films feature homicide or sex crimes as the principal offence animating the plot. Property crimes have almost disappeared as central to narratives. This table also shows that the degree of violence depicted has intensified considerably.

Table 2: Cinema Crime Films, 1945-91

	<u>1945-64</u>	<u>(%)</u> <u>1965-79</u>	<u>1979-91</u>
<i>Principal Crime</i>			
Homicide	50	35	45
Property	32	20	5
Sex crime	3	10	15
Drugs	2	10	5
Intense pain/ suffering of victim	2	20	40

News and fictional stories also feature an increasing number of crimes in addition to the central one animating the narrative. Some of these are ‘consequential’ offences: other crimes committed as a result of the primary one (for example to cover it up). Others are ‘contextual’: crimes that have no relationship to the primary one but are still featured in the story (for example the robbery in progress encountered by Clint Eastwood as ‘Dirty Harry’ when he goes for a hamburger). These ‘contextual’ crimes in particular signify a world permeated by a threat of crime. An increasing proportion of news stories feature such secondary offences, as Table 3 shows. Cinema films exhibit a similar trend (Reiner *et al.* 2001: 184).

Table 3: Multiple Crime News Stories

Consequential Crimes (as % of all principal crime reports)

1945-64	1965-79	1981-91
16	22	22

Contextual Crimes (as % of all principal crime reports)

1945-64	1965-79	1981-91
19	32	44
(N=211)	(N=243)	(N=203)

These tables suggest that both news and fiction stories are increasingly depicting crime as a serious and pervasive threat. They are also representing the police as less reliable and successful as a protection for potential victims, although they still portray the police as usually successful in clearing-up crime. Tables 4 and 5 show an increase in the proportion of both news and fiction films that question the integrity and the effectiveness of policing. In both news and fiction stories the police are overwhelmingly the most common part of the criminal justice system to be represented at all. Table 5 also shows that there is a marked trend for the police to become the protagonists of fictional films, displacing other types of hero figure that used to be more prominent.

Table 4: Police Success and Integrity Newspaper Stories (1945-91)

CLEARING-UP CRIME

% of principal crimes reported as cleared-up

<u>1945-64</u>	<u>1965-79</u>	<u>1981-9</u>
73	63	51

POLICE DEVIANCE IN NEWSPAPERS 1945-91

% of all crime stories primarily concerning police deviance

<u>1945-64</u>	<u>1965-79</u>	<u>1981-91</u>
10	12	19

Table 5: Police Legitimacy in Cinema Films, 1945-91

	<i>Protagonist</i>		
Police	9	50	40
Amateur/PI	36	5	-
Victim	13	-	25
	<i>Police</i>		
Violate due process	11	80	67
Excessive force	3	44	25
Honest	89	67	77

Quantitative content analysis thus shows a clear trend in the last half century for crime to be represented as an increasingly fearful and common threat. The police (the primary symbols of social control in general) are seen more negatively, both in terms of their effectiveness in providing security, and their integrity and adherence to the rule of law – although they are still portrayed predominantly in a favourable light. Qualitative analysis of news and cinema crime stories suggests even more fundamental shifts in popular media discourse about crime and justice.

The Changing Discourse of Crime Stories

The quantitative changes indicate a deeper qualitative transformation in public discourse about crime. Crime news is almost by definition bad news: it reports

the occurrence of officially proscribed activity, although this may be depicted as isolated unfortunate incidents. From the late 1960s, however, crime is presented as increasingly threatening and out of control – as symptomatic of wider social crisis, and ever more serious and pervasive in its impact on ordinary people with whom the audience is invited to identify. Three principal themes can be discerned in this new law and order discourse:

1. *Accentuate the negative*

News stories increasingly represent developments in a negative way, emphasising crime as an ever more menacing problem. One striking example is a pair of stories reporting essentially similar changes in the official crime statistics. Both are from the *Daily Mirror*, the first on May 2 1961 (p.7), the second August 26 1977 (p.4). The 1961 story was the first report of the annual crime statistics that we found in our sample (although the publication of crime statistics now always attracts much attention and concern, reflecting the politicisation of law and order). It was headlined ‘Fewer Sex Crimes’, and reported that there had been a ‘slight’ fall in the recorded number of sex crimes since 1959. This was contrasted with a rise of 10% in indictable offences known to the police, including a 14% increase in violence. What is remarkable in retrospect is the emphasis on the *good* news, the ‘slight’ drop in sex offences, highlighted in the headline and the first paragraph, but the downplaying of the fairly large rise in violent and other offences. The story is written entirely without any emotional or evaluative expressions, as a straightforward report of new data.

This is in stark contrast to a report in 1977, headlined ‘Crime soars to new peak’. It is of course a story from a period in which law and order was beginning to be politicised, emerging as a leading issue with which the Conservatives under Margaret Thatcher were attacking the Labour government (Downes and Morgan, 2002). What is really striking is that the changes in the crime figures reported are mainly worse than the 1959 ones. This time, however, every bit of bad news is stressed. The overall rise in recorded crime was 1% (by contrast with the 10% of 1959). ‘The grim Home Office figures show’ a 10% rise in violent crime, a 24% increase in firearms offences, a 9% rise in homicide, and a 15% increase in muggings (mainly because of a 24% increase in London – the rest of England and Wales reported an 11% decline). Tucked away at the end the story reports that ‘there were 1500 fewer sexual offences’ recorded.

In short, the statistical changes reported are very similar. But whereas in 1961 the emphasis was on the good news, and the writing style restrained and

descriptive, the 1977 story spotlights the bad news in a tone of panic. The contrast illustrates a number of basic trends in the reporting of crime news. Above all it indicates the construction of crime as a major problem posing an increasing threat both in extent and seriousness. It shows the news expressing and reinforcing the emergence of law and order as a public concern and a political issue. 'Bad news' and sensationalism have become core news values.

2. *Victim culture: crime as a zero-sum game*

Both news and fiction crime stories have become increasingly centred on the victim as the focus of the narrative. There has been a profound change in the characterisation of victims and their role within crime stories. Increasingly the harm done by crime is equated with the suffering and distress of individual victims, as well as the potential threat of victimisation to readers who are invited to identify with the victims through portrayals of their ordinariness, innocence and vulnerability. Whereas in the earlier part of the period studied there was also often a measure of concern for offenders, both to understand and if possible rehabilitate them, increasingly the victim/perpetrator relationship is presented as zero-sum: compassion for the offender is represented as callous and unjust to victims. Two contrasting pairs of news stories can be taken as examples. The first pair both concern violence against a child, the second pair both involve a marital triangle.

On February 27 1945 the *Daily Mirror* front page prominently featured a photo of a two year old girl, looking sad and in pain, headlined 'Another cruelty victim'. Even in a murky photocopy, even after more than half a century, the child's pitiful, anguished face cries out for comfort. The story is the main home news of the day. One paragraph details the poor girl's injuries: black eye, bruises, 'Red weal marks extended over her temple and across her cheeks.' Beyond this clinical detail there is no attempt to spell out the trauma and suffering of the victim, or the evil of the assault. Approximately two thirds of the story focuses on the offender, a 26 year old Birkenhead man who lived with the girl's mother, and was sentenced to six months with hard labour. The last part of the story concentrates on his account of his own actions. He claimed 'the child's crying got on his nerves and that he "couldn't help himself." This was explained by the fact that 'he had been torpedoed three times and that his nerves were very bad.' What is noteworthy is the absence of demonisation of the perpetrator, and the concern to understand how he could have carried out such an act from *his* point of view. Attempting to understand the offender is not seen as incompatible with the greatest concern for the victim, and condemnation of the act is taken for granted.

This can be contrasted with the way the *Times* reported a child murder case on November 25 1989 (p.3). This is of course a much more serious offence: murder rather than assault. Nonetheless the presentation of the story suggests a fundamental transformation in discourse about serious crime since 1945. The story is the lead story on the main home news page. A banner headline reads 'Martial arts fanatic gets life for killing daughter aged five' and a smaller headline above it tells us that the 'Girl died from a combination of pain, shock and exhaustion after vengeful beating'. A sub-headline says that 'Social workers held many case conferences but she slipped through the safety net'. Three pictures illustrate the story: a large one of the unfortunate victim, happy and smiling; her mother weeping; and her father, the killer, looking dishevelled and menacing. All are Afro-Caribbean. The most immediately noticeable contrast with the 1945 story is the use of much more emotionally charged language to emphasise the victim's suffering and the perpetrator's evil – not only in his actions but his essence. The assault leading to the girl's death is elaborated in brutal detail, and the victim's pain and fear are stressed. Hammond is portrayed as essentially violent behind a façade of respectability and concern for his children. 'Outwardly he was a doting father, proud of his children and anxious that they should do well at school, but inwardly he was a moody fitness fanatic' and martial arts expert. His 'three children were placed on the at-risk register following incidents in which Sukina and her three year old sister were taken to hospital with broken limbs.' The only glimpse at the defendant's perspective offered, reporting his admission that 'he lost control and did not realise what he was doing', is undercut by its placement in the middle of a detailed, gruesome account of his actions. The only comment showing any sympathy towards him comes from the mother: 'Whatever they do to David will never bring my daughter back to me. I have got no feelings whatever towards him. But I cannot condemn him as he was a good father in a loving way. He just had a bad temper that he would not control.' This is immediately contradicted by the Detective Superintendent in charge of the case, who tells us that the perpetrator had previous convictions. The killer is not the only character in the story who is blamed, however. Considerable attention is given to the failure of social services to protect the child adequately despite repeated warnings.

The presentation of these stories is radically different in a number of ways. The 1945 *Mirror* story describes a tragic situation in which a child is assaulted by a man who is presented as himself a victim rather than an essentially evil person. The injury suffered is presented in degree zero clinical language, and no emotional or evaluative adjectives are used to colour the report. The 1989 *Times* story by contrast is replete with adjectives stressing the victim's anguish

and the perpetrator's pathologically violent character. It is noteworthy that by 1989 the *Times* is using more emotive styles of reporting than a tabloid had forty five years earlier. The stories illustrate a profound change in discourse about crime. By 1989 it has become a zero-sum game in which only the victim is represented as a suffering human being. Her plight is caused by two villains. A demonised brute who attacks her, and a negligent authority that fails to protect her. Instead of a complex human tragedy we have a one-dimensional battle of good vs. evil.

This illustrated further by the following two cases of violence in the context of a marital triangle. On December 13 1945 the *Mirror* published a story on its front page under the headline 'Three years for "savage" cripple who branded rival'. The story continued on the back page, under another headline, 'Cripple and branded woman "in a fervour"'. Nearly all the front and back page stories concerned crime, but this was the most prominent. It concerned a crippled woman who had branded another woman that her husband had 'associated' with whilst his wife was in hospital. The story highlights the judge's comments whilst sentencing her to three years for the 'savage' offence. His emphasis is not so much on the brutality of her attack *per se* as that she took 'the law into her own hands' and used a punishment – branding – that 'our laws' now regarded as 'too revolting to the civilised mind to be inflicted for any offence whatsoever'. The bulk of the story concerns the anguished expressions of guilt by all three parties in this triangle. The husband pleads for mercy for his wife, whilst the victim is described as having accepted the branding as a deserved punishment after confessing to the 'association'. Both the victim and the husband seemed to accept the primary responsibility for what had occurred. Altogether this is presented as a tragic human situation, with no innocent parties, in which all are victims of their own wrongful actions, and filled with remorse. The punishment is necessary to maintain the integrity of the law rather than to avenge harm done, to placate the victim's pain, or to incapacitate or deter an evil perpetrator.

On 6 July 1991 both the *Mirror* and the *Times* reported another case arising from a marital triangle. The *Times* covered it on the front page with a photo spread, and more fully on an inside home news page. The *Mirror* spread it over two full pages (2/3), with many photos. The case involved an armed man who held his ex-wife's lover hostage in a car for 29 hours, surrounded by armed police. The kidnapper had been alarmed that his children were to be taken into care - apparently a mistake as they were to stay with his ex-wife. The pictures in both papers exhibit much of the iconography of thriller movies: the surrounded car, police marksmen in bullet-proof vests, the hostage emerging

with blood pouring from his left arm where he'd been shot, the hand-cuffed offender with face blacked out being led away. No doubt the prominence given the story owed much to the availability of this dramatic visual material.

There is a sharp contrast with the 1945 story, as the narrative is constructed with a clear hero/victim and villain/perpetrator. Although the incident is referred to as tragic, the sympathies expressed are entirely one-sided. The violence is emphasised: the victim was threatened with a noose, the perpetrator was armed with a crossbow and gun and shot the victim in the arm as police converged on the car. The perpetrator is continuously described in one-dimensionally villainous terms as 'the gunman', and we are told that he had been involved in a 'tug of love drama' 20 years previously in Australia. His arsenal of weapons is described in detail. By contrast the victim is extolled in heroic terms: 'Hero is Mr Cool' reads a sub-headline, and the police credit him with 'remarkable resilience and patience'. What could be read as a tragic personal conflict in which everyone was a victim (as the 1945 story had been constructed) is transformed into a straightforward fight of good vs. bad.

These pairs of stories illustrate the key change in the discourse of crime news reporting since the Second World War. The narratives have become personalised and sensationalised. What drives them is a battle against one-dimensionally evil villains who inflict dramatic and frightening suffering on individual victims. This pattern is also found increasingly in crime fiction (Reiner, *et al.*, 2000, 2001).

3. It's Not Business, It's Personal

In quantitative terms many aspects of the pattern of crime news stories remain constant in the half century after the Second World War, and confirm the 'law of opposites'. In particular there is disproportionate reporting of violent crime, and of older and higher status victims and offenders. Nonetheless even in terms of the quantitative analysis much has changed. Property crime without violence has dropped out of the news picture, unless there is a celebrity angle. Victims increasingly feature prominently, and often occupy the subject positions of crime stories. The police are represented in a much more negative way both in terms of effectiveness and integrity, although the predominant portrayal of them remains positive.

Crime is now portrayed as a much greater risk than before, not just because it is more common, but because it is represented in much more highly charged emotional terms as a serious threat to ordinary people. There is much greater individualism underlying the narratives. Crime is seen as problematic not

because it violates the law or other moral reference points, but because it hurts individual victims with whom the audience is led to sympathise or empathise. Offenders are portrayed not as parts of social relations or structures that the victims and the public are also embedded in, but as pathologically evil individuals. Any attempt to understand them, let alone any concern for their point of view or their rehabilitation, is seen as insensitive to the suffering of their victims. These features also testify to a decline of deference. Crime is seen as wrong not because of acceptance of legality as a benchmark of how people should behave but because it causes personal harm to individuals we identify with. The police and other authorities are themselves portrayed as increasingly immoral or irrelevant.

Conclusion

The changing discourse of crime news and fiction stories is part and parcel of those broader developments in the politics of crime and criminal justice policy that Garland has called the 'culture of control' (Garland, 2001). Clearly they can only be understood as aspects of much broader transformations of political economy and culture, above all the hegemony of neo-liberalism, the combination of free market economics and cultural individualism that has become dominant since the 1970s. A less deferential, consumerist society conceives of crime and policing not as the breaking and enforcement of generally respected laws, but as the violation of sympathetic and vulnerable individual victims. Each narrative has to construct its own moral universe in these terms: identification of characters as good or bad cannot be read off from their legal status. This contrasts sharply with the earlier narratives in which the legitimacy of law and the evil of breaking it could be taken for granted. Perpetrators and victims shared a common humanity, and the interest of stories often turned on understanding offenders' motivations, not simply demonising them. Following the politicisation of law and order crime stories have increasingly become an orchestration of hate and vengefulness against individual offenders, supposedly on behalf of their victims, in what sometimes amount to virtual lynch-mobs.

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The Press and Crime

By

Tom Hamilton, News Editor of the *Daily Record*.

Most newspaper executives spend their professional lives trying to avoid appearing before sheriffs and judges, and many of my colleagues find it somewhat strange that I have actually volunteered to do so today – especially at such an early hour on a Sunday morning when accepted lore would have it that newspaper types are either just going to bed or waking up to a hangover of savage dimensions. Hopefully, if nothing else, my presence here today will go some way to dispelling such highly actionable views.

I regard the issue of crime and the media as massively important – especially as it affects the tabloid press – and am delighted to have this opportunity to be here today. I would first of all like to emphasise that the views I am expressing here are my own personal thoughts and not necessarily those held by the industry in general. But I am sure the broad sentiments I express will be generally accepted by many of my journalistic colleagues.

Crime is hugely popular with the newspaper-buying public. We spend a lot of financial resources each year employing dedicated crime reporters on our own rolling readership surveys. These show consistently that crime appears in the top three categories of stories that our customers want to read. It's right up there in the same league as the latest crisis at Rangers, Celtic or Hearts. It falls into the same category as the latest showbiz gossip, soap plot and political sex or sleaze scandal.

And while recent Scottish Executive surveys have revealed a huge rise in fear of crime among the general population, those very same people have a morbid fascination in reading about crime and criminals - as long as it does not directly impact on them or those around them.

It could be the latest memoirs of a gangland villain, an expose of the vice scene in Scotland, a gruesome murder background, a child murder trial. Quite honestly, the public cannot get enough crime. The proof lies in circulation figures and more often than not a major crime story sells more papers. By far the most common type of crime story which appears in newspapers are criminal trials or general stories emanating from the courts.

And initially, I would like to talk about how the appointment of Elizabeth Cutting, in her role as a liaison between the bench and the media, has resulted in some important changes in the relationship between the bench and journalists. Until recently, judges and sheriffs, by and large, were virtually unapproachable. In a few notable exceptions some could be dealt with directly, but almost always in an informal off the record manner. Others, to be blunt, regarded the media as an unwelcome and unnecessary intrusion into their courts and their cozy world. But there has been a sea change and more openness is now becoming apparent. The conduit provided by Elizabeth's post has been instrumental in providing a better understanding from both perspectives.

If I may cite some examples, in today's economic environment it is not possible for newspapers to provide their own cover at every court every day – it is simply not feasible. In some courts no reporters are present at some cases which appear on the face of it not to be newsworthy. On occasions these cases are brought to our attention by the understandably highly-emotional relatives of crime victims who have been upset by what they believe to be a soft sentence. In these circumstances, Elizabeth forms a crucial link and allows a judge or sheriff the opportunity to provide a full and detailed explanation for their disposal.

Also, in recent years, a small army of freelance correspondents has emerged and these journalists often provide cover for all the papers from a specific court. All newspapers use these normally reliable operators and they provide a generally first class service. But like everyone they are human and - in the same way as staff reporters can make occasional errors - so too can they.

In one recent instance a story was filed from the High Court. The case involved a 19 year-old man who was found guilty of raping a 15-year old girl. The rapist had been released on bail pending the preparation of background reports. At the time a national debate was raging on the subject of bail being granted to sex offenders. Many newspapers were trying to educate their readers on the importance of the European Convention of Human Rights and how it had impacted on Scots Law. The Executive was looking at ways of toughening up the existing bail regulations And then, out of the blue on a very quiet news day, this story drops on our computer screens.

There was suitably furious reaction from women's groups and individuals and organisations which concentrate on protecting the interests of victims of sex crimes. Ordinarily, the story would have walked into most newspapers

and on a quiet news day could easily have been justified as the page 1 splash under the headline: ‘Barmy judge frees rape beast to walk your streets’. Even Joan Burnie was let off the leash to pen an opinion article entitled: “Why judges should not be allowed out on their own.”

However, there was something missing from the story – there was no comment from the judge. No explanation from the bench to justify this decision. Immediately, I contacted Elizabeth and explained the situation to her. In addition, I furnished her with the detailed copy to enable her to go to the judge in question to enable the individual to be given the opportunity to reply.

Time is always the enemy in newspapers and deadlines take no prisoners. With important decisions being taken as to how the story was to be presented and the space it should be given we had already cleared 3 full pages to cover the story with reaction. Research was carried out on previous decisions where judges had been criticised and backgrounders were also ordered on the bail system with legal experts lined up to give their thoughts on the matter. But within 20 minutes a call from Elizabeth forced us to scrap the project entirely. She had managed to contact the judge and pass on the details of the story.

The judge was absolutely horrified and was able to provide crucially important information which had been outlined in court but which had not been included in the copy sent to news desks. It transpired that the rapist and his victim both stayed in a residential care establishment for unfortunate individuals who cannot be provided for within the mainstream educational system. In addition, the judge had been told by an expert psychiatrist that it would be inadvisable to remove the accused from his current environment and place him in a penal establishment pending the preparation of reports as it could hamper those compiling the reports.

There now appeared a very different story to the one which had been sold to us originally. Needless to say the entire project was scrapped and the very sad story did not receive one line of coverage in the vast majority of newspapers which took the time and trouble to ascertain all the facts.

The speedy response to our inquiry insured that the liaison role had benefited everyone: The judge was not unfairly pilloried, the newspapers did not misinform the public and - perhaps most importantly – the unfortunate individuals involved in the case were also spared the indignity and humiliation of widespread publicity.

Such cases are rare. It is more common these days for our attention to focus on the words of judges and sheriffs involved in high profile cases. Nowadays they are well-prepared for the media interest and they will have liaised closely with Elizabeth prior to sentencing day so that whenever a judge has passed sentence the full text of the disposal will arrive on news desk computer screens almost simultaneously.

This is a welcome advance and enables journalists to see immediately the reasoning behind a sentence instead of reacting in a less measured knee jerk manner to a rushed call from a court reporter saying: “The wife killer only got 2 years”. These sentencing statements continue to be of great value and are well read by the news executives responsible for taking the ultimate decision on how to present a story.

These statements can also be educational. A recent sentence handed down by Lord Hardie provided one of the best explanations I have seen as to how the discounting policy works. It has now been downloaded and is in the possession of every Daily Record reporter and executive.

In short, I believe the new liaison system is working very well for both sides. But I believe it is just one step in a long process to opening up our criminal justice system which has been too closed for too long for too many. And I believe we can learn from our counterparts in England and Wales where an exciting and innovative new system has recently been put in place following agreement between the Director of Public Prosecutions, senior police officers and editors.

This has resulted in the formulation of a protocol which is far-reaching in its fundamentals and offers a tremendous scope to develop the public’s knowledge and understanding of how our criminal justice system works in practise. Under the agreement certain prosecution materials which have been relied upon to secure conviction will be made public. This includes the following:

- CCTV footage and pictures, including custody pictures.
- Maps, diagrams and documents.
- Scene of crime videos
- Property seized including - weapons hauls, drugs hauls, counterfeit goods.

- Video and stills of reconstructions
- Video and stills of police interviews
- Victim and witness statements.

Just a few weeks ago at the conclusion of the agreement the DPP Ken Macdonald, QC, welcomed the protocol. In what I regard as a speech remarkable for its candour, he said: "We are determined to provide an open and accessible prosecution process by ensuring that - wherever possible - we give the media access to all relevant prosecution material."

The DPP further said that the emphasis in future would be on disclosure rather than the retention of information. Spelling this out to his staff across the country he said: "I have instructed chief crown prosecutors around the country that they always presume in favour of disclosure unless there is very good reason why material should not be disclosed." He continued: "I think it's time for us to get away from a culture of secrecy." Powerful words indeed.

And I long for the time when a similar announcement is made in Scotland. It's not just law officers who are backing the brave new world down south - senior police officers are also closely involved and have given their unqualified support. Let me quote you the words of Andy Hayman, an Assistant Commissioner with the Met in London and the chairman of the media advisory group of ACPO: "The media plays an important role in helping the public understand the work of the police and the criminal justice system and a close working relationship is essential. Not surprisingly, journalists have welcomed the initiative as a breath of fresh air, and already the protocol is operating well. It comes into force after 90 days when the limit for appeals has passed.

Last week its benefits were seen when police officers arrived at a newspaper office in Liverpool with the full transcripts of the interviews between officers and double killer Brian Blackwell, the public schoolboy who killed his parents and then hopped off with his lady friend for a luxury trip to the Bahamas. It made for powerful reading. If nothing else, the protocol will provide for consistency in disclosure. Consistency is sadly lacking in Scotland. There is not even consistency within individual forces. Let me provide an example.

Earlier this year a man was convicted of the brutal murder of an OAP who

lived alone in a flat. It was only after several months of a high-profile police operation, with several appeals for public assistance, that an arrest was made. DNA evidence proved crucial to the case. The individual was a loner and no newspaper had been able to secure a picture of him despite massive background inquiries. The police were asked if they could assist and were kind enough to provide a mugshot to the media on the day he was convicted. This was prior to any sentence and certainly well before the expiry of any appeal process.

Yet only a few weeks ago the same force refused a request for a mugshot of a man who had horribly assaulted a young child to such an extent that the doctors examining the little boy initially thought he had been the victim of a high speed road traffic accident. What was the difference between the killer of the OAP and the attacker of a defenceless little boy? When we asked we were told the case involving the child was not high profile enough. The response to that is: Not high profile enough for whom?

We do need consistency in the release of information. It would be a great step forward for this country if the protocol system adopted down south is imported here. We should not be too proud to learn from others. I understand there may already have been informal discussions at fairly senior levels on this matter. And I believe there may already be rumblings of discontent on matters like CCTV copywrite and other mundane matters. Quite honestly, I can see no legitimate excuses not to embrace the system at least for a trial period. And I am sure those behind the model down south would be happy to provide a template which could be adapted as required in Scotland.

Crime reporting and its effects

By

Duncan Campbell

“Every journalist who is not too stupid or too full of himself to notice what is going on knows that what he does is morally indefensible. He is a kind of confidence man, preying on other people’s vanity, ignorance or loneliness, gaining their trust and betraying them without remorse...Journalists justify their treachery in various ways according to their temperaments. The more pompous talk about freedom of speech and the ‘public’s right to know’, the least talented talk about Art; the seemliest murmur about earning a living.”

That is a quote from a book called **The Journalist and the Murderer** by the American writer, Janet Malcolm. Her book told the story of how a journalist won the confidence of a man on Death Row for the murder of his wife and children by saying that he believed him to be innocent. When he came, during the course of his research, to believe that the man was, in fact, guilty, he continued to profess to be battling on the prisoner’s behalf so that he would still have access to him and thus also have access to the material that would provide him with a best-seller. Many people who have been brought into contact with the media through crime - whether victims, defendants, police officers, lawyers or judges - might share Janet Malcolm’s view. But there are many different ways of looking at the media’s coverage of crime.

Crime reporting is as old as newspapers themselves. In its hey-day in Britain, when editors operated under the principle of “if it bleeds, it leads”, when people queued up for the evening papers to see if a famous murder trial jury had reached its decision and a guilty man was about to be hanged, it was one of the major staples, if not the major staple, of the daily paper in Britain. Back in the fifties, newspapers had crime bureaux rather than a single crime correspondent and whole teams dedicated to the courts. The Press Association, which services all our national media, had five reporters at the Old Bailey alone. Now they have two. They had more than 20 reporters at the Royal Courts of Justice, now they have five. There have been similar cuts in courts coverage throughout Britain. Much of the media now concentrates its main attention and resources on celebrity gossip. But crime still plays a big part in every national media outlet and will continue to do so and continue to provoke argument about how the subject should best be treated.

The media in its reporting of crime comes under scrutiny in three key areas: firstly, does the media glamourise crime? Secondly, does it unnecessarily increase the fear of crime? And, thirdly, does it drive political agendas and changes in the criminal law as a result of its reporting?

Firstly, the glamour. A few of you may have heard the old Mel Brooks record called *The 2000-year-old Man*. The concept of the album is that a man who has lived for 2000 years is being interviewed about everyone he has met during that time, from Jesus to Joan of Arc. He knew them all. He is asked about Robin Hood: did he really rob from the rich and give to the poor? "He robbed everyone and kept everything," replies the 2000-year-old man. And that seems to be true of many of the great romantic outlaws in history. The only Robin Hoods in East London are pubs. In legend, too, Dick Turpin was a dashing, masked highwayman but, according to James Sharpe's recent biography, he was a calculating and unattractive murderer. When Dickens wrote *Oliver Twist*, he was criticised for presenting a rosy and seductive picture of the life of a team of pickpockets and thieves. Dickens defended himself by saying that John Gay, with *The Threepenny Opera*, had also presented, through the characters, MacHeath and Polly Peachum, romantic and attractive characters. The fascination persists. *Guys and Dolls*, which celebrates the cheerful criminal creations of Damon Runyon, is a current West End hit and *Oliver Twist* has returned to our screens in its latest incarnation.

The point is that, as we know from our own school days, rule-breakers can often be more appealing than rule-followers. Look at the romantic names used for law-breakers - outlaws, bandits, rebels - while the nicknames for the police are the filth or the pigs, the busies or the plods. If the media do sometimes glamourise crime, they are only reflecting society's own sneaking admiration for the bad boys and girls. The period of British crime most associated with glamour was, perhaps, the sixties. This was the time when the Kray twins were photographed by David Bailey and when the Great Train Robbers stole £2 million from the Glasgow to Euston train. There have been more than 20 books about the Krays and a film, there have been almost as many about the train robbers, two films and more to come. The best of the books are **The Profession of Violence** by John Pearson, about the Krays and **Biography of a Thief** by Bruce Reynolds, the great train robber whose first job - before he decided that he could make a more honest living as a train robber - was at the Daily Mail.

What the Krays and the Train Robbers showed was that there was an

enormous public fascination with crime. Ronnie Kray's funeral was like a royal event in East London with black plumed horses leading the procession of limousines and mourners. But those days have past. Few criminals are known to the public in the same way. The Krays and the train robbers came from a largely pre-drugs era so it is pertinent to ask now if the media glamourises drugs crime?

The charity, Drugscope, published a survey in May 2005 about the attitudes towards drugs of young people between the ages of 11 and 25. Their conclusion was that television and the press produced a hopelessly mixed message for young people on drugs. The research suggested that the media portrayed drugs users as either demon junkies (the musician, Pete Doherty), or survivors (model Sophie Anderton). The conclusion was that the stories were so contradictory and so far removed from a young person's experience that they left them none the wiser about the real dangers, where those dangers exist.

Part of the problem is that the media's coverage of drugs has often trailed behind reality. In 1957, The Times told its readers that "white girls who become friendly with West Indians are from time to time enticed to hemp smoking ...this is an aspect of the hemp problem - the possibility of it spreading to irresponsible white people - that causes greatest concern to the authorities." In the seventies if you wanted to know what drugs were dangerous and what they were being sold for you had to buy > magazines like IT and Oz because the information in the mainstream press was so wildly inaccurate and ill-informed. But while the media can be accused for glamourising crime, it has also played a major part in deglamourising particular crimes.

Thirty years ago, domestic violence was not taken very seriously as a crime. The police now take it very seriously. This is, of course, greatly thanks to the women's organisations that campaigned on the issue. But it is also because the media, across the whole spectrum, have highlighted the crime and made it clear that men who batter women are to be despised not excused. Equally, drinking and driving, once regarded as a harmless peccadillo, has become a serious crime, again not least because the media represents it as such through the coverage of its effects on the families of people killed by drunk drivers.

Secondly, does the media unnecessarily increase the fear of crime? Reading some newspapers - the Daily Mail comes to mind - one wonders sometimes how some readers dare go out of the door. Are they not worried that a Gypsy

or an asylum seeker will attack them? That muggers will grab their watches? That binge-drinkers will assault them and the police will be too busy filling in forms or pulling people over for speeding to catch them? The impression given is of Britain as a lawless, anarchic place where young men high on drugs butcher old ladies only for some politically correct social worker to speak on their behalf and ensure the a senile judge gives them a short sentence in a soft jail where they will spend their time watching television and smoking dope.

Certainly, the fear of crime often runs far ahead of its actuality. In the United States last year there was a perfect example of how the media can increase the fear of crime. After Hurricane Katrina had hit New Orleans, there were reports on television in the US of murder and rape in the superdome in New Orleans which caused enormous panic when people the word spread in the city. There were also reports of snipers shooting at the police and rescue services. Some - but only a few - of those stories were true. Many, of babies having their throats slit or being raped while police officers stood by, were false. But the false ones did serious damage in creating panic, in keeping people away from the rescue services and portraying the black community unfairly as out of control.

Thirdly, how does the reporting of crime impact on the political agenda and law-making? In 1991, the press reported a series of attacks by dogs on children. Six-year-old Rukshana Khan was savagely mauled in Bradford. Attacks by dogs which would once have a merited a paragraph in a local paper were now front page news. A campaign was on. Home secretary Kenneth Baker responded by hastily introducing the Dangerous Dogs Act. Suspect dogs were to be put down. The law itself was ill-thought out - it put the onus on the dog to prove itself innocent, it caused lengthy and expensive trials with competing expert witnesses - and it was eventually amended by the last Conservative government in 1997.

After Tony Martin shot dead a burglar in his property, there were many calls in the media for the laws to be changed so that, effectively, a householder could inflict damage of any kind on an intruder. This led to a current private members bill being sponsored by a Conservative MP which would actually achieve nothing but would be supported by those parts of the media who have made this a campaign. This is an example of legislation – or would-be legislation – driven by the media rather than by any genuine need for a change in the law.

More recently, as we know, the London suicide bombings have been put forward as a justification for changing the laws on detention without trial. Within days of the attacks, there was pressure for changes in the law to allow police to hold suspects for periods of three months, for telephone tapping to be used in evidence and for tougher immigration controls. Much of this was driven within the media but equally opposed by the media in that many papers saw the extension of a 90 day detention as many steps too far. But at the same time the media has played a major role in exposing miscarriages of justice and through this led to changes in the law and police procedures. The cases of the Birmingham Six, the Guildford Four, the Bridgwater Three and many others highlighted the way in which innocent people could be convicted. Such programmes as Rough Justice and Trial and Error and a series of press campaigns painstakingly exposed how the defendants in these cases had been failed. This exposure, aided by a few dedicated lawyers, helped to change the laws of evidence gathering and ushered in the bodies on both sides of the border which now review doubtful or controversial criminal convictions. Without the work of the media in this area we might still be living in a world where a police officer could make up a handy confession in the back of a police car on the way to the station.

Here I think the differences between American and British media are noticeable. While working for the Guardian in Los Angeles I became interested in the three strikes law whereby someone can be jailed for 25 years for a third felony, a law introduced following a media panic in the nineties after the murder of a young girl by a persistent offender. While there may have been a logic to locking up violent persistent offenders, the new law scooped in hundreds of minor offenders. One man was jailed for 50 years for stealing \$160 worth of videos for his children. His 50 year sentence was deemed by the court of appeal in California to be cruel and unusual, a decision appealed by a Californian attorney general, terrified perhaps of being accused by the media of being soft on crime. When it went to the supreme court in Washington, they ruled by five votes to four that it was not for them to intervene and they allowed the 50 year sentence for shoplifting to stand. I went to various meetings of families of those serving such sentences and they said that the only interest shown in their cases came from an astonished foreign media. The media in the US largely ignored it as an issue and when the law went to the voters to see if they wanted to change it so that it only applied to violent offenders, the measure failed. One of the problems for anyone covering crime in Britain is the culture of secrecy. In the United States, you can ring a court where a trial is taking place, speak to the clerk and be told what stage the judge's summing up is.

That would be unthinkable in this country. The culture of the police, like that of many public servants, is to be as reticent as possible. This is partly for the understandable reasons of not wanting to prejudice a trial by committing a contempt of court but it is also part of a culture of secrecy that is often unnecessary and should be challenged. Some things don't change. In 1945, a story in the Daily Herald announced "we have too many prisoners and too few prisons." In 1947, the front page of the Daily Mail reported that "hardly a day passes without some atrocious act of violence."

One final story from one of the great journalists of our time, Paul Foot, who very sadly died in 2004 much too young. He started his journalistic career at the Daily Record in Glasgow and he recalled one incident from his early days there in an article he wrote for the Journalists' Handbook in 1995. He told how in the early sixties he had been part of a court brawl: he was a member of six-man Record team which had been told to secure an interview with a man who had who was being released after a murder charge against him had been found not proven. Teams from the Scottish Daily Mail and the Scottish Daily Express were also intent on getting an exclusive with the man.

"There followed the most fantastic fight between rival gangs of journalists - a fight which ended in a car chase through the city streets. At one stage, the bewildered ex-defendant was plucked from one newspaper as it stopped at traffic lights and hauled bodily into another." Paul recalled that that there had been an inquest by the paper as to how they had lost their man: "had we had enough cars? Had we paid the crooked lawyer enough money in advance? Had we been free enough with our fists?" He said that the National Union of Journalists had also had an inquest in which local union officials spoke to them as "journalists with responsibilities to others apart from their papers and their employers." The result, wrote Paul, was that battles, as far as he was aware, did not happen again for the rest of his time in the city. I know that we, as journalists, can forget that wider responsibility but I also know that there are many, many journalists - from those just starting to those coming to the ends of their careers - who entered the profession with aspirations to do the kind of work that Paul Foot and others like him did. For many people within the criminal justice system, whether victim of crime or victim of miscarriage of justice, the media may represent their last court of appeal. That is a responsibility which both journalists and their readers should cherish.

Alternatives to Prison

By

Professor Sir Anthony Bottoms, of Cambridge and Shieffield Universities

In March 2003, the Esmée Fairbairn Foundation announced the establishment of an Independent Inquiry into Alternatives to Prison, chaired by Lord Coulsfield, a recently-retired Scottish appeal judge. Later the same year, I was appointed as Research Director to the Inquiry.

The research task was a challenging one, but it was made easier by the Esmée Fairbairn Foundation generously providing significant funds to accomplish our goals. The main task was to provide a thorough and impartial review of relevant empirical research that could be drawn on by the Coulsfield Commissioners as they formulated their recommendations. Additionally, I was encouraged from the outset to consider undertaking a small piece of original empirical research that would inform the Commission's work.

Lord Coulsfield and the other commissioners were helpful and supportive throughout, and encouraged us to publish the research findings independently. So it was that, November 2004, a research volume entitled *Alternatives to Prison: Options for an Insecure Society* was released simultaneously with the Coulsfield Commission's report. Besides myself, the research volume had two other editors, one from each of the two universities in which I now work: Sue Rex from the Institute of Criminology, Cambridge (now of the Home Office) and Gwen Robinson from Sheffield University. We were also immensely fortunate to be able to assemble a group of leading scholars – representing, in all, ten U.K. universities – to provide well-researched chapters on a wide range of topics such as reparative and restorative approaches, rehabilitative and reintegrative approaches, electronic monitoring, dealing with substance-misusing offenders in the community, intensive projects for prolific/persistent offenders, what guides sentencing decisions?, and sentence management.

What were the highlights of all this work? I would like to mention just four. The first concerns the use of prison. A thorough statistical review by Chris Lewis (Portsmouth University, formerly of the Home Office Research Section) on trends in crime, sentencing, and prison populations clearly showed that the large rise in the English prison population over the last

decade was not the result of an increase in crime or its seriousness. Rather, for any given offence, both the rate of imprisonment and the average length of sentence had increased. In 1993, for example, in the broad offence category of theft and handling (a category that includes many minor cases) 8 per cent were imprisoned, 37 per cent fined, and 25 per cent received a community penalty; but by 2002, the respective proportions were dramatically different – 22%, 19%, and 37%. These data also show another important trend, namely that, as well as an increased use of imprisonment, there has also been a strong recent tendency for courts in England and Wales to use community sentences instead of fines for more minor cases. This tendency, of course, has the unfortunate consequence of overloading probation service personnel with cases of lower strategic importance for the criminal justice system.

Simultaneously with the Coulsfield Inquiry's deliberations, the think-tank CIVITAS published a report arguing that the rise in the prison population in England and Wales was probably causally linked to the recent reduction in crime – that is, more severe punishments had created a reduction in crime through deterrent and incapacitative effects. My own review chapter in the Coulsfield volume examines this possibility in the light of, especially, the extensive US evidence on these topics. It concludes that the evidence for reductions in crime due to the deterrent effects of harsher sentencing is very weak. The evidence for incapacitation is stronger, but after a time of prison expansion (such as has recently been experienced in England) 'diminishing returns from incapacitation set in because the most serious and prolific offenders are already incarcerated'. Therefore, CIVITAS's argued policy case to the Coulsfield Commission – for a further increase in the prison population to achieve further reductions in crime – could not realistically be supported.

A second research highlight concerns the potential for various alternatives to prison to achieve reductions in re-offending. Unfortunately, some commentators have made some very rash statements on this topic in recent years – including the official Halliday Report of 2001, which dared to speak of a possible 16 percentage point reduction in the national re-offending rate if offender behaviour programmes were 'developed and applied as intended' (para 1.49). More recent research results are substantially more modest. Nevertheless, the chapter by Peter Raynor (Swansea University) in the *Alternatives to Prison* volume emphasises that promising evidence for rehabilitative effectiveness does exist (both for programmes and for wider aspects of supervision). Raynor is, however, clear that there are no 'magic bullets', and that 'the [politically-inspired] rush to "go to scale" after

hasty and incomplete evaluation must be slowed' (p. 217). Other modestly promising research results are also to be found scattered throughout the volume, for example, in relation to 'reintegrative' and constructive community service placements and restorative justice approaches (Gill McIvor, Stirling University); and a reduction in the rate of offending among prolific offenders while participating in (but not after leaving) intensive community-based projects (Anne Worrall and Rob Mawby, Keele University). The difficult task for policymakers is to recognise and build on modestly promising results of this kind, rather than succumbing to unrealistic demands for instant dramatic success stories.

A third matter well worth highlighting is sentence management, a vital but rather neglected topic considered in a chapter by Gwen Robinson and Jim Dignan (Sheffield University). Here a particularly important point concerns what the authors call the 'neglected asset' of the supervisor/supervisee relationship. In their own words: 'within a discourse which emphasises the "management" of offenders it has become unfashionable to talk about the "relational basis" of work with offenders... But in the face of a trend... toward specialist practice and the fragmentation of supervision, a growing body of research indicates that both the consistency and quality of offender/supervisor relationships are central to effective practice, in terms of promoting motivation and compliance (in the short term) and desistance (in the longer term' (p.322). In light of the forthcoming changes to be brought about by the creation of the National Offender Management Service (see below), it is vital to acknowledge and build upon this set of research results.

Fourthly, our Coulsfield research volume is perhaps unusual among 'alternatives to prison' texts in placing strong emphasis on research into public opinion on sentencing. The Editors' introductory chapter stresses that the contemporary 'alternatives to prison' debate cannot ignore the decisive shifts in the economic and social character of Western societies that have taken place in the last half-century; hence the subtitle of our volume ('options for an insecure society') was deliberately and carefully chosen. Within such a society, the issue of public opinion is pivotal, and it is examined in two chapters in the volume. Shadd Maruna and Anna King of the Cambridge University provide an overview of research findings, plus a glimpse of their own research among various types of community in the south of England. They are able to show that certain core beliefs and values, such as 'offenders are redeemable,' or 'ultimately, crime is a choice' are strongly associated with attitudes in favour of, or against, community penalties. So too are expressive variables such as attitudes towards youth in contemporary societies, and

perceptions of collective trust, or its absence, in a neighbourhood. Building on Maruna and King's work, and (with their permission) using some of the same questions, Andrew Wilson and I added a more explicitly 'community' dimension to the debate through empirical work in two high-crime areas in Sheffield. (This was the 'small piece of original empirical research' that the Esmee Fairbairn Foundation had encouraged us to conduct).

Although these two areas had very similar crime rates, the general public in one had markedly less punitive attitudes than was the case in the other. The two (linked) main explanations that we tentatively put forward to explain this very unexpected result were: first, that the more punitive area seemed to have more 'on-street disorders,' making the population more anxious (and therefore perhaps more punitive); and second, that the population in the less punitive area appeared to believe, to a significantly greater extent than in the other area, that the authorities listened to residents and were willing to put into place sensible social control policies. On this reading, then, the adequacy of general social control in an area is inextricably linked to the likelihood of being able to develop community penalties that command public confidence.

In the 'insecure society' in which we now live, the subject of alternatives to prison inevitably has a political dimension. This was emphasised, during the life of the Coulsfield Commission, by the publication of the Carter Report and the government's controversial decision to proceed, in England and Wales, with the creation of a new National Offender Management Service, in which the concept of 'contestability' is central. How these plans will ultimately translate into local practice still remains unclear. However, those of us who provided the research reviews for *Alternatives to Prison* believe and hope that our work will be of value not only to the Coulsfield Commissioners, but to those developing regional and local practice in this new context.

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Prisons, Prisoners and Criminal Justice as an Instrument of Social Policy

by

Roger Houchin of Glasgow Caledonian University

Having been asked by your committee if I would speak to your group about the research that I published about a year ago on the links in Scotland between the imprisoned population and social exclusion, I said that I would like use that research as a prompt to discuss wider issues of the limits of the purposes of the criminal justice system.

My emphasis will be on the use of imprisonment. I am aware that I tend to associate the use of imprisonment and the effects of the criminal justice process rather loosely, as though they are one and the same thing. Of course that is not the case. But prison and its use has assumed such a prominent position in our policy discourse and in the practice of the courts that, having recognised the wide variety of outcomes that are possible within the system, I hope I can be forgiven for concentrating my discussion rather heavily on the use and practice of custody.

I shall argue that the politicians, having constructed a picture of social life in Scotland that is fraught with threats of disorder and danger and, somewhat recklessly, having accepted for themselves responsibility for abating this tide of chaos, are now allowing themselves to be unrealistic in the expectation they place in the criminal justice system to remedy the problem.

I shall further argue that in stretching the ambit of criminal justice rather than recognising its limits and ensuring justice in its execution, we are undermining its foundations.

I shall begin by setting the context of my remarks. I shall do this in 4 ways. Firstly let me briefly describe some quantities. Because although the possibility of prison looms over the criminal justice system like a dark cloud, it is not part of the experience of most of those who come into conflict with the law.

We don't, of course, know how many crimes are committed in Scotland each year. If you take estimates such as are given in the research into

youth offending published by the Executive last year and the Crime Survey, and if you disregard the incidence of those crimes such as speeding and possession of illegal drugs which are only deemed to occur if they come to the attention of the police, it would appear as though there are somewhere between 2 and 3 million. But the figure is really meaningless. We do know that now slightly more than 1 million are recorded annually by the police and that of these, they 'clear up' just over 700,000 – though their success in solving 'crimes' as opposed to the offences of which they become aware, though improving, is still below 50%. The police deal with somewhat more than half of these incidents by means other than by reporting them to the Procurator Fiscal for consideration of prosecution, and COPFS, in its turn disposes of slightly more than half of the cases referred to it by means other than proceeding to court. Of the about 150,000 cases that go to court in a year, about 130,000 result in convictions. And of these, the great, but a decreasing, majority (65%, down from 72% ten years ago) end in fines. Of the 35% that remains a slightly higher percentage (16%) are sent to prison than are given community disposals (13%).

That is, each year 16,600 criminal convictions result in prison sentences. That results in about 12,000 'admissions' to prison in a year of persons sentenced to prison following conviction. About twice that number are admitted to prison each year for other reasons, most of them remanded to be detained awaiting trial but a significant minority of about 6,000 because they have failed to pay fines ordered by the court. That is regrettable, I think, but not something that I have come to talk about tonight, except to note that everybody seems to have agreed for many years that it is regrettable and should be stopped, but that it does not stop. That is of relevance. There is also widespread agreement that prison is an unsuitable response to the behaviour of most of the women who go to Cornton Vale. Following the publication of the joint Inspection report by the Prison and Social Work Inspectors, "A Safer Way", the then First Minister, Henry McLeish went on record that he wished to see the population of Cornton Vale decrease from 200 to 100 prisoners. It now sits between 300 and 350, an increase of 75% over 10 years. That persistence of recognised wrongs, our inability to deal with the institutionalised injustices of the system is of relevance to what I have to say. And it is widespread. And, I shall argue, that extent of injustice undermines the moral foundation of the system itself.

Why, I want to ask, at a time when it is widely agreed that the use of prison in all but a small number of the most serious offences is expensive and unproductive; why, when Parliamentary debate is overwhelmingly in

favour of reducing recourse to this damaging sentence are we projecting a consistent increase in the prison population and investing previously unheard of levels of public money in building new prison capacity.

About 1 in 25 of the sorts of crimes that you or I might have reported to the police result in a prison sentence. That is 24 out of 25 have different consequences for the person involved. But the consequence of the processes that lead to that is that last year, there were about 37,000 admissions to Scottish prisons. I looked at the pattern of admission in 2002. A slightly lower number of admissions involved about 20,000 individuals, for many of those who are admitted to prison each year are admitted more than once. A large minority is admitted twice and significant numbers are admitted on 3 or 4 occasions. One person in the year I studied had been released from prison on 13 occasions!

The purpose of my research was to look at the social backgrounds of that minority of those who come into contact with the criminal justice system who are the 4% that are sent to prison. Before describing the research and reflecting further on its implications for the discussion I am I developing, however, I would like to add a few more comments about the context of this discussion.

In December 2004, the Executive published its criminal justice plan – “Supporting Safer, Stronger Communities” The document sets out to demonstrate the coherence in the unprecedented level of activity of criminal justice reform that is being undertaken: the nature of policing is being changed and police and local authorities have been given duties to work proactively and in concert to make communities safer; the prosecution authorities have undergone huge structural change and, more importantly, urged to adopt more public friendly approaches to victims and witnesses to raise the standing of the criminal justice system in the eyes of the general public; fundamental changes in the operation of both solemn and summary court procedures are being introduced following two major reviews; new community sentences have been introduced and the Sentencing Commission has been established to make recommendations across the spectrum of sentencing options ; there is a determination to improve the effectiveness of the “management” of those who offend especially as they cross the threshold between custody and back into the community.

The unifying purpose for all this activity is to make our communities safer, by reducing re-offending. Great emphasis is placed in the body of the

document on innovations in the way in which we now react to offending in the community: in preventive measures and in the introduction of new community sanctions – Restriction of Liberty Orders, Supervised Attendance Orders, Drug Treatment and Testing Orders, Arrest Referral Schemes. But one cannot fail to notice that while use is being made of these new sentences (1,000 RLO's and 500 DTTO's last year), the number of people being sent to prison is rising. It is the use of fines and community service orders that has been falling.

Behind the proposals is a clear belief that prison, if properly integrated with the work of other – especially criminal justice social work – agencies, if they jointly are using well conceived methods of working with prisoners and if there is seamless communication between the agencies then prison can play a constructive part in reducing re-offending. This belief is echoed widely across the political and legal debate. In speaking in the December 2005 debate on the Criminal Justice plan the Justice Minister cited better risk assessment, better case management, better information sharing, better quality approved and accredited interventions and better joint-working as examples of improvements that will contribute to an expected reduction in re-offending.

In a very balanced speech on behalf of the Liberal democrats Mr Purvis argued for the ending of prison sentences of less than 3 months and an assumption against sentences of less than 6 months. His argument was based partly on cost: six months in prison costs the tax-payer 15 times as much as a 6 month probation order - but more fundamentally on the argument that it is impossible to do good in such a short period. Margaret Mitchell for the conservatives similarly argued against the proposed powers of Ministers to release certain short term prisoners onto Home Detention Curfews as proposed in the Management of Offenders Bill on the grounds that early release would “eliminat(e) the possibility of continuing effective rehabilitation work in prison”. Later in the debate she asserted that the Justice 1 Committee had “discovered” that short sentences “provide an opportunity for meaningful rehabilitation work to be undertaken”.

In their recent paper on early release, the Sentencing Commission consider this issue and record that the Commission is split in its views. While some members sympathise with the view that very short sentences are not only incapable of serving any useful rehabilitative purpose but impede the development of constructive work with offenders by workers in the community, other members take the view that the judiciary need to retain short

sentences to signal their denunciation of certain behaviours, to communicate to those who are not cooperating with community sanctions that this will not be tolerated or to give some brief respite to the community. They do not note that 21% of all custodial sentences handed down by Scottish courts are for less than 60 days, 54% for 3 months or less and 79.5% for 6 months or less. Having referred to their discussion they do not reach any recommendation at this stage. It is to be hoped that they will return to the matter and that when they do they will ensure that their recommendations at least create an environment in which the numbers sentenced to such short periods – rather than being managed in the community – will be restricted to the few that the reasons for retaining the power suggest might be required.

Why I refer to this discussion of very short sentences at some length is because it is premised on the view that their inability to be put to positive rehabilitative use invalidates them; the implication being that if, like longer sentences they might be effective, then the objections to them would be at least significantly weakened. But why is it thought that longer sentences either are, or are capable of being, rehabilitatively effective.

We have had modern prisons now for rather a long time. We have retained them, against all the evidence to the contrary, on the belief that they can serve a rehabilitative purpose. And we have been consistently disappointed. In the introductory paragraphs to the Criminal Justice Plan, Scottish Ministers note that 60% of offenders are re-convicted of a further offence within two years of release. That is after 165 years of trying to get the prison system to work better! Why, I want to ask, do we persist in our belief that the institution is capable of achieving what it has so manifestly never managed.

The history of that belief can be traced back to the 1839 “Act to improve prisons and prison discipline in Scotland”. That Act – which effectively created the modern prison system as has persisted since in Scotland – recognised two purposes for prisons: the punishment and repression of crime, and the reformation of criminals

This was the earliest legal recognition of a social purpose for prisons other than punishment: prisons as places of punishment, rather than places for the detention of those awaiting punishment, having in its turn been a relatively recent innovation at that time. Reformation was initially to be achieved through imposed orderliness, penitence through silence and then through solitude. Grinding work replaced solitary contemplation as the engine of reform later in the century. This was overlaid with strict discipline and

‘austere’ conditions. With the turn of the century emphasis started to shift to forms of interpersonal influence, to education, to work training, to psychiatric and groupwork based interventions all, rather incongruously, overlaid with a pastiche of military discipline derived from the career histories of many who worked their later lives in prisons. Increasing discretion was extended to prison staff and government officials to decide how sentences should be implemented to maximise positive influence and respond positively to personal change. The role of ‘open conditions’, of periods of leave and of discretionary release on licence was extended and extended in the belief that carefully phased and supported management of prison sentences was effective in treating criminality.

That optimism came to an end during the sixties and especially the seventies. It came to an end for two reasons: Firstly, exposure by both enlightened officials and lawyers and groups representing the rights of prisoners of the injustice inherent in the granting of such wide discretionary powers to officials. In particular the institutionalised discrimination against blacks in America inherent in the application of such discretionary powers was demonstrated. Secondly, research into treatment methods used was unable to find evidence of any such methods being effective in reducing re-offending.

Prison reformers in the UK wrote to suggest that all that the prison system should aspire to achieve realistically was the “humane containment” of those in prison. I can remember prison governors, enthusiasts for the optimism and ambitions they had held for their occupation scoffing at the limits to which it was suggested we might aspire – warehousing criminals - and the anticipation with which we waited for the Inquiry into the UK prison services that was conducted by Lord Justice May and which we hoped would outline for us a new constructive role. That was not to be. The best May could offer us was that we should provide “positive regimes”: a concept that was not elaborated.

A decade of policy vacuum in the eighties, as the prison system did little more than come to terms with the radical redefining of the relationships between the prison and the prisoners that were being driven by the enforcement by the courts of the obligations the UK had entered into 25 years earlier when firstly promoting and then being an early signatory to the European Convention of Human Rights ended with a series of riots that in its turn prompted a brief visionary internal policy based on recognition of the new environment and structured around affording prisoners more responsibility in managing their own programmes supported by staff acting as coaches and enablers.

Visionary the policy may have been, and consistent with extending respect to the individuality of the prisoners but it was not effectively resourced, managed, communicated or understood even by many senior managers. What might have been a groundbreaking experiment of prisons working in partnership with the charges foundered.

Not only did it founder but its demise was welcomed by many who were uncomfortable working in a prison system in which authority relationships were less clear and in which prisoners were actively to be encouraged to take responsibility for their own development. Into that vacuum strode a new occupational group offering prisoner management and treatment tools that they claimed were effective in lowering the probability of further offending. The forensic psychologists offered risk assessment tools that offered a scientific/actuarial validity to decision making that would support a new move to use prisons primarily incapacitatively. And they offered treatment programmes that they claimed were effective in countering cognitive and behavioural learning that predisposes persons to offending. Given effective quality control methods and if targeted on the right offenders, they claimed that their treatment programmes could be effective in reducing re-offending.

These two claims are of course as manna from heaven both to a prison system that has lost direction and to a government that has accepted for itself the responsibility for reducing re-offending. We have technologies both to assess the risks prisoners present and to treat them. All we need to do is to make the systems work efficiently and we have a prison system that – despite the evidence of 165 years to the contrary, we can expect to reduce offending.

Not only that, but we have also shown ourselves open enough to new evidence to recognise that prisoners are a highly disadvantaged sector of the community. They have educational, training and employability deficits. They have health disadvantages and especially mental health and addictions problems. They have housing disadvantages. They are poor financial managers. We can do something about all of these things. Not only do the forensic psychologists give us tools that allow us to treat the cognitive deficits, but by making effective arrangements with other agencies we can systematically tackle their disadvantage and enable them to survive in the community legitimately and successfully.

Before continuing with this narrative of, I shall suggest, misplaced and cruel optimism I should like to report the findings of my research. The prompt to the research was a request by the SPS to produce a Scottish equivalent

of a report that had been published in England and Wales in 2002 by the Deputy Prime Minister's Office, Social Exclusion Unit, entitled "Reducing Re-offending by Ex-prisoners". This had surveyed a wide range of available research information, and conducted some research of its own in producing a report that demonstrated the disadvantages of the prisoner population in a number of dimensions: Health, Education, Employability, Housing, Financial Management etc. The report brought together a wide range of valuable data. It reached the conclusion that it was possible – and it gave examples of good practice – to work more effectively with prisoners in each of the areas it examined and suggested that if this were achieved, and prisoners' exclusion from the benefits of our communities, then we could expect re-offending to decrease. It sent out a challenge to other departments to tackle these issues.

In using the rather more modest resources I had over the significantly tighter timescale allowed me (though I admit I over-ran) I thought it unlikely we could produce as encyclopaedic a report as we had seen for England. But I thought we could do something as useful. I thought we could do more than had been attempted in the English report to try to understand what social exclusion means to the prisoner population. The report we looked at had an understanding of social exclusion structured basically around the departmental responsibilities of different parts of government. I thought we should try to explore how prisoners saw their own world. And I thought that we could, in a smaller jurisdiction, produce a report that was more managerially precise and focused: that could look at specific organisational and geographical issues. I had also hoped to do analysis of how money was spent, but was not able to access all the data needed for this. The Auditor General, however, has looked at similar issues. I shall refer to his report later.

In each of the Scottish prisons we interviewed 4 prisoners who had been released from prison during the previous twelve months and had returned. This was not a representative sample of prisoners. It gave us a bank however of more than 40 semi-structured interviews at which the interviewer talked about the prisoners experiences of upbringing, offending, dealings with public agencies and imprisonment. Each interview lasted 1-2 hours. We have not yet published any formal analysis of these data. We used them and our reading, however, to draw up a provisional model of the components of social exclusion as we heard it. It is a model with 7 core dimensions. What is most important about the understanding we developed was the extensiveness of the interdependence between each of those dimensions.

The prisoners with whom we spoke helped us to develop an understanding of their understanding of how they relate to the world, the nature of that world and the values that bind them into it.

Three of those dimensions exist at the level of the individual's relationship to their community. The access they have to basic services and facilities, including housing, healthcare, education and employment. These are basic components of the quality of life the community offers to the individual. Discussion of them is at the heart of the Social Exclusion Unit report. The attempt to improve such access lies behind the SPS Links Centre initiative. These are pretty concrete and relatively easily improvable elements of social exclusion.

The quality of relationships individuals have with significant agencies is important. These include: offices controlling Government and local government services; police, prosecutors and the courts, social work, schools, GPs and Prisons. These relationships are shaped by the expectations and behaviours of both parties. Many offenders recognise that they are often their own worst enemies. But also there is clear evidence of the often unintended but institutionalised disrespect communicated by officials to those who people our prisons.

Memberships of social networks are vital too. They include: families, associates who share similar leisure interests, neighbourhood solidarities, religious groupings and sporting affiliations. Very few people live without membership of a number of significant social networks, in which they earn approval and are granted social value. It is very clear that inclusion in our dominant community can only be achieved for many of those to whom we spoke at the cost of exclusion from the networks within which they currently earn their social rewards.

Four are internal, specific to the individual. The first is an individual's strength of affiliation to competing networks. Here, the model we developed was of competing networks being more or less successful in retaining the affiliation of individuals insofar as they were capable of meeting their perceived needs and they offered values and rewards consistent with those shared with other networks of importance to the individual. Particularly, we noticed that patterns of affiliations shift with maturity. Those interviewed started to question some affiliations and to value others more highly. This seemed to be the dimension of those we were proposing that was generally most in flux.

The second is health – especially mental health. Recognition is only now – and, I have to comment, apparently rather reluctantly – being paid to the levels of psychological disorder amongst the prisoner population. Attention was drawn to this dramatically as regards the women in Cornton Vale. No comparable study (and the Cornton Vale study was pretty quick) has been made for male prisoners (other than the Office of National Statistics survey of prisoners in England and Wales). The picture of emotional underdevelopment and damage we developed in these long interviews, however, was strikingly common. This, and its links with self-destructive behaviour, including drug dependence, is an area crying out for systematic research among the prisoner population.

Third comes a repertoire of competences. Like the social dimension of access to services, the dimension of competences is one that is readily recognised. The prisoner population is poorly educated, unskilled and ill-equipped for employment. These are skills that can readily be tackled and in which prisons has made great progress in improving services.

Finally, cognitive and perceptual frameworks. This is conceptually the most difficult dimension. It is the glue that binds all the dimensions together. How we see, explain and interpret the world and how we validate our own behaviour and what mediates our emotions are all responses learned throughout our life. They are a very robust and self-validating set of values and models that are more or less confirmed by the circumstances of our continuing life. It is into this area that the work of the forensic psychologists peers. That is very helpful. But what can be expected to be achieved in the course of a forty, or eighty or one hundred and twenty hour ‘programme’ has to be weighed against the continuing learning and confirmation of the rest of the lives of those who find themselves in the criminal justice system or in prison.

I have described this part of the report at length because it has been less referred to by commentators than the statistical data that I shall discuss in a minute. It is a provisional understanding that has yet to be developed by full analysis of our data - and hopefully further developed by other work. But a model of this kind is an essential underpinning if we are to have an informed debate about the limits of the effect of criminal justice. We have not just to approve developments to improve such matters as prisoners’ access to housing on release – important though they are. We have to ask the question firstly whether a criminal justice response can ever be expected to positively and consistently impact on each of these dimensions in a way

that can be expected to fundamentally alter the perceived worlds of those whose behaviour brings them into conflict with it. Even if the answer to that is “yes”, we then need to ask if the operation of criminal justice, either as it is or as it is being planned, is close to a model that might be expected to impact positively. Unless the answer to that is a resounding “yes”, we then need to ask whether we are likely to be able to change it sufficiently for it to be other than damaging.

All of that argument is premised on the understanding that in general the imprisoned population is socially excluded in the terms that I have described. Let me then report the findings in that area. I looked at the distribution of the homes of Scottish prisoner population and analysed this in terms of two established measures of social deprivation: the Scottish Index of Multiple Deprivation, and the Scottish ACORN database of housing types.

The sample used was all those in prison on the night of June 30th, 2003. We excluded from our analysis those who came from addresses outside Scotland and those about whom, from the data we were able to access, it was unclear where their home was. We were able to obtain a 92% sample (6,007 out of 6,557)

Essentially, what we did was to quantify what we already know: that punishment, in the form of imprisonment, is concentrated in Scotland on very specific demographic groups. It is concentrated on the basis of gender: men are 24 times more likely to be in prison than women. It is concentrated on the basis of age: for each 10 years older, over 25, you become the probability of your finding yourself in prison reduces by 30%. And most dramatically, it is concentrated on the basis of social deprivation.

The SIMD is a complex index comprised of subordinate indices of wealth, employment, education, training, [housing], health and ease of access to services. The wealthiest of our communities score close to zero on the index. The most deprived score into the 8's. The geographic areas on which it was based at the time of my research were local government wards. There are 1,222 of these in Scotland. Each, typically has a population of about 4,500. There is a near perfect correlation between the deprivation level of communities clustered into 10 point intervals on the index and its imprisonment rate. If the SIMD score of the community is less than 10, about 5 people per 10,000 were in prison at the time of my research. If the SIMD score is between 30 and 40, about 35 people. If it is above 70, about 95 people (there is a slight upturn in imprisonment rates at the very top of the scale).

The imprisonment rate for 23 year old men from the 27 wards that score above 70 is 3,427 per 100,000. That translates into about 1 in 9 men from these communities spending some time in prison while they are 23. To put that in context, the imprisonment rate in Scotland in general is 129/100k. That compares with 31/100k in India, 87/100/k in Belgium, 112/100k in China, 155/100k in New Zealand, 226/100k in Iran, 416/100k in Ukraine, 562/100k in Russian Federation and 726/100k in USA. Looking deeper at the Scottish data, it is 10/100k for women in Scotland, 237/100k for men in Scotland, 924/100k for men aged 20-25, 953/100k for men of all ages from wards with an SIMD over 70, and 3,427/100k for 23 yr old men from those communities. Of the 1,222 local government wards, just 53 account for 25% of the prisoner population and just 155 account for half. On the night that I took my sample, there were no people in prison from 329 wards, and the imprisonment rate for two-thirds of the country was below 40/100,000.

The ethical and policy question that figures such as that raise in my mind is: In circumstances in which the evidence of the correlation between deprivation and imprisonment is so strong how far should our response be one based on cruel justice: holding the person to account for their offence, challenging their 'yobbish' behaviour, 'managing the risk' they present to the law abiding majority, (all this the language of the criminal justice debate that underpins the political consensus we now face)

Or how far, should we recognise in the development of policy that in a country that is prosperous, in general is safe and free from prosecuted crime, but which includes a very small number of pockets where people's experience is of poor health, poor housing, inadequate education, negligible job prospects, criminal victimization, poverty and an early death and where that is compounded for the men by a high probability of spending part of their lives in prison - how far should we recognise that our response to their behaviour needs to be less one of harsh justice and more one that recognises the duty on society in general to set out to bring those young men into membership -contributing and benefiting - of the world in which the rest of us live.

My argument is not one based in theories of social conspiracy or subjugation of the poor. It is one based in simple observation of the operation of the criminal justice system and the association of the consequences of that with social exclusion. For whatever reason, that system operates to punish young men with no chances, with no stake in the future of our communities. And the operation of criminal justice, I shall now argue, is to further exclude. Indeed

it can be argued that the very basis of criminal justice is to legitimate the allocation by the state to those whose behaviour is most offensive to the values most strongly held by the majority (in a democracy) from which it is its normal duty to protect its citizens.

So strong is the association between exclusion and, for young men, spending time in prison that one has to ask what it is about the criminal justice environment that leads so forcefully to the concentration of punishment on such a small group. It hasn't always been so. Although we still, by international standards, find it necessary to keep very large numbers of juveniles in custody, they are a fraction of the number there were when I started working in Scotland (less than one third). Go back to the last century and we imprisoned nearly as many women as men – and the rate at which we are increasing our use of imprisonment of women suggests that the period of sharp distinction between the genders may be ending.

But either in the decisions we have taken as to what to criminalize, or in the distribution of offending behaviour, or in the way criminal acts are reported, or investigated, or prosecuted, or in the making of sentencing decisions – probably cumulatively across all those processes, punishment has become cruelly focused on this one group.

Let us now look at some of the consequences of that. And I should like to start the discussion of that by looking at the sorts of issues on which the European Committee for the Prevention of Torture, Inhumane and Degrading Treatment or Punishment focused when it last came to Scotland in 2003. This Committee visits all 46 member states of the Council of Europe and has to be granted unhindered access to any place in which people can be detained: police cells; prisons, psychiatric hospitals, immigration detention centres, custodial schools; in Britain, in Iceland, in Chechnya, in Turkey, in Moldova, in Siberia. They see a lot.

They note that although they did not receive any allegations of severe ill-treatment of detained persons by the police. But they also note that about 800 complaints of police assault are received annually and that they received complaints of rough treatment, kicks and punches at the time of arrest, of handcuffs being applied painfully tightly and of inconsiderate driving of police vehicles containing prisoners. They asked for further information on the investigation of such complaints and the frequency of disciplinary or criminal proceedings following such investigations.

In the light of the inadequacy of legal protections to people in police custody as regards notification to another, immediate access to a lawyer and access to a medical officer of their choice but taking note of the government's reassurances of practice in these areas they also ask for reports of actual practice and of clarity and enforcement of regulations. They note inadequate provision of accommodation for detainees in one of the two police stations they visited and asked for improvements in the granting access to those held in police custody for more than 24 hours to some form of exercise.

In visiting Barlinnie prison, they noted improvements in accommodation since their previous visit in 1994. They report that the failure of the authorities to end slopping out in Scotland by 1999 as they had been assured it would be on their last visit as 'highly unsatisfactory' They ask that the authorities bring forward their estimate to have achieved this by 2007/8 to 2005. In their response to this part of the report the government replies that it cannot undertake to have completed that improvement by 2007/8.

They comment on reports they received alleging violence by both staff and other inmates, on the inadequacy of the newly installed partitioning between the sleeping area and toilets that had been installed in cells (a development that was heralded by SPS as creating a prison fit for the 21st Century) and of the arrangements for accommodating new admissions to the prison while they wait to be interviewed. They have some adverse comments to make about conditions in the State hospital that they also visited and are most positive of the comments they make about the Secure Detention facility at St Mary's Kenmure.

None of this is the stuff of "Midnight Express" but neither is it an international committee recognizing the operation of parts of the criminal justice system it visits as humane and communicating to those detained the care of the authorities to ensure that they are held in custody with dignity. A similar picture is painted by the Annual Report of the Chief Inspector of Prisons. As is the case of all who see the work of prison staff in Scotland he pays tribute to their endeavour and humanity.

He points attention in his 2004/5 annual report to the continued existence of slopping out in the hall in Polmont that is where children coming into custody for the first time have their first experience of prison conditions. He records the willingness of the authorities to allow children under 16 to be held in prisons: 18 of them during the year, one for 155 days. (A characteristic that by the end of the 1980s we believed we had brought to an end) He regrets what he

considers to be a statistical sleight of hand in the prison system using in its new planning methods not the number of prisoners that the prison is designed to hold as its baseline but the normal level of occupancy, building into the process for Inverness, for example an implicit acceptance of 46% overcrowding as the norm. He cites frequent examples from around the country of the corrosive impact the very high prioritisation on making financial savings is having on the quality of the work that is undertaken in Scottish prisons. As I will, in a moment, though with commendably more restraint, he draws attention to “how damaging prison can be”.

What reports such as these tell us is that, however, well managed our prisons and comparable agencies of criminal justice may be – and in many respects Scotland’s prisons could be held up as models of good practice – it is unrealistic to talk as though the impact of imprisonment in this country is over the piece positive and likely to enable the inclusion of the highly excluded population that is sent to them into our communities: they are characterised by assumptions, practices and absence of care that communicate the disregard in which the authorities hold those who are sent to them.

In exemplification of the systemic carelessness of the way in which we structure our practices, I should like to make comparison between practice in Scotland and practice in Bosnia and Herzegovina – a country whose prisons I now know rather well – as regards the care with which the two systems actually safeguard family relationships of those in prison, and the importance attached to the support of family relationships as is evidenced by those practices. (I should say that I am not trying to argue that we should model our prisons on BiH, but that the underlying assumptions that we make about the way in which prisons should be run is coherently challenged by sets of expectations from other countries). In Scotland, if someone is sentenced to prison in court, they are removed immediately to below the court, put in a cell, then put in handcuffs – and I understand that the practice is now accepted by escorting services in Scotland that prisoners may have their two hands cuffed to each other – and taken to a prison without any opportunity to speak with their partner or family. (I would commend that anyone here who has not heard Angela Morgan of Families Outside speaking of the impact that can have on families, they should do so). In BiH, unless the court finds reason to order the contrary, when a person is sentenced to imprisonment, he or she will return home. A letter will be sent to them subsequently instructing them to report to prison. They have ten days to do so or alternatively to write to the court explaining why their social obligations make it an inappropriate time to serve their sentence. The law recognises 9 or 10 reasons that may be advanced: a partner is expecting a

baby, the harvest needs to be got in, aged parents need care. The reasons have to be supported by evidence and the sentence has to be commenced within a year of being handed down. In our system we not only show a cavalier disregard for family needs; we absolve the offender of any responsibility either for putting their affairs in order or for submitting themselves to punishment and, from the outset, we establish a relationship with the person undergoing punishment that is premised on their untrustworthiness. (This assumption of untrustworthiness is further reflected in the way our prisoners are managed in that 29% of the prison population in Scotland are deemed to be in need of the highest, most restrictive level of supervision) And remember, 80% of sentences to prison in Scotland are for periods of six months or less and for which many informed practitioners and commentators would argue would be better dealt with by community sanctions. When in prison in Bosnia, prisoners – including (and arguably especially) pre-trial detainees are entitled to intimate visits with their partners. The visits are in specially furnished rooms. They last 3 hours and are out of the sight of staff. When the Council of Europe was drawing up its recommendation on the management of prisoners serving long sentences, representatives of all the countries on the committee wished to include specific guidance on the provision of visits designed to sustain intimacy between prisoners and their partners. All countries, that is, except the UK, which vetoed the proposal to the bemusement of practitioners from across Europe, and especially those countries that had formerly been part of the soviet system. But few prisoners in Bosnia use their entitlement to intimate visits as they are also entitled to regular weekend leave to fulfill the family responsibilities.

What I am describing is an institutionalised disregard of and damage to family life associated with imprisonment in this country. I would not argue that there is any wish to achieve that. But I would suggest that we would do well to look at our practices in this area and consider whether we do not allow an instinct to impoverish and subdue prisoners to over-ride any coherent consideration of how we might sustain social relationships that few would disagree are fundamental supports to law abiding life. Similar arguments apply to the debate that now has to be had on the recommendations of the Sentencing Commission on early release. Again, the Council of Europe has issued very helpful guidance emphasising the importance of universal access by prisoners to structured early release supported by conditions and supervision. Such structured and supported return to freedom is most important for our most problematic prisoners but it is all too easy to let clear consideration of how best to achieve the goal of improving public safety be lost in fears that the benefits to the prisoner of leaving prison early would therefore not be restricted to those who, by their conduct and response in

prison have earned them. We need to be careful not to lose our concern for public safety behind a wish not to appear to reward problematic behaviour.

If I could return to the example of impact on family life again briefly. We learn from the Auditor General's report on "Correctional Opportunities for Prisoners" that, commendably SPS offers 4 "Approved Activities" targeted on developing prisoners' relationship and family skills: "Relationships", "Positive Parenting", "Parenting Matters in Prison" and "Encouraging the Long Term Father". But we also know that 80, 50, 16 and 17 people in turn had had access to these programmes during the year: out of the 20,000 who passed through prisons. But each of those 20,000 was relieved by the criminal justice system, at a stroke, of any possibility of dealing responsibly with their home affairs, each was subject to restricted and estranged contact with their family and very few had available to them, and then only very limited, opportunity to engage in family life in their home during their sentence.

That example of the impact of prison on family life illustrates the general issue. Scotland can take pride in the investment it has made in ensuring the quality of the work that it does with prisoners. In 1996, it introduced a policy of discouraging well-intentioned but often poorly conceptualised work with prisoners and instituted a system of accrediting prisoner programmes. In the 10 years since then, it has accredited 6 programmes. Between them they are now made available to about 850 prisoners a year (nearly half of this total being accounted for by a general programme focused on prisoners' cognitive and problem solving habits). They have also introduced a wider range of shorter and less thoroughly evaluated activities of the sort I described above. These are available to about 1,300 prisoners. They have introduced 'Links Centres' where most helpful work is being done offering in a one-stop-shop environment a range of housing, addictions, benefits employment services.

For the 80% of people who spend short periods of time in prison, the possibility of meaningful access to these services is slight while the reality of exposure to severance from family and community, of loss of privacy, of hours of inactivity, of fear is certain. Barlinnie offers more programmes to prisoners than all prisons other than Glenochil – 120 a year – but 8,000 people pass through Barlinnie in a year.

To conclude. We live in a country that in general is safe and prosperous. Across two thirds of the country we only find it necessary to punish people through the criminal justice system at levels that equate with the least punitive in the world. But we do have some pockets from which we also find

it necessary to punish at levels that would be found in only the worst ghettos of the most punitive countries.

There is a broad political consensus, shared by the executive, that recognises the existence of a small number of pockets of extreme deprivation and is aware of the very strong association of that with the development of lifestyles that lead to punishment. We don't know to what extent each of: the behaviour of the young men from these areas, the behaviour of the public, of the police, of prosecutors or of sentencers that contributes to their concentration in prison. It is reasonable to predict that it is an aggregation of each of these.

Peoples' experience of exclusion of the intensity that is experienced in these communities is pervasive. It comprises many components that each support each other in an alienating cocktail of rejection, social and economic incompetence, emotional immaturity, reckless and self-destructive behaviours and validating cognitions. These are not issues that can be addressed piecemeal: they are the consequence of years of learning and, insofar as they are amenable to mediation, are likely only to be impacted by consistent and contrary experiences over a long period of time.

Massive investment is being made at present to re-shape and modernise the criminal justice system. In the prison system in particular most impressive work has been undertaken to develop rehabilitative services. We should not be misled from that however to reach the conclusion that the overall impact of punishment is likely to be constructive. For the group that is the core of the imprisoned population, the overwhelming effect of contact with the criminal justice system is to confirm their exclusion

We are likely, of course, to continue to use prison. We may wish to do this to express our condemnation of certain behaviours. We may wish to do this simply to remove people for a time from our communities, for respite and protection. But we should remove from the language that we use in justifying our action any references to the positive effects of the experience and we should be removing from our thinking any notion that spending time in prison is likely to reduce the probability of any but a very few people re-offending.

Promoting Desistance and Resilience in Young People who Offend

By

Lucy Robertson, Anne-Marie Campbell, Malcolm Hill and Fergus McNeill

Introduction

This article reports on an evaluation of recently established projects in Scotland, which apply a holistic approach to working with young people who commit offences. In this article we shall briefly describe the underpinning philosophy of the agency running these projects, the data-gathering methods and findings related to the young people referred during 2002-3. First we outline key features of current understandings of youth crime and justice, child welfare and service delivery, which are relevant to the service model. Some of these were explicitly espoused, while others have been more implicit or potential in the approach.

Concepts and evidence underpinning an intensive holistic approach to helping young people with serious offending problems

Attending to needs and deeds

Over the last 20 years, in England, the USA and elsewhere both the theory and practice of youth justice have tended to sever the links with child welfare approaches, which were seen as discredited on account of their lack of effectiveness and potential for disproportionate periods of loss of freedom (Stewart, *et al.*, 1994; Muncie, 2004). Fortified by research evidence about ‘what works’, the stress has been placed on services that impact directly on criminal behaviour, particularly through the use of cognitive/behavioural models, though also embodied in early interventions (Farrington, 1992; Farrington, 1996). It has been argued that, in England, this trend has been associated with a ‘punitive drift’, which has neglected the substantial welfare needs of most persistent young offenders (Goldson, 2000). Recently, however, there have been attempts to reintegrate ‘justice’ and ‘welfare’ considerations and systems, but in a new way, also taking into account some of the implications of restorative justice principles. This fits with the Scottish Children’s hearings system, which has retained a strong welfare basis for the past 30 years (Lockyer & Stone, 1998; McNeill & Batchelor, 2002).

The determination to see needs and deeds as being interlinked is supported by both practice experience and research evidence highlighting the close interplay between, on the one hand, poor care or abuse and, on the other, anti-social behaviour and youth crime. The association is neither simple nor inevitable, but many young people who offend were previously ill-treated and/or looked after in public care early in their lives, while disproportionate numbers concurrently face major welfare issues (Huizinga & Jakob-Chien, 1998; Waterhouse, *et al.*, 2000; Thornberry, *et al.*, 2001; Taylor, 2003; Howell, *et al.*, 2004). Several studies have shown that multiple placements in care are associated with 'heightened rates of delinquent outcomes' (Jonson-Reid, 2004).

Of course, the fact that many young people who offend also have welfare problems, or indeed the evidence that often these were part of the cause of unlawful behaviour, does not mean that attempting to resolve those problems will in itself deal with the criminal activity. However it suggests that an integrated approach is likely to prevent personal and social problems from undermining progress made in response to work on beliefs and attitudes about crime. Mainly American research has shown that multi-modal and multi-level approaches to youth crime are among the most successful (Lipsey, 1995), as indeed is also the case for a range of care and protection interventions (Hill, 1999). Moreover, although unstructured counselling by itself is often ineffective (Lipsey, 1995), young people appear to respond best to programmes and guidance when they believe that staff are interested in their well-being and are able to build trusting relationships (Hill, 1999; Rex, 1999; McNeill, forthcoming).

Resilience and Desistance

Theoretically child welfare has been recently fortified by attention to the concept of resilience, while desistance has become prominent in relation to youth crime. Although developed separately, these two ideas have much in common. Resilience refers to a set of interactive processes between an individual and her/his environment that enable that person to do well despite adversity or to bounce back following adversity. A major focus of resilience research and theorising has been on children who grow up in poverty affected by abuse or separation (Werner & Smith, 2001), in other words the kinds of children who are at high risk of both public welfare interventions and of becoming persistent offenders. A resilience approach to professional practice seeks to build upon personal, family and social resources available to the young person or, where these are lacking, to help

develop appropriate resources and supports (Daniel, *et al.*, 1999; Gilligan, 1999; Newman & Blackburn, 2002). For those in their mid to late teens, this can mean for example tapping into and enhancing interests, hobbies and skills for their educational and employment value, as well as maximising external supports, whether through encouraging existing links with trusted individuals or developing alternative relationships, as in mentoring. Thus a resilience approach also involves promoting social capital for young people for whom this is usually deficient.

Theories about desistance from offending highlight three main clusters of influence (Maruna, 2000; McNeill, forthcoming):

1. maturation
2. the development of significant ties to people, education and employment that discourage and substitute for criminal activities and associations
3. changes in identity

A somewhat different formulation is to view desistance as the interactive product of five domains: programmed potential (risk factors), social structures, situational contexts, group culture (*habitus*) and individual choice or agency (Bottoms, *et al.*, 2004). Burnett has pointed out that desistance is often 'provisional', and so is affected by the presence or absence of people in a the formal or informal network who encourage or discourage involvement in crime (Burnett, 2000). Like resilience, a desistance approach tends to be future oriented, seeking to develop personal and social resources rather than delve into past history, and also emphasises the strengthening of social ties (Rex, 1999). This fits well with young people's own wish to concentrate on the here and now and future possibilities rather than past failures (Jamieson, *et al.*, 1999). McNeill (2004) argues that desistance research requires a mode of practice that engages productively with the inherent complexities between people's narrative constructions of their identities and the social and personal contexts of change and helping processes. Neither a unidimensional focus on behaviour, nor a return to deterministic welfarist rehabilitation are satisfactory, so a new configuration is required, which also gives prominence to the agency of young people involved in crime (McNeill, forthcoming).

Service delivery

Research on rehabilitative interventions in relation to youth crime stress that services should target serious or persistent offenders, be well structured

and be implemented coherently (Hollin, 1995; Utting & Vennard, 2000; McNeill, forthcoming). They need to challenge thinking about crime as well as behaviour and tackle offending-related personal, family and environmental problems. Work with young people who offend occasionally (the great majority) is often best brief and should seek to divert young people from formal intervention (Goldson, 2000). It seems, though, that young people with entrenched offending patterns require longer term intervention (Howell, *et al.*, 2004), as is the case with most of those who have deep, multiple problems (Williams, *et al.*, 2001). Moreover close and readily available support is also often crucial for improvement to occur (see for example, (Berry, *et al.*, 2000). Intensive and flexible responses to individual circumstances form important aspects of wrap-around models of practice in North America, which also include a no rejection or ejection policy (Burns, *et al.*, 2000). Unconditional acceptance is seen as an essential element for the young people to give and receive that trust without which they are unlikely to engage with more targeted and structured elements of a programme.

Social inclusion and restorative justice

Social inclusion has been prominent in New Labour government policies, with a somewhat diffuse and variable meaning, related to overcoming social exclusion, which may result from poverty, unemployment, living in a deprived neighbourhood or a range of factors linked to behaviour, social status or identity (Askonas & Stewart, 2000; Pierson, 2001; Hill, *et al.*, 2004). It is highly relevant to youth crime, which may itself prompt attitudes and responses from adults that marginalise the young people involved, while the multiple and connected disadvantages of social exclusion are widely recognised as key risk factors in provoking offending. Seeking to tackle the environmental problems of young offenders has been a long established element of practice. This is reinforced by one element of restorative justice, which emphasises making amends to victims and the wider community, but also encourages links to ‘mainstream’ society so that a young person is restored to a ‘normal’ relationship with the community (Crawford & Newburn, 2003).

The projects

Includem is a not-for-profit organisation set up in Scotland in 2000 to run a number of projects working with young people who, by virtue of their persistent offending and chaotic lifestyles, had exhausted the capabilities of mainstream services.

The primary aim of Includem is to ‘tackle the social exclusion of young people at the greatest risk of offending and to reduce the offending behaviour of the most excluded young people by offering packages of personal support and supervision’ (Annual Report 2003, p. 2). Includem’s work aims to re-integrate young people, especially through helping them become established in suitable accommodation and supporting educational and employment goals. These measures not only promote social inclusion in the sense of enabling young people to reconnect with law-abiding society, but they offer potential routes to adequate incomes and improved life-styles for young people, consistent with desistance and social capital ideas.

The approach has six key elements:

- primacy of intensive support and supervision within the context of a close trusting relationship with a key worker (for 5 to 6 hours per week on average)
- 7 day a week availability (including a 24 hour helpline)
- brokerage of help packages from general and specialist agencies
- providing multiple supports, including use of mentors and volunteer befrienders
- ‘stickability’, that is, staying with young people ‘no matter what’
- constant management support

In contrast to some programmes, the primary basis of work is one-to-one rather than group or family work, although some work with parents does take place when needed.

Includem has sought to apply principles and techniques derived both from longstanding criminological and intervention theories and from recent concepts and evidence about desistance from crime. It has developed its services to address both deeds and needs: the essential ingredients of its services for young people who offend are largely the same as those used in its services for young people with care issues, apart from greater attention to offending and attitude focused work. Key workers are committed to both frequent personal contact and availability, alongside structured work, thereby reflecting the principles and evidence about effectiveness outlined earlier in the article. The work focuses both on tackling problems in young people’s lives and on promoting their strengths, which is consistent with recent thinking about resilience and desistance.

Since its inception, Includem has been committed to independent evaluation and commissioned staff at the University of Glasgow to undertake work to assess the progress made by young people accessing the service.

Methods

The evaluation is based on a study of 50 clients served by Includem's young offender projects, who were followed up for at least a year after starting with the programme. By gathering quantitative and qualitative information, the research has examined both the processes of implementation and evidence about young people's progress and outcomes (Patton, 1990; Hill, *et al.*, 1996; Kazi, 2003). In conjunction with the researchers, Includem developed a system of 'Events and Changes' pro-formas to monitor positive and negative developments across key dimensions of young people's lives. Project workers completed weekly 'Events and Changes' sheets jointly with young people. They recorded new offence charges, as well as improvements or deterioration in the young person's living situation, drug use, alcohol use, health, education/employment, personal/social relationships. The research team summed the numbers of positives and negatives on each dimension to show individuals' progress as a form of single-case design. The totals were aggregated to show the trends across the whole sample.

In addition, Youth Level of Service assessments were completed at referral by the project workers and at a twelve month follow up stage. The YLS is primarily a case management tool, but also acts as a measure of changing risk and resilience (Hodge & Andrews, 2001). Scores are generated on eight domains:

- Prior and current offences
- Family circumstances/parenting;
- Education/Employment;
- Peer relations;
- substance abuse;
- Leisure/recreation;
- Personality/behaviour;
- Attitudes/orientation.

These yield a rating of Low, Moderate, High or Very High on each individual dimension, which can be summed to give an overall score. Data using the YLS measure was available for 30 of the 50 young people in the research sample, who had been with the earliest established teams.

In addition, semi-structured interviews were carried out with young people, key workers and local authority social workers. Baseline interviews were completed within four weeks of the young person being referred and follow up interviews after approximately 6 months. Respondents were asked

initially about expectations and goals and later about the extent to which these had been met and how. The interviews also covered progress and outcomes on key developmental and behavioural dimensions; and feedback on the different elements of the service provided. This article concentrates on data from the young people themselves as the primary service users, but corroborative data from the professionals is also included.

The sample

At the time, Includem had four offending teams covering different parts of Central Scotland. For the purpose of this study a sample of 50 young people were chosen at random from the four teams' lists of clients, who had been registered with the project for at least 12 months. Besides duration of involvement, the only other factors that affected inclusion were the young person's consent and availability for completion of both risk assessments and semi structured interviews. The evaluation did not have adequate resources to permit the inclusion of comparison or control groups.

Young people in this study were mainly referred to Includem by local authority Social Work Services. A major criterion for referral was that the young people had not responded to existing services, whether at home or in public care.

About two thirds of the young people were male. The majority were aged 15-18 years old at the time of interview, but one was younger and a few older. Just under two thirds (63%) were categorised as either high or very high risk of offending at referral. Examination of both risk assessments and the events and changes pro-forma found 58% of young people to be subject to some form of external risk factors that were not directly attributed to their own behaviour at the time of referral to the project. Most commonly these fell within the areas of family and accommodation difficulties. Many others were experiencing family difficulties that could be attributed to their own previous behaviour.

Expectations of young people

Using a standard prompt covering a number of areas of potential help, all the young people were asked in interview by the researchers in which areas they thought they needed help (Table 1). 90% admitted to a need for help with offending, but this was nearly always seen as one of several issues in their lives requiring assistance. Four fifths (82%) wanted help in at least two other areas as well. 52% of young people stated they needed changes with

regard to their living situation (accommodation) and nearly as many wanted help in finding or maintaining an educational placement or job. Drug/alcohol misuse and personal family relationships were also common concerns. Thus nearly all of the young people hoped that both their deeds and needs would be tackled.

Table 1: Young people’s expectations of help wanted
(N = 50)

Category of help	Number of clients	Percentage of sample
Offending	44	88
Accommodation	26	52
Education/Employment	23	46
Alcohol use	22	44
Family or Personal Relationships	21	42
Drug Use	20	40
Practical	14	28
Health	9	18

Asked open ended questions about their objectives, about two thirds indicated generalised long term goals such as ‘to stop offending’ which they felt to be the reason the project was asked to work with them. Very few discussed shorter term objectives necessary to reach their end goals.

Evidence about outcomes

Offending

After 12 months the proportion of young people with a high or very high offending risk score on the YLS had fallen from two thirds to one third. Eight of the 30 assessed with this tool did not change their overall score at follow up and one young person increased their score from moderate to high. All of the remaining 21 young people had reduced their overall score (Table 2).

Throughout the initial 12 months working with the project 12 (24%) young people committed no further offences. Of those re-offending at some stage most occurred either within months 3 and 4 or between months 7 to 9.

The actual number of offences committed over the twelve month period demonstrated a decrease in numbers between the first and second 6 month periods. Some 68% of all the offences being committed during the year were within the first 6 months. Offences mostly involved personal or public

aggression (assault and breach of the peace) or were property related. There was a reduction in each of the main types of offence.

A common pattern was for young people to engage and improve their behaviour as regards offending and substance or alcohol misuse quickly within the first six months, but then have a setback in month's seven to nine. Quite often the return to offending coincided with other difficulties, for example, family conflict or accommodation problems. These relapses were nearly all brief and followed by a return to little or no negative incidents. By contrast, those who appeared to take longer to engage initially and demonstrated a gradual decrease in negative behaviours particularly between months 3 and 6, were largely free from relapse in the second 6-month period. The group experiencing relapses had a higher number of previous offences recorded prior to referral and severe relationship difficulties. This suggests that the early apparent engagement and improvement were more superficial, so desistance was not sustained. However, the long-term commitment of the projects enabled them to overcome the relapse.

Other life domains

Changes in other aspects of young people's lives showed a mixed pattern. Scores on the eight dimensions of the YLS are shown in Table 2. This shows that, besides offending, the other most common changes in risk and need were with respect to attitudes, behaviour and peer relations:

Table 2 – YLS Scores over 12 months (N= 30)

Category	Number of clients at 12 month with overall score (Low, Medium, High):		
	Increased	Decreased	The same
Prior & current offences/dispositions	1	24	5
Family circumstances/parenting	2	18	10
Education/Employment	3	12	15
Substance abuse	1	6	23
Leisure/Recreation	0	19	11
Personality/Behaviour	1	23	6
Attitudes/Orientation	1	25	4
Peer relations	2	20	8
Totals	11	147	82

It was uncommon for a deterioration to have occurred on any dimension.

Using the events and changes pro-forma, trends were identified as stable periods when positive developments such as attendance at school were sustained over a number of weeks or months, while chaotic periods were characterised by positive and negative events happening together or close in time (eg, resumption of school followed by suspension). On this basis progress in education/employment or accommodation was for most of the sample a combination of stable and chaotic periods over the first 12 months. Out of the 35 who showed a reduction in offending behaviour, 25 clients had at least one other area where problems remained unchanged or worsened. The most commonly continuing problem areas were personal relationships, accommodation and drug misuse. To tackle these wider issues of social exclusion, long-term intervention was provided as young people worked through a succession of turbulent periods and changes. Most significantly, the data showed that when young people experienced further negative events or changes in specific areas of their life, some returned to offending behaviour at those times. One third of clients showed offending current to or just after a period of turbulence. The data across the range of dimensions indicated that for most young people there was an improved pattern of negative and positive events recorded in the final three of the twelve months both as regards offending and indicators of a less eventful and chaotic lifestyle being ensued.

A crucial pre-requisite for social inclusion is employability, for which many young people were ill-equipped at referral. Within the area of education all who had previously been excluded from formal education (and were under the age of sixteen) had either re-engaged with formal education fully or at least begun to reintegrate gradually by the end of the twelve month period. For those over sixteen who were initially excluded in both the areas of education and employment improvements were occurred for just over half. About half (51%) had either gained employment (and sustained it for a period of at least 4 weeks) or begun attending further education. Nearly all the others had begun attending a job centre or other services related to seeking employment.

Changes in attitudes were evident in the discussions of future education and work plans at the initial and follow up stages. During the initial interviews few young people acknowledged a need to tackle this area of their lives. Some stated that they simply were not interested in activity in these areas, for example, *"I don't want a job"* or *"there's no point in going to school"*. By the time of follow up interviews however, the numbers wishing help with education/employment and having corresponding personal objectives almost

doubled. Even those who were still not interested currently tended to be less dismissive or recognise its future relevance. For instance, one said: *“I’m not ready yet for a job, once I’ve stopped using (drugs) I’ll look for one”*.

The mechanisms for achieving change: the centrality of one-to-one trust

From the perspective of young people, the direct communication with their key worker was the primary helping mechanism. They stressed the combination of the personal qualities of the relationship combined with structured attention to the young person’s needs, attitudes and behaviours.

Responses to standard questions shortly after joining Includem showed that young people usually began with a reluctance to engage, which was related to past disappointing experiences with professionals. Workers also described how at first some young people would fail to attend appointments, be uncommunicative or display resentment. However over a period of days or weeks, trust developed. After a few weeks, just over half the young people felt that Includem was very distinct compared to other services, particularly because of the greater amount of time staff spent with them and the workers’ ability to listen and relate. Young people also realised that staff would not give up on them, when they continued to reach out after a young person had not been home as arranged or spent time supporting them through a crisis or children’s hearing. For example one young man did not do well initially and was sent to prison. However this seemed to serve as a turning point in the client worker relationship *“He came and seen me in the nick and picked me up and helped me when I got out”*. After this period the young man began to make positive changes. His YLS risk scores and actual offence charges both decreased markedly and he obtained his own tenancy.

In view of young people’s histories however, not surprisingly sometimes personality clashes did occur and a few clients requested a change of worker. By the six months stage, 94% were said by workers to have engaged well. Just three out of 50 in the sample refused to co-operate with staff, even after a prolonged period.

As in previous research (Hill, 1999), young people stressed the personal qualities of key workers through which their professional expertise was deployed. The young people valued the accepting manner and willingness to listen, not telling them what to do, which they had resented from others in the past. Workers were described in terms such as ‘easy to get on with’, ‘normal’, and ‘friendly’. The personal, attentive aspects were also cited in

comparing Includem workers to other workers, mainly local authority social workers.

Qualitative statements in over half the cases about what had been most helpful in the worker's approach concerned support being offered appropriately. About one third of young people highlighted the intensive nature of the support (that is, frequent and lengthy contact). All young people who had engaged with their worker said this had the greatest influence on positive changes they had made. Around two thirds made reference to honesty and forthrightness as helpful qualities, for example, "*They don't mess you about, they tell you it straight*".

Once clients had got to know their worker and were convinced of the persistence of their approach, they began to like them and felt able to trust them. This enabled staff to guide and challenge behaviour, which young people considered as advice rather than instruction. Half the sample referred to the value of advice and guidance from workers in adopting more constructive behaviours.

Worker 'stickability' was also highlighted as vital to helping young people through periods of behavioural relapse. One young person said "*It's good to know there's someone there for you, even if you muck up*". Young people who discussed a relapse period emphasised the support and encouragement offered by workers during this period as being paramount in both helping them through this time and in adding more depth to their trust in the project and their workers.

Moving beyond trust

As indicated above, the trusting relationship with a key worker was both a central mechanism in itself for promoting change and a means that made possible more targeted work. Interviews showed that young people were assisted to adopt a more organised, 'planful' and focused pattern to their daily lives, which have been found to be key individual features of resilience (Quinton & Rutter, 1988). 'Weekly planners' were used to set appointments and agree targets with the young person and their worker, while detailed structured workbooks were used as a tool to establish objectives that could be reviewed systematically to produce evidence about changed behaviour and activities. Many young people said these were major elements in helping them change their behaviour. Thirty eight of the 50 young people in this study (i.e. about three quarters) had used *both* the workbook and weekly planners and of these 71% viewed them as being either helpful or very helpful in the changes they had made. The value of this work was

demonstrated during follow up interviews, when young people were often able to explain how they had achieved or were achieving their goals by spelling out the steps necessary to reach these original aims. Some said they had learned to break down a global aim into a number of smaller more attainable objectives.

It was also evident that practical support and general encouragement to accept interventions or attend meetings involving other agencies such as social services played a part in assisting the positive changes made. A large proportion of clients had previously either refused to attend services or had attended erratically. However the encouragement and presence of Includem staff had enabled young people to access help from other services, especially with respect to substance misuse issues. General practical assistance and encouragement in meeting with and communicating with other agencies such as social work or court was cited as having helped a great deal in positive changes made by around two thirds of the fifty young people asked. One young male had originally stated *“Nobody can help me ...I don’t need to change anyway”* and had refused to work with any agencies previously. He later commented *“Includem have helped me change but social work has helped with stuff too”* indicating engagement not only with the project but with other core services who may act as support networks.

Other elements of the service

Young people also regarded the approachability and availability of the service as a whole as vital elements in supporting change. Young people commented on the fact that Includem were always there for them. Constant worker support during a crisis response strengthened relationships. Young people felt re-assured that they could contact the 24-hour helpline at any time. The fact that a person was available *if* needed, was a comfort. Some used to talk through problems or request immediate help in getting out of situations that could have lead to offending behaviour, such as fights with peers or using violent behaviour at home. In this sample 65% of clients used the helpline, though at times this served organisational purposes, such as confirming contact times, rather than crisis needs.

Young people came to know members of staff other than their key workers through the helpline and visits to the Project base, while some were allocated a mentor. These wider contacts combined with the trust in the key worker meant that young people generalised their feelings of being supported to the whole agency and felt able to approach the organisation for help, even if their key worker was not available.

Conclusions

We have presented evidence about the effectiveness of projects run by a new agency in Scotland (Includem), which offers intensive support to young people who offend, have severe, multiple problems, and have exhausted the capacity of mainstream services. The service offers young people frequent contact with a key worker, plus access where needed to a mentor, a 24-hour helpline or links to other specialist services. The aim is to promote desistance from offending and resilience in overcoming social exclusion and family difficulties.

The data showed that Includem's offending projects were successful in maintaining young people's co-operation, with a very low rate of service termination. Nearly all the young people regarded the service very positively and contrasted it with previous experiences as regards caring, availability and consistency. Workers carried out structured work programmes with young people along with responding to crises, but it was the personal qualities of the relationship that young people regarded as most crucial in supporting change. Once trust was established, the young people were willing to engage in structured work, discuss constructively the consequences of their actions and make positive plans for the future.

The data on behavioural change, environmental circumstances and network relations showed that actual offending and risk of re-offending both reduced in most cases, while other aspects of young people's lives normally exhibited ups and downs, though generally in a positive direction.

The multi-stranded approach (intensive support, tackling social exclusion, crisis help) was not only effective but also fits with current theorising about the multi-dimensionality of both offending and children's welfare and their interconnectedness. The study confirmed the relevance of the classification of desistance domains by Bottoms, *et al.*, (2004). The projects were dealing with young people who had high programmed potential for re-offending (risk factors). The mode of working with young people helped reduce offending by a combination of cognitive work to enable young people to resist situational 'temptation' and crisis support to overcome interpersonal or accommodation crises, so that situations did not increase both the young person's vulnerability and the likelihood of re-engaging with criminal activity. The projects were not in a position to alter structural constraints, but the workers prioritised help and support for young people to take advantage of educational and employment opportunities, which would increase their life chances and social capital. Individual agency was also a crucial factor, since most of the young people had a history of poor co-operation with

formal agencies and were initially suspicious of engaging with this new programme, but the workers used active persistence and informal acceptance to gain trust and persuade the participants that change was worth trying. Where the project may have been weaker was in addressing group culture issues, except indirectly. Arguably there is also more scope for strengthening the informal support networks that young people will require to be resilient and socially included once involvement with the service has finished.

The agency approach and this evaluation support policy and practice measures that integrate attention to structure, situation and agency across all the main dimensions of young people's lives and development. The projects helped build social capital, in the sense of increasing young people's sense of trust in professionals, stabilising or developing their education or employment. However, improvements in behaviour often went alongside persistent problems in one or more life areas, which combined with the chronic nature of the problems in the young people's histories, emphasised the need for longer term support and relapse prevention measures. This also highlights that services dealing with offending by young people must attend to their welfare needs, not simply because this is a contributing criminogenic factor in their unlawful deeds, but because they are entitled to such help to overcome long term disadvantage and become ore socially included.

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Electronically Monitoring Offenders in Scotland, 1998-2006

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Introduction

The electronic monitoring (EM) of offenders originated in the USA and grew steadily across Europe and rest of the world during the 1990s (Ball, Huff and Lilly 1988; Mayer, Haverkamp and Levy 2003). Electronically monitored Restriction of Liberty Orders (RLOs) were introduced in Scotland by the Crime and Punishment (Scotland) Act 1997 in the last days of a Conservative administration (Scottish Office 1996). They were part of a general strategy intended to strengthen existing forms of community supervision, to increase public and judicial confidence in such supervision and thereby to improve public protection. However, as McAra (1999) notes, there was still significant deference in the Conservative strategy to the humanistic, “penal welfare” values so staunchly upheld by Scottish crime policy networks since the 1960s, which had both survived the encroaching “culture of control” (Garland 2001), and bestowed a distinctive “tartan” slant on several indigenous criminal justice institutions. Until recently, the congruence or otherwise of EM with the enduring Scottish inflection on penal welfare values has been at the heart of all arguments about it in Scotland, although, tentatively, it might now be suggested that the questions are changing.

RLOs were partly modelled on the EM-curfew orders already being used in England and Wales. They enabled the restriction of an offender *to a place* (usually his or her home) for a period of up to 12 hours per day, up to a maximum of 12 months (double the length of the English order). Uniquely in Europe, an adaptation of the same technology meant that offenders could also be restricted *from a place* (originally envisaged as the home of a domestic violence victim) for 24 hours a day for up to 12 months. The new orders were made available to all Sheriff, High and Stipendary Magistrates courts. Their introduction coincided with penal reformers’ concerns about Scotland’s rising *adult* prison population - from an average daily population of 4,470 in 1993 to 5,018 in 1997 - and although the initial Conservative legislation did not specify that RLOs should only be used instead of prison, an early

New Labour circular (Scottish Office 1998) spoke of “tough alternatives to custody like electronic tagging”.

Piloting Electronic Monitoring in Scotland

Under the 1997 Act three pilot schemes ran between 1998 and 2001 in Hamilton (operated by General Security Services Corporation of Europe Ltd (GSSC)), Aberdeen and Peterhead (both run by Geographix , later called Premier-Geografix). The first 14 months of the schemes were evaluated by Professor David Smith of the University of Lancaster on behalf of the Scottish Executive (Lobley and Smith 2000; Smith 2001). 152 orders - all restrictions *to a place* - were made on 142 offenders (only 9 of whom were women): 94 in Hamilton, 53 in Aberdeen and only 5 in Peterhead. As in the England and Wales EM pilots, this was far fewer than anticipated. 54% were made on 16-20 year olds, “despite the reservations voiced by some sheriffs about the ability of younger offenders to show the self-discipline required to complete an order without breach” (Smith 2001:205). Most orders were indeed made on serious and persistent offenders, but after studying sentencing decisions Lobley and Smith (2000) estimated that only 40% would in fact have received a custodial sentence. Extrapolating from this, they concluded that RLOs were unlikely to reduce the prison population in any significant way, and that with the unit costs of each order unlikely to decrease by much in a national scheme, there would be no net savings in penal costs. In addition they were concerned about the manageability of the orders. The technology proved reliable, the private sector staff performed well and social workers (who wrote assessments for RLOs) grew more supportive of tagging as the pilots progressed. But even in the 103 (72%) RLOs deemed to have been successfully completed, there were many technical breaches, and short spells of police or prison custody for at least half of the offenders. Two thirds of the 152 orders were run simultaneously with other community penalties, usually probation, but this did not correlate with improved completion rates. These difficulties led Lobley and Smith to conclude that Scotland did not need EM to help manage its prison population - increased use of its existing alternatives to prison would do. Although this was not what the Executive had anticipated, their consultation document *Tagging Offenders* (Scottish Executive, 2000) asked genuinely searching questions of EM, and led Smith (2001:209) to believe that EM’s expansion in Scotland was not a “foregone conclusion”.

Smith misjudged the moment. In June 2001 the Scottish Executive (2001) announced that the evaluation had been successful (ultimately the pilots dealt with 418 offenders, 90% of whom were deemed to have completed

their orders) and that RLOs would be rolled out nationally, as stand alone orders, as conditions in probation and as conditions of post-release licences. The internal Executive politics which brought about this decision are unclear, although, in fairness, the results of the consultation were more positive about EM than Smith might have anticipated. Smith (2003) speculates that, as in England, New Labour politicians came to see EM as a self-evidently tough measure that would strengthen the electoral appeal of their penal policies. This may be true in part, but Scottish New Labour has never pressed “populist punitivism” to the same extent as their English counterparts - the consultation document does not emphasise EM as “punishment”. The Labour-Liberal Democratic coalition partners who gained power in the Scottish Parliament in May 1999 inflected their EM-talk differently - Labour emphasising the control and regulation it entailed, Liberal Democrats (and the Scottish National Party opposition) welcoming the prospects of reduced prison use. Even the Conservative Party was not at this point hostile to it. There was thus no serious political opposition to the principle of introducing EM for adult offenders. The potentially divisive issue of tagging juveniles was not raised at this stage. Although the consultation had countenanced the possibility of EM being delivered by the state rather than the private sector, it was at the time more convenient for all concerned to continue using commercial providers - the Executive retained central control over the single service provider, while local authorities kept EM at a comfortable distance from themselves. A national contract was awarded to Reliance Monitoring Services¹ in January 2002, headed up by Iain Johnston, the former criminal justice social worker who had headed the Hamilton pilot scheme.

This paper reviews the evaluation and picks up where Smith (2001) left off, covering the period during which Reliance Monitoring Services provided EM in Scotland - in effect, up to March 2006, when a new private contractor, Serco, took over from Reliance. Noting Castells’ (1996) account of “network societies” - societies permeated and integrated by digital and communication technologies - I am more inclined (than Smith) to believe that contemporary politicians, bent on modernising governance, will at least *try* to incorporate remote location monitoring into the community supervision of offenders, although the precise forms it takes, and its reach and impact, will depend on local structural and cultural factors. New technologies of interconnectivity and the emergence of “automated socio-technical systems” (Lianos and Douglas, 2000) have created a surveillance option that crime controllers have not had before, which (potentially) weakens or subordinates traditional “humanistic” forms of supervision. Parallel to this, there is widespread recognition, even among liberals, that established

forms of community supervision must change if, in the 21st century, public safety is to be enhanced and excessive incarceration avoided (Roberts, 2004; Rex, 2005; Hough, 2006). Simplistically high hopes were once placed in EM to help achieve this, but while experience suggests that EM is not in fact the self-evidently tough measure that some champions claimed (and some opponents feared), a modest moral and empirical case can be made for imposing reasonable spatial and temporal restrictions on offenders, both as punishment and to restrict offending opportunities, preferably in the context of rehabilitative and socially integrative strategies which give offenders an incentive to comply with the controls placed on them. The aim of this paper is not primarily to engage in normative debate, however, but to chart the development of EM in Scotland, based, as yet, on somewhat incomplete data. The opinions expressed in the paper are my own but it draws on discussions with civil servants, former Reliance managers, journalists, politicians and fellow academics, for whose time and help – especially David Denny’s with statistical data – I am very grateful.

Tagging Offenders: Consultation and Response

The Executive’s consultation document clearly and cogently raised issues pertaining to the implementation of EM, drawing in particular on the experience of England and Wales and Sweden (whose probation service had run a nation-wide EM-programme since 1996). Arguably, it portrayed Smith’s evaluation too positively, (whilst emphasizing tortuous breach procedures, a problem he underplayed) and it exaggerated the extent to which “sheriffs *generally* welcomed the availability of an additional sentencing option” (Scottish Executive 2000:9 emphasis added). EM was portrayed as having potential to meet criminal justice objectives in five ways; increasing the range of sentencing options, reducing the use and cost of custody, tackling offending behaviour and reducing offending, protecting the public from dangerous offenders, and protecting victims from specific offenders. It explored the options that were already available in England and Wales, notably EM-bail and EM-early release from prison (the Home Detention Curfew (HDC) Scheme), the latter having been hastily implemented in 1999 as a matter of urgency by the incoming New Labour government, to assist in the management of a daily rising prison population. The Executive conceded that only an equivalent of the HDC scheme would create cost savings, but noted that it could not be introduced as easily as in England, because Scotland lacked a pre-existing system of release on licence for short-term prisoners onto which it could be grafted. The consultation document picked up the Maclean Committee’s (2000) interest in using EM (including satellite tracking) to monitor dangerous offenders released from prison, while noting

that this latter technology “is not yet a foolproof proposition” (idem:16). The document posed thirteen questions to potential respondents.

Replies came from 19 local authorities, 6 voluntary organisations, 3 police organisations, The Association of Directors of Social Work (ADSW), the Convention of Scottish Local Authorities (COSLA), the Parole Board, the Law Society of Scotland and the Scottish Association of Health Councils and one individual expert on EM, Dick Whitfield². Few made reference to the research, although both HM Chief Inspector of Constabulary and Victim Support (Scotland) felt it was too small in scope to justify the expansion of tagging on its own. None of the broadly supportive submissions were without caveats but all accepted, to a greater or lesser degree, the cost-effectiveness and increased control and public safety arguments that had prompted Scottish interest in tagging in the first place, and were prepared to look ahead positively towards new uses of it. There was scepticism about the value of *stand-alone* RLOs and a noticeable preference for embedding them in social work interventions - even the Law Society favoured this. Fife Council noted that “social workers are more accepting of the development of electronic monitoring than previously”, suggesting that it was not seen to threaten a broadly rehabilitative approach. West Lothian Council doubted if it was onerous: “if offenders are free to roam for the other 12 hours, then this disposal is only suitable for low risk of harm cases”. West Dunbartonshire Council particularly welcomed “the option of excluding a person from a place”. Remote rural authorities had divergent views: Orkney Islands Council, where custody was rare, doubted whether RLOs were needed, while Shetland Islands Council welcomed stand-alone RLOs precisely because human forms of oversight and support were difficult to implement in geographically remote places.

COSLA saw RLOs as a “useful addition to the range of community disposals” and made clear that “the public sector should retain control of strategic development of this disposal”, whilst fudging the issue of who should actually run it. Others were more direct, West Lothian Council noting that “the present arrangements for private tendering appear to be working” and agreeing with Glasgow City Council that delivering EM is “not a professional social work task”. Fife Council acknowledged that “the prospect of privatised services would not be a block to the development of electronic monitoring”. The ADSW accepted that local authority experience of the EM-pilots had been positive, felt that RLOs should be backed up with social work, and agreed in principle to extending EM to early release from prison and to bail. Various police organisations - The Association of Scottish Police Superintendents,

The Association of Chief Police Officers (Scotland) were supportive. The idea of RLOs protecting individual victims met with scepticism, especially from Victim Support (Scotland). Safeguarding Communities Reducing Offending (SACRO), was also sceptical, while reluctantly conceding that with high risk offenders EM did offer “a higher level of surveillance than would otherwise be possible”. The Scottish Association for the Study of Delinquency (SASD), took a different view, envisaging RLOs as an early intervention, useful “where someone is beginning to go ‘off the rails’”.

Lord Maclean’s committee on the supervision of serious and violent offenders had reported before the Executive consultation took place. His comments on EM, derived from his committee’s visit to the USA to study a range of initiatives for such offenders, mixed confidence and caution, but added significant judicial weight to the idea of *at least exploring* EM in Scotland:

The indiscriminate use of electronic monitoring rightly causes concern. However, as was noted by one respondent to our consultation, “the civil liberties implications will always be less grim than the alternative of indefinite imprisonment”. Our experience in the USA was that many offenders also take this view, and are quite prepared to accept the inconvenience of electronic monitoring, including devices which are much more cumbersome than the more simple tags used in the UK, if this allows them to remain in the community and to lead a comparatively normal life. We recognize that the technology used to monitor offenders is developing at a fast rate, but public confidence in the methods used is of course paramount. (Maclean Committee, 2000: para 9.16)

The response to the consultation gave the Executive legitimate grounds to proceed incrementally with a range of EM programmes - although it did so without conceding that RLOs should be linked to social work. The response demonstrated a widespread (if not universal), willingness to support the Executive in modernising criminal justice by *augmenting rather than transforming* existing services, and a belief (shallow rather than deep) that EM was worth trying in attempts to manage the prison population. Three Executive priorities emerged from the consultation. Firstly, to organise a tendering process to find an EM service provider. Secondly, to refine existing legislation - the Criminal Justice (Scotland) Act 2003 made RLOs a “direct alternative” to custody (comparable to community service), and

made them transferable between jurisdictions in Scotland. It also enabled EM-restrictions of liberty to be included as conditions in both probation orders and the new drug treatment and testing orders, for implementation at a future date. Thirdly, to initiate new legislation for EM-bail and EM-early release from prison, but also, in parallel, to arrange for further deliberation and consultation on these more difficult-to-implement programmes. These latter issues were also considered by the Sentencing Commission, which was established in May 2003 to cumulatively review - and modernise - sentencing in Scotland more generally.

Delivering the Electronic Monitoring Service

Reliance Monitoring Services (RMS) had a four month lead in time between winning the contract and launching a nation-wide service on 1st May 2002. A control centre, using ElmoTech³ equipment, was set up in East Kilbride, making the population of the central belt easily accessible. All the pilot staff moved there with Iain Johnson, who then appointed Norman Brown, another social worker, as business development manager, creating a team that was credible with social workers and savvy about Scottish sentencing practice. Working to a tightly-regulated contract, he deliberately distanced RMS from the military/policing ethos often cultivated by security companies, envisioning EM as something distinct and new, but supportive of social work. He never doubted the difficulties of promoting EM in Scotland, where (unlike England) the institutional power of social work still commanded respect, and he knew that only a high quality and efficient service (orders starting promptly, breaches dealt with speedily) would impress sheriffs. To this end, senior Reliance staff devoted considerable personal time - 300 meetings in the first year, 200 in subsequent years - to educating relevant constituencies about EM, and equally importantly, recruited as monitoring officers people who had sound social skills and a commitment to “customer service”. Promoting EM entailed repetitive meetings with different local authorities and groups of social workers within them, assuaging anxieties and hostilities (about both tagging and contracting-out) which were perhaps greater among basic grade staff than among the senior local authority managers who had responded to *Tagging Offenders*. Promotion also entailed presentations to sheriffs and judges, penal reform organisations and, (under Executive oversight), liaison with the media. Johnston’s approach did win significant profits for RMS’s parent company, but it is debatable whether his English managers fully appreciated his belief that tagging in Scotland needed a “tartan” inflection, and more investment in the active promotion of it. Johnston left Reliance in October 2004, following a dispute with the parent company over these things, and Norman Brown took over.

Reliance had to create “an infrastructure that will cover the remote glens of Ardnamurchan and Torridon as well as the housing schemes of Dundee and Glasgow” (Johnston 2002:54) There was some initial difficulty about anticipating and predicting where orders were likely to come from, and where staff needed to be deployed. Dundee was correctly identified as a high user, on the basis of its past requests for SERs and the pattern of its use of non-custodial disposals. Four full-time monitoring staff were appointed initially, increasing incrementally to 68 - 37 full-time, 29 part-time, 2 “retained”) by March 2006 – the latter in the Highlands and Islands where estimating need was more difficult, and orders rare - Skye has had none. Retained staff have included crofters and coast guards, and one of the losses when orders are made in the islands is staff and offender anonymity - “the tagging man” is usually known to all in the community. Recruiting women was difficult in some parts of Scotland - the hours can be antisocial, in isolated places far from home - and where women (and later juvenile) offenders have needed to be tagged the few female monitoring officers around travel long distances.

Reliance’s East Kilbride control centre operated on a 24/7 basis, requiring a complex shift system. Fewer staff are required in the daytime (although some RLOs place daytime constraints on offenders). Work increases after 4pm when new orders are faxed in from the courts, and monitoring officers all over Scotland, instructed from the centre, begin fitting new tags, or retrieving equipment where orders have ended, often working late into the night. In the centre itself, work intensifies around 7pm when the majority of “curfews” begin, necessitating phone checks on those whom the automated monitoring system shows are not yet indoors. The nightshift deals over the phone with such crises as erupt in the lives of tagged offenders and their families. The dayshift mostly liaises with police, social workers, fiscals and courts. Monitoring staff - who (in the central belt) work both in the field and in the control centre in order to maintain individual contact with their tagged clients - constitute a new occupational sub-group in Scottish criminal justice, about whom little is known. There are always large numbers of applicants, from diverse employment backgrounds, whenever posts are advertised. Induction courses last three weeks. Monitoring officers see the job as being socially useful, and satisfaction and retention rates have always been high.

Restriction of Liberty: The Flagship Order

The Restriction of Liberty Order was the Executive’s - and Reliance’s - flagship EM order and it had to be made to work, and seen to work, if subsequent EM programmes were to be introduced. Whilst interpreting the punitive element of RLOs as nothing more dramatic than a partial constraint

on locations and schedules, the Executive nonetheless wanted them to have a certain symbolic distance from social work. Sometimes, as in the pilots, RLOs were made on offenders who were already on probation for previous offences, or who were subsequently put on probation for new offences; offenders on RLOs then experienced more substantial supervision. Via these overlapping orders social workers and Reliance staff learned to cooperate: the latter, for example, granting “authorised absences” so that tagged probationers could attend scheduled groupwork programmes. Details of all RLO violations, graded in severity, were passed to sheriffs within 24 hours. Some, withdrawal of consent to being monitored, for example, warrant breach in themselves - others, minor time infringements, for example, accumulate before constituting a breach. The householder’s withdrawal of consent - refusing for whatever reason to have the tagged person in the house - has been the commonest cause of breach action. The breach process, undertaken by the Procurator Fiscal, can, as with other community sentences, become a protracted legal process. The Executive has given the costs of a six month RLO as £4860, compared to £1250 for an equivalent probation order, £1325 for community service, £5000 - £6000 for a DTTO and £14,000 for a six month prison sentence (Justice 1 Committee:2003: 5).

In the 2004-05 period, 1335 RLOs were made, a 65% increase in the 807 in 2003-04 (Scottish Executive Statistical Bulletin 2006), but it is their variable use within and across sheriffdoms which is striking. A handful of courts make regular use of it, the vast majority only occasional use of it, and some none at all. While some sheriffs are clearly supportive of it, Smith’s (2002:206) finding that “the orders had not become part of the routine thought processes of all sheriffs” seems as true in 2006 as it was in 2000. The sheriffdom of South Strathclyde remains by far the highest user, with Hamilton still the dominant court. It had made 517 orders up to March 2006. Within the same sheriffdom, Dumfries made 228, Lanark 206 and Stranraer 112. Given the relative sparsity of its population, one might not expect large numbers of orders in the Sheriffdom of Grampian, Highlands and Islands, but Aberdeen is a busy court, dealing with lots of drug-related offending, yet had only made 43 orders. Peterhead had made 63. Some of the smaller and more remote courts made no orders at all, but Lerwick, in the Shetlands, having made only 4 orders since 2002 made 16 (including one on a woman) in the first half of 2005 alone, and a further 14 in the next nine months (reflecting the arrival of a new sheriff). Glasgow made 225. Edinburgh, which has a long tradition of using probation had not been particularly enamoured of EM: having made only 97 RLOs since 2002 - 63 of these after January 2005. The High Court imposed 4 RLOs in the first year of operation, three in

Edinburgh and one in Glasgow, and by March 2006 had imposed 14 orders, suggesting a very wary approach to EM in the senior judiciary.

Most RLOs (91%) have been made on men, although at one point, in one area, 40% of the local tagged population were women, the result of a sheriff's attempts to reduce daytime shoplifting. Most orders (above 75%) have been made on people between 16 and 30, with fairly equal proportions of orders been given to 16-17 year olds, 18-20 year olds, 21-25 year olds and 26 to 30 year olds. 14% of orders stipulate the 12 month maximum, the average length is approximately 5 months. Most restriction times are 12 hour, "overnight" blocks but over time, sentencers have grown more sophisticated, varying times to take account of offenders' work and travel commitments, specifying different restriction times on weekdays and weekends, creating narrow "windows" in which offenders can leave home to collect methadone prescriptions, and in one instance specifying a two hour at home, two hour away arrangement, to limit the interval (and distance) the offender could travel from home. From the outset sentencers imposed RLOs on a wide variety of imprisonable offences - theft and assault being the most common, followed by breaches of the peace and a range of road traffic offences. It has also been used for - the list is not exhaustive - possession of drugs, malicious damage, housebreaking, fraud, embezzlement, attempted theft (from both buildings and cars), public indecency and wasting police time.

Restrictions *from* a place have been little used – 26 solely from a place, 19 to *and* from a place by March 2006 - compared to restrictions to a place, for reasons which are unclear. These require crime victims (typically, but not always domestic violence victims) to consent to having equipment installed in their house which would warn the Reliance control centre if the tagged offender comes within a 150 metres of them. Restrictions from a place have also been used by some sheriff's to exclude offenders from public rather than private places - shopping centres and harboursides where thefts had taken place being examples so far. These arrangements require a number of strategically placed receivers which can pick up the tagged offender as s/she approaches or crosses the perimeter of a prohibited zone.

Integrating Electronic Monitoring with Other Measures

Probation with a condition of EM. The formal inclusion of an EM requirement in a probation order became available to courts on 27th June 2003. It enabled the blending of "punishment" and treatment in community supervision which Johnston and Brown had always favoured. Close liaison with criminal justice social workers - providing monthly (sometimes weekly) reports and/

or attending monthly reviews - makes operating the orders more complex than basic RLO's. Despite the Justice 1 Committee's (2003:para 45) view, drawing on ADSW evidence to their inquiry, that "probation orders with a requirement of electronic monitoring are more effective in obtaining positive results than electronic monitoring alone", the vast majority of courts did not use them: only 271 orders had been made up to March 2006. Hamilton dominated with 109, followed by Glasgow (65) and Dundee (40). Wick made 20. Social workers rather than Reliance have the responsibility to report violations to the Fiscal, and sometimes use their discretion more flexibly than the Reliance staff, looking at violations in the context of the offender's overall performance on a probation order, rather than in isolation.

Drug Treatment and Testing Orders with EM requirements. The EM options in DTTOs became available at the same time as EM in probation. Very few have been made. The first five were all breached very quickly, usually within the week, one in a matter of hours. This has not helped their credibility. In anticipation of an *initial*, intractable instability in the lives of drug using offenders, legislation allowed for the inclusion of an EM requirement three months into the DTTO, but no courts have yet used this facility. Reliance have liaised actively with the specialised drug teams in Glasgow, Kirkcaldy and Dundee, with the voluntary organisations involved in DTTOs, and with the Sheriff's in the drug courts, but the precise advantage of an EM requirement in a DTTO has yet to be proven. It seems highly unlikely that the availability of EM in such an order will in itself increase the likelihood of an order being made. Tomb's (2004) view, that some sheriffs' dislike making community sentences so onerous that offenders are bound to fail, possibly applies here.

Parole with EM. This was introduced in 2004 as a means of making parole supervision more robust: the maximum daily restriction period is at the discretion of the Parole Board and tagging can last (potentially) for as long as the parole licence lasts. Lengthy debate with the Executive about the development of guidelines for using EM with parolees - and the establishment of protocols with local police forces - meant that no one was given parole with EM until 2005. Reliance was involved in some pre-release conferences, but was not automatically invited to them. Six persons had been placed on EM-parole by March 2006.

EM Bail. Pilot sites were set up in Glasgow, Kilmarnock and Stirling sheriff's courts and Glasgow High Court in April 2005. The EM-bail regime is much tighter than with basic RLOs, The equipment must be installed within 4 hours

of the bail condition being imposed (as opposed to 24 hours for other orders). There are no authorised absences and if a tagged bailee leaves the house the police have to be notified within 15 minutes. EM-bail brought Reliance into more regular contact with the police officers, and it remains to be seen if the strong early support for EM by police professional associations is sustained: the Scottish Police Federation (2005), for example, anticipates an “increased workload in relation to breaches”. The Sentencing Commission (2005:37) endorsed the principle of EM-bail, but supported its extension only if the University of Stirling evaluation yields positive results.

EM with asylum seekers. This UK-wide initiative - immigration is a “reserved matter”, controlled by Westminster, not the Executive - has been the least publicised EM scheme (and is not concerned with offenders). The Immigration and Nationality Service ran a pilot programme between autumn 2004 and autumn 2005 during which 130 asylum seekers, 35 in Glasgow, were subject to either conventional tagging, voice verification or (in England and Wales only) satellite tracking. The scheme aimed to keep the immigration officers in touch with asylum seekers without the latter having to attend a reporting centre, or (in Scotland), reside in Glasgow’s Dungavel detention centre. No evaluation was published, and in Scotland asylum seekers have not been tagged since the pilot ended, although it may resume. Pressure groups representing asylum seekers disapproved of the measure, whilst conceding it was preferable to detention.

Home Detention Curfew. Mooted in the consultation as the EM programme most likely to save on costs, early release from prison was not operational in Scotland’s during the period of Reliance’s contract. The Executive introduced it into the Management of Offenders Act 2005, intending that using EM with low risk prisoners serving between 3 months and 4 years will structure the release process and improve the transition from prison to community. Prison governors will authorise release, based on an assessment within the prison and home suitability assessments by community-based social workers. Breach will likely result in return to prison. The Executive’s initial estimates were that HDC “could reduce the [daily] prison population by around 250-350, which would have a significant impact on overcrowding and allow more constructive work with those who remain in custody” (Scottish Executive 2004:50). The HDC programme will begin in July 2006.

GPS satellite tracking. This is not on the Executive’s immediate agenda, although the Irving Report (2005: para 4:11) notes that “compulsory electronic monitoring of sex offenders has been remitted to the Sentencing Commission

for review and recommendation". The Executive's consultation document noted both its availability, and Lord Maclean's (2000) cautious interest in using it to strengthen the supervision of dangerous offenders. In its response to the consultation, The Law Society espied a paradox: tracking would only be "proportional" with very high risk/dangerous offenders but at the same time would not ensure complete public protection from them - therefore, they reasoned, such offenders should stay in custody. West Dunbartonshire Council, on the other hand, thought it "beneficial" if offenders' whereabouts were known, and if Supervised Release Orders were used as well. Dick Whitfield, an international authority on EM, told the Executive that "GPS systems currently on the market are insufficiently reliable to be used with confidence at present", but, anticipating that it would "be viable sooner or later", recommended "enabling legislation". England and Wales ran a three-site satellite tracking pilot between September 2004 and June 2006, and the Home Office evaluation of this may inform future Executive thinking on the subject.

Electronic Monitoring and Juvenile Offenders

The use of EM with under 16 year olds – juvenile offenders and youngsters in need of care and protection was predictably controversial in Scotland (far more so than in England). The Executive's view of EM as punishment meant that it jarred massively with the essentially still welfarist orientation of the children's hearing system. It was not mooted in the original consultation on tagging in 2000, and entered policy as part of the Executive's "anti-social behaviour agenda" (borrowed from New Labour's more strident equivalent in England), which included anti-social behaviour orders (ASBOs) dispersal orders and parenting orders (Scottish Executive 2003). Embedding EM in this agenda - which was seen as a further twist in the ongoing critique of the hearings' welfare ethos (McAra, 2006) - probably hardened resistance to it. Communities Minister Margaret Curran's suggestion in June 2003 that the age limit for EM be lowered to match the age of criminal responsibility, (currently eight) (see Hughes 2003), was not well received. Her view that using EM as an alternative to secure accommodation (where children's own homes were safe and secure) would be consistent with prioritising the welfare of the child, as well as providing an element of punishment and opportunities to address offending was more compelling, but still not palatable to some representatives of children's interests. Many professional responses to the consultation on the anti-social behaviour White Paper were hostile (Flint, Atkinson and Scott 2005; Croall 2005), and debates on the Anti-Social Behaviour etc (Scotland) Bill were heated, but eventually a framework for using EM with under 16 year olds was created.

The Intensive Support and Monitoring Service (ISMS) (modelled on an English initiative) was a key part of this. It was envisaged as a multi-modal package comprising an offending behaviour programme, education and/or vocational training, alcohol, drug and health services, family support, residential and non-residential respite services, reparation, counselling and mentoring, and round-the-clock crisis intervention, as well as a “movement restriction condition” monitored by EM (Scottish Executive Education Department 2004). ISMSs were established in seven areas - Glasgow, Edinburgh, the two Dunbartonshires, Morayshire, Dundee and Highlands, not as pilots which might, after evaluation, be discontinued, but as the first phase of an eventual national service. Five are run by Includem, a voluntary organisation supporting serious and persistent young offenders, formed in 2002, which, unlike the older voluntary child care organisations, more willingly embraced EM. Administrative problems beset several of the projects, and not all were ready to start in April 2005. Reliance recruited new staff to cope with an expected increased workload, and its managers made many presentations to children’s panels about EM, recognizing themselves that EM was not the most important component of ISMSs. Productive discussions took place, even in respect of care and protection cases - eg restricting a girl to a halfway house as part of a strategy to keep her from prostitution. Nonetheless, only 30 movement restriction conditions (and 2 RLOs) were imposed by March 2006, although many more ISMS packages were ordered without them, suggesting that specific scepticism towards EM remains. The practice of not using EM in ISMSs has caused the Executive to threaten loss of funding to local authorities if it continues (Adams, 2006). In principle, ISMSs could be used on eight year olds, in reality the lower limit has been twelve. The official evaluation of ISMSs is being undertaken by DTZ Piedad Consulting, not a university.

Public Expectations, the Press and Electronic Monitoring

EM lends itself to coverage in the visual media because, compared to most other forms of community supervision, it is novel, distinctive and tangible - in the press and on TV it can be represented (a photo of a tag on an ankle, a graphic of the way the technology works, a cartoon) far more simply than, say, the “talking treatment” of probation. A 30-minute BBC Scotland television documentary, “Tagged”, broadcast on 22nd March 2005 took a broadly positive view of it. The intermittent but sustained press coverage has been mixed, latterly (if not initially) erring more towards the negative and the neutral than the openly positive. Nonetheless, and perhaps fortunately, press reporting on EM has been dominated by one journalist, Lucy Adams, *The Herald’s* Home Affairs correspondent, who wrote 43 fair, balanced but

not uncritical articles on it between 2002 and 2006. The negative/neutral tone of the press in general is in part set by the “voices” which the press report. The Conservative Party, for example, tend to be hostile to EM because they see the Executive’s increasing commitment to it as part of a deeply misguided attempt to manage (stabilise or reduce) the prison population. In the press Conservative spokespersons usually make the case against tagging more combatively, and with more panache than the Executive defends it, questioning its adequacy as a means of control. Some newspapers back them on this. Occasionally, more welfare-oriented organisations say publicly that excessive faith is being placed in tagging. Further elements of negativity seep into the press coverage of EM in Scotland when newspapers “taint” Reliance Monitoring Services with the occasional failings of its sister company Reliance Custodial Services, whose court-to-prison escort service has received persistently derisive coverage in the press. Although the two companies shared premises in East Kilbride, they always were operationally separate⁴.

Press hostility to EM may be increasing, possibly as a result of “tabloidisation” in the press itself, possibly as a result of public anger about a number of cases in which offenders already known to the authorities (on bail, parole and probation) have committed very serious crimes. Callum Evans fell into this category and brought tagging into serious disrepute. Evans was an 18 year old Glasgow man, tagged to his flat on the first floor of a tower block who, in October 2005, savagely murdered another young man outside at the foot of the tower, whilst wearing his tag and still being within the range of his receiving unit (which had inadvertently been set too wide). At Evan’s trial, the High Court judge criticised his ability to leave his flat undetected, and triggered a frenzy of press comment on 27th April 2006. “The Killer Who Was Tagged: scandal as axe murderer beats his curfew” (*The Daily Record*). “Tagged But Free to Kill: teen butchers man during 12hr curfew” (*The Sun*). “Judge attacks tracker devices after youth tagged by Reliance is convicted of murder” (*The Scotsman*). Paradoxically, given its hitherto neutral-to-positive stance on EM, it was *The Herald* (28th April 2006) which pressed the argument to the limit, noting the record number of 1335 RLOs had been made in the 2004/5 period, implying that the 770 recorded violations (which are NOT reoffending as such) were evidence of failure, rather than proof that the system kept tabs effectively, and concluding in an editorial that “the jury is still out on tagging”.

There is now a tendency in the contemporary Scottish national press, (Lucy Adams’ reporting excepted), to judge community supervision in general

and tagging in particular, by impossibly high standards. This creates an unrealistic expectation of continuous and immediate control (and rapid response to violations) way in excess of any impression the Executive has given. Cumulatively, this jeopardises the credibility of all community supervision, implying by default that imprisonment is the only tenable punishment. Tagging was rightly championed as something more formally controlling than other community penalties but it is not incapacitative, not the electronic equivalent of a ball and chain. It can foster prudent behaviour on the part of the tagged offender, but offers no guarantee that s/he will not leave designated premises with nefarious intent. Tagging seeks to contribute to the “responsibilisation” of offenders, and while it is indeed more constraining (“surveillant”) than probation or community service it ultimately has more affinity with them than it has with imprisonment (Nellis 2004, 2006). It is uncertain how well this is publicly understood, but the “public confidence” in EM, identified as a “paramount” consideration by Lord Maclean, may well have been dented by the reporting of cases which spectacularly identify EM’s limitations. Informed public opinion on crime policy does not simply take its cues from press - or indeed any media - comment (Stead 2002), but the constant iteration of negative stories and associations, and the relative absence of mundane success stories in the media, creates a climate in which modest, honest and balanced accounts of community supervision are both hard to convey, and easily eclipsed.

Conclusion

Given the internal dynamics and cultures of the Scottish criminal justice scene, the establishment and implementation of EM in Scotland has to be judged a genuine but – because it is still underused – limited success. Good supervisory practice has occurred, but is largely undocumented, outwith the public domain. Such success as it has achieved has been significantly due to shrewd judgments within the Executive and to the manner in which the two successive Reliance managers promoted it. Whilst accepting that the Executive saw RLOs as a punitive restriction on movement Johnston and Brown promoted them as constructive interventions, as “control” in the context of “care”. The Justice 1 Committee (2003: 4, emphasis added) called RLOs one of the “five *principal* community sentences” in Scotland. The Executive, for its part, trading on support for EM in the *Tagging Offenders* consultation and in the Justice 1 Committee’s Inquiry into Alternatives to Custody, has remained strongly committed to it, nowhere more so than in the case they made for it in respect of juveniles - although that initiative brought out the “quiet resistance” to tagging that still remained among many social workers.

It can reasonably be argued that Reliance optimised the use of EM within the prevailing structures, and won some support from social workers and sentencers who might otherwise have been completely hostile to it, but the marked geographical variation in the use of RLOs - which, plausibly, can only be attributable to the attitude of sheriffs (or, maybe, social work assessments) - suggests that either there has been resistance to this novel measure from the outset and/or that, as tagging is perhaps perceived to have fallen short of the high expectations that were had of it, that disillusion has set in even before the novelty has worn off. In a judicial structure which cherishes individual sentencer discretion as much as the Scottish Sheriffs Courts' (Hutton 1999), the take-up of EM was perhaps always going to be slower than the Executive anticipated, dependent on one-by-one acceptance of its utility. Sheriffs influence one another, but are not of one mind about what is right for their particular sheriffdom. In addition, there is evidence that sheriffs perceive advice from the Executive to use certain penalties and to sentence according to a predetermined policy, however weakly framed, as an infringement of their independence (Tombs, 2004:63) - and some may have cast the Executive's endorsement of EM in this light. But there are paradoxes here. Tombs (2004:72) research (in late 2003/early 2004) on sentencer decision-making also showed that sheriffs seemingly welcomed rational debate about how best to use sentencing options, and were sympathetic to modified penal welfare values. Even sheriffs who at that point had not yet used RLOs saw them as "tough" and supported their expansion" (idem). Both sheriffs and judges recognised that media sensationalising and misreporting of criminal justice issues was having an adverse effect on public opinion, fuelling fears of unmerited leniency and endemic incompetence, but they claimed, when passing sentence in individual cases, to reflect the "reasonable" rather than the "hysterical" aspects of the public mood.

The fact remains that many sheriffs have not used EM, and there is nothing the Executive can do to change this situation in the short term. The change of contractor will make no difference. The Executive had strong commercial reasons for transferring business from Reliance to Serco⁵, but it wants and anticipates continuity - the same level of professionalism but at lower cost - in the delivery of EM. It is not looking for a more overtly commercial, more entrepreneurial, approach to promoting EM from Serco, which, given the latent animus towards privatisation, could undoubtedly be counter-productive in many key constituencies. In any case, contractors have no ability to "sell" EM direct to the public, and it is difficult to know what might be said or offered to the sheriffs that Reliance has not already tried. Sheriffs are under no obligation to engage in a dialogue. The Scottish Prison Service is responsive

to policy, but the advent of the Home Detention Curfew scheme in July 2003 will undoubtedly pose problems for it, because it will occur in a climate in which “early release” has already been branded by the Conservative party and some media as inherently misguided and endangering to the public. It will be scrutinised intently and any failures will be amplified to discredit the scheme as a whole - and, by implication, the Executive, for persisting with it. Prison governors may become risk averse in the face of such scrutiny, and HDC may not fulfill its potential or achieve the cost savings that have so effectively entrenched its equivalent in England and Wales (National Audit Office 2006).

The future of EM in Scotland is thus still dependent on principled argument about its merits and evidence of its practical value becoming more widely known, appreciated *and acted upon* by sentencers and professionals, so much so that its occasional, inevitable (and even high-profile) failures are seen - with due humility - in the context of the general good that it can accomplish. There is, however, little point in promoting EM as something novel, distinctive and superior (or inferior) to other community penalties - especially if the press continue to use its very distinctiveness and ease of representation negatively. Alongside closer attention among practitioners to the ways in which it can be integrated *within* social work approaches, it needs instead to be “talked-up” only in the context of a broader vision about the use and scale of imprisonment, about the changing nature of community supervision, and about the means by which Scottish communities can be made safer. Presentationally, the Executive already does this, and to an extent further debate on the issues is already underway, even if not quite on the terms that the bodies who have so cogently promoted it - the Justice 1 Committee, the Howard League Scotland (2003) and the Scottish Consortium for Crime and Criminal Justice (Tombs, 2004, 2005) - might wish. Given the Executive’s limited room for manoeuvre - with a formally independent judiciary it cannot realistically be pressed to *decree* a policy of prison reduction (or stabilisation) - a debate can still usefully take place within civil society. This should involve the business community, faith groups, academia, the voluntary sector, the many professional bodies within the criminal justice system and, crucially, the more responsible media, and aim to create a moral consensus about community supervision and prison use from which sentencers might eventually feel able to take some cues. Within this debate social work and penal reform organisations who still quietly resist EM because they perceive it to be too controlling and too punitive should note that the fortunes of EM in Scotland are currently caught up not in the Orwellian spectre of overcontrol, but in a press-augmented scandal of

undercontrol - and worry that the spotlight (as it has in England) may turn on them. Although “populist punitivism” may yet push some politicians, newspapers and perhaps some victim advocates to canvas the scrapping of “costly and ineffective” tagging schemes in order to signal “getting tough on crime”, international experience suggests that EM is becoming integral to the community supervision of offenders. It may be that in Scotland social work will not overcome its reservations about EM, and acquire the confidence to shape its development, unless it is taken out of private sector hands, and for that reason the Swedish, probation-based model of EM service delivery (Wenneberg, 2004) - flagged by the Executive in its original EM consultation - would be worth revisiting.

Endnotes

1. English company Reliance Secure Task Management was originally subcontracted by GSSC of Europe Ltd (a subsidiary the American company GSSC Inc, and the EM contract holders in the south of England and the Hamilton pilot) to do EM installations and home visits. Following a legal dispute between the two companies, settled in Reliance’s favour, Reliance took over the contract in October 2001 (personal communication, James Toon, Home Office). Different subdivisions of Reliance variously provide prisoner escort services, police custody suites, vehicle tracking services and warrant enforcement services for magistrates’ courts. In England, Reliance Monitoring Services, as well as providing tagging, also provided voice verification, drug and alcohol detection services and asset tracking services. It lost the South of England EM contract to Serco in 2004.

2. All quotations from the respondents to the consultation were made in 2000, and can be found at www.Scotland.gov.uk/consultations/justice/tagging-00.asp

3. ElmoTech is an Israeli company founded in 1990 to exploit the emerging market on offender surveillance in the USA. It rapidly became, and has remained a world leader in EM technology. It provides equipment to the Swedish probation-run EM scheme, and to 18 countries overall (Nellis, 2005).

4. Contracting out criminal justice services - whether HMP Kilmarnock to Serco, or escort services and tagging to different divisions of Reliance - was encouraged by New Labour, but not popular with the Liberal Democrats or the SNP, and was tolerated by a wary public sector only to the extent that

commercial organisations were kept on the margins of established policy networks. Mistakes by Reliance Custodial Services (occasionally “losing’ prisoners it was escorting) were repetitively held up in the press as proof of the Executive’s misjudgement. Simon Marshall, Reliance UK’s operational director, challenged a particularly inflammatory press attack, pointing out that “in an average month we are responsible for some 15,000 prisoners and the few incidents that are reported account for only a tiny percentage of total prisoner movements” (letter, *Edinburgh Evening News* 9th March 2006)

5. Serco’s five year contract is for up to £30m - £16m more than Reliance’s original four year contract - in anticipation of an expanded service (Scottish Executive 2005). Serco is a British-based company with 600 operating contracts and 34,000 staff worldwide. Its publicity describes its “core products”, somewhat circumspectly, [as] “the skills and processes for organisational design and change management”. 90% of its business is with the public sector, mostly defence, corrections and education. It runs research centres and railways, maintains offices and spacecraft, manages schools, prisons, immigration detention centres and motorway systems, tests military assets (including operating firing ranges) and controls air traffic - as well as having run electronic monitoring programmes in England since 1999. It was the joint parent company of Premier Monitoring Services, Premier Geografix and Premier Custodial Services with US company Wackenhut, but has since become the sole owner of these companies. It has dropped the Premier brand and trades under its own name. In Scotland, Serco already has contacts with Scatsca airport, Network Rail, the naval bases at Clyde and Faslane, the BBC and a Westin Hotel, as well as managing the Dungavel Immigration Detention Centre, Kilmarnock Prison and Wishaw Hospital.

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Audrey Chisholm (1923-2006)

An Appreciation

Audrey died on 7th February after a long and courageous battle against the recurrence of cancer.

She became a member of SASD as a result of joining the Children's Panel in the early days of its existence. She soon became very involved in SASD and was appointed secretary to the Glasgow Branch. She proved a most efficient and enthusiastic organiser and a great support at the Annual Conferences in Peebles.

As well as her contribution to SASD Audrey was a volunteer with the CAB, she continued her membership of the Children's Panel becoming chairman of several areas and eventually a member of the CPAC. She was a devout Christian and was also involved in many church activities.

Audrey possessed enormous energy and enthusiasm and when she undertook a task you could be sure it would be perfectly performed. At the Annual Conference knowing that Audrey was on the check in desk meant peace of mind to the organiser!

It was at the Conference that she became known to a wider circle in SASD and many realised this quiet lady was not just very competent but also possessed great humour and – as we saw in these last sad weeks – tremendous courage. Lord Hunter wrote to me about her and commented 'She was one of the brave soldiers of SASD'. I think that this summarises Audrey who fought hard to beat the disease which finally destroyed her.

Evelyn Schaffer

The Honourable Lord Hunter

(1913-2006)

An Appreciation

Lord Hunter – Jack, as he was known to many of us – was born in Edinburgh on 21 February 1913. After schooling at Edinburgh Academy and Rugby he went on to graduate B.A.(Law) at New College, Oxford and LL.B at Edinburgh University. In 1937 he was called to the English and Scottish Bars, and he then decided to enter into practice at Parliament House in Edinburgh.

However, war intervened and Jack, who was already a lieutenant in the R.N.V.R., was called up and remained on active service until the end of hostilities. By that time he had achieved the rank of lieutenant-commander, and had been mentioned in despatches. He never returned to sea, but he became a lifelong supporter of the R.N.L.I., and he ultimately became the proud recipient of the R.N.L.I. gold badge.

In 1946 Jack returned to practice at the Scottish Bar where he quickly gained a reputation as an eminent lawyer and a forceful and effective advocate. He took Silk in 1951; and, in 1957, he was appointed Sheriff Principal of Ayr and Bute. He remained in that office (which, in those days, was a part-time one, thus enabling him to continue his large practice at the Bar) until 1961 when he was appointed as a Senator of the College of Justice and a Lord Commissioner of the High Court of Justiciary. As a Judge he was respected for his fairness and courtesy, and for the great care with which he considered all of the details of cases which came before him; but he was also known as a Judge who would stand no nonsense either from witnesses or from counsel appearing before him. In 1971 he was appointed chairman of the Scottish Law Commission, and in that capacity he oversaw the formulation of many important proposals for the development and improvement of Scots law.

On leaving the Law Commission in 1981 he returned to work as a Judge, but by that time as a member of the Inner House, as the Appeal Court in Scotland is known. He eventually retired in 1986, and was thereafter able to spend more time with his wife, Doris, in the home in East Lothian to which they had moved some five years earlier. There he devoted much of his time to gardening and ornithology, though he also found many opportunities to pursue one of the great loves of his life – fishing, a sport which he continued to enjoy until the age of 88.

Jack Hunter's links with what is now known as S.A.S.O. began in the early 1970s. At that time what is now S.A.S.O. was no more than the Scottish branch of an English organisation known as the Institute for the Study and Treatment of Delinquency (I.S.T.D.). That organisation was based in London, and its activities were primarily driven by the interests of the medical profession, including in particular, psychiatrists and psychologists. It did not promote any activities in the English regions. By contrast, I.S.T.D. (Scotland) had local branches in many parts of Scotland; and the main thrust of its activities was to promote mutual understanding and effective co-operation between all of the agencies involved in the criminal justice system. That being so, it drew its membership from all parts of the system and, just as now, its members included judges and other members of the legal profession, police officers, prison governors and staff, social workers, those involved in the churches, in education, in the medical profession, and many more. Most importantly, from its earliest days I.S.T.D. (Scotland) enjoyed the encouragement and support of the Government in Scotland and of its departments.

Jack had always supported a wide-ranging approach to criminal justice matters and, accordingly, when I.S.T.D. (Scotland) broke away from its London-based parent in 1971, and renamed itself as the Scottish Association for the Study of Delinquency (S.A.S.D.), he readily accepted an invitation, put to him by Mrs Evelyn Schaffer, who was then a clinical psychologist at the Douglas Inch Clinic in Glasgow, and by

the author of this Appreciation, to become the Association's first Honorary President. He remained in that office until 1988.

During his time as Honorary President of S.A.S.D. Jack encouraged and supported the work of the Association with great enthusiasm and vigour. He regularly attended meetings of the Edinburgh branch; and, if it came to his notice that a branch elsewhere in the country was failing to attract sufficient support, and was in danger of going to the wall, he was always willing to travel to the place in question to speak at a meeting and to encourage the various agencies in the locality to understand and to respond favourably to the opportunities for co-operation and understanding which were likely to arise from the existence of a local branch of S.A.S.D.

Jack also attended all of the Association's annual conferences during his time as President. As well as chairing the opening dinners in a genial fashion, he was always ready to make effective, and at times provocative, contributions to the open discussion following on speakers' presentations. Away from the formal sessions he enjoyed nothing better than to meet, and to chat with, delegates from all walks of life; and it is likely that, thanks to Jack, many young police constables, social workers and others who met him quickly came to realise that Judges are not aloof fuddy-duddies but are actually quite congenial as well as being genuinely interested in the work done, and problems faced, by others.

When Jack retired from the office of Honorary President in 1988 the Association, at its annual general meeting, decided to create a new office, namely that of Honorary Life Patron; and Jack was thereupon unanimously invited to accept that office. He was, I believe, greatly touched by this gesture on the part of S.A.S.D., and he willingly accepted the office. In the ensuing years he continued to attend the annual conference albeit with decreasing frequency. His interest in the work of the Association continued, however, for many years.

Jack Hunter married his first wife, Doris Mary Simpson, in 1939. She died in 1988. In 1989 he married Angela Marion Mclean who survives him along with Mary, a daughter of his first marriage.

Gordon Nicholson



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To find out more: e: law-crimjust@strath.ac.uk
t: 0141 548 3049 Please quote SASO/06.

www.ggsl.strath.ac.uk



SASO – Objects, Membership, Office Bearers, Branch Secretaries and Chairman’s Report

Objects

The formal objects of the SASO are: “to initiate, encourage and promote as an independent Scottish body, study and research by all means into the causes, prevention and treatment of delinquency and crime, and to co-ordinate and consolidate existing work of that and the like nature, and to give publicity to such work, and to secure co-operation between bodies, association or persons engaged in any research or work or activity having objects similar or akin to those of the Association”.

The Association is managed by a Council. There are branches in Aberdeen, Dumfries, Dundee, Edinburgh, Fife, Perth, Glasgow, Lanarkshire, and in Orkney & Shetland. Each branch carries out its own programme of meetings and local conferences. The Association organises a residential conference each year at Peebles on the third weekend in November. It is Scotland’s main criminal justice conference and attracts distinguished speakers from both within and outwith Scotland.

The basic aim of the Association, both nationally and locally, is to create a common meeting ground for the many professional groups and individuals interested in the field of crime and criminology. The membership is drawn from the Judiciary, the Legal Profession, the Police, the Prison Service, Social Work Services, Administrators, Academics, Teachers, Reporters to Children’s Panels, Children’s Panel Members, Doctors, Clergy, Psychologists, Prison Visiting Committees, Central and Local Government. It provides an opportunity for an exchange of views by its members, enabling them to explain their own problems and to appreciate the problems of others engaged in related fields. SASO has no agenda other than to make possible and encourage purposeful dialogue within the Scottish criminal justice system in ways which will contribute to its improvement.

Through study groups and conferences, communication between the professional groups is encouraged and individual members gain the opportunity to meet experts in different fields of study, and to discuss with them matters of mutual interest. In the working parties it is possible for

the members to contribute their own specialist knowledge or experience. Among the most valuable results of membership are the opportunity to meet and know others with whom it may be necessary to make contact during the course of one's professional life, and the consequent building of trust and confidence between members.

Membership

SASO has around 400 members. Those wishing to join should contact the Administrator, Carol McNeill, 56 Ava Street, Kirkcaldy, Fife KY1 1PN.

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Chairman's Report, 2004-05 Given to the AGM of the Association at Peebles on 19 November 2005

General

The past year has again been a very active year and the Association continues to flourish and carry out its important function of improving communication and knowledge within the Scottish criminal justice system. Our membership has increased and now stands at 430 as a result of our relaunching the Association under its new name.

Change of name

After much careful consultation, a decision was taken at the AGM in November 2004 to change the name of the Association from the Scottish Association for the Study of Delinquency to the Scottish Association for the Study of Offending. The main reason for the change was that the term "delinquency" was causing confusion about the scope of the Association's interests. Although we were all sorry to lose the familiar name and the familiar initials, SASD, the change of name has been generally welcomed as giving a much clearer idea of what we are about. We took the opportunity of the change of name on 1st April 2005, to relaunch the Association with a new leaflet, featuring a new logo, which is also carried through to the cover of the Journal and the Conference programme. The new membership leaflet was widely distributed to the criminal justice agencies and to the press, both to raise our profile and to bring in new members. It succeeded in both those purposes.

Conference

The 2004 Conference was a very successful one. The subject was Evidence and Effectiveness. The Conference started with its usual dinner on Friday 19 November. The after dinner speaker was the Rt. Rev Richard Holloway, formerly Bishop of Edinburgh. He gave a striking address, speaking of the urge to punish and the need for forgiveness. Under the Chairmanship of Tony Cameron, Chief Executive of the Scottish Prison Service, the main proceedings started on Saturday morning with two outstanding keynote addresses. The first was by Professor Andrew Coyle, Professor of Prison Studies at King's College, London, who considered, in the light of international comparisons, whether prison worked. The second keynote speech was by Professor Sir Anthony Bottoms of the Cambridge Institute of Criminology, who drew on his recently published book and the work he had done for the Esmee Fairbairn Foundation, to consider the evidence for the effectiveness of community penalties. After lunch, there was an interactive workshop on the Life Prisoner, when an imaginary lifer was traced through the criminal justice system. The workshop greatly benefited from the contributions of Lord MacLean, Professor Jim McManus, Chairman of the Parole Board, Sheriff Alastair Duff and Audrey Park, Governor of Shotts Prison, each drawing on their own first hand experience of the system. The afternoon finished with review of the current knowledge on how and why criminals stop offending by Professor James Maguire of Liverpool University. On Sunday morning, Margaret MacKinnon and Rachel Murray of Kenmure St Mary's School spoke of what worked with serious young offenders and the Conference concluded with Sheriff Richard Scott, a former Chairman of the Association, reflecting on over a quarter of a century as a Sheriff.

Branches

The Association continues to benefit from the activities of its energetic local branches and I am very grateful to the Branch office bearers who make all this possible.

In Edinburgh, with Sheriff Andrew Lothian as Chairman and Bernadette Monaghan as Secretary, there was a full and interesting series of lectures with big attendances and excellent speakers, including Sir Malcolm Rifkind.

Glasgow equally has provided a very interesting and varied programme with lectures, debates and an excellent and very well attended day conference,

chaired by Lord MacLean, at which the Minister for Justice and the Chief Constable of Strathclyde spoke. I am very grateful to the Chair, Sheriff Rita Rae, and the Secretary, Jackie Robeson, for all the work they put in to making Glasgow such a lively Branch.

The revived Perth Branch continues to provide an excellent winter lecture series, thanks to their Chairman, Sheriff Fletcher and their Secretary, Eilidh Murray. Chief Constable Wilson has been the driving force behind the Fife Branch which has a programme with both local and national speakers. In Dumfries, Bill Milven as Chairman and Amanda Armstrong as Secretary have drawn up an imaginative programme of talks to run over the winter months. At the other end of the country, Sheriff Graeme Napier has, in cooperation with the local authority, arranged seminars on aspects of offending behaviour in Lerwick. In Lanarkshire the Branch, with Sheriff Gibson as Chairman and Jim O'Neill as Secretary, has had a programme of lectures and a day conference. In Aberdeen, the Branch is chaired by Sheriff McLernan. In Dundee, we have still to find a new Chair to replace Sheriff Frank Crowe.

Being a Branch office bearer involves a lot of hard work and I am very grateful to all of the branch office bearers for all they put into the Association. We continue to be ready and willing to provide financial help to local branches both to start up and to maintain their programmes. I am very glad that we have over the past year been able to help and, of course, the offer remains continuously open.

The Journal

All members will have received the latest issue of the Scottish Journal of Criminal Justice Studies with its smart new cover. I am very grateful to the Editor, Jason Ditton, and the Assistant Editor, Michele Burman, for producing such an excellent publication. It contains contributions from the Annual Conference and also original articles and book reviews commissioned by the Editor. It was agreed at the most recent Council meeting that the Journal should have its articles peer reviewed, as with all academic journals, and this will further increase the standing of our Journal.

Finance

I am glad to say that our finances are in excellent order, thanks to our Treasurer, Alasdair McVitie, and he will be reporting shortly.

Web site

Last year I reported that we planned to launch a website soon. This happened simultaneously with the change in the Association's name in April 2005. Now, thanks to the hard work of Mary Munro, who already runs the criminal justice web site CjScotland, the Association has an excellent web site. On it, you can find out all the meetings and lectures being organised throughout the country by the Association. You can find out the names of the national and local office bearers and how to contact them. You can see the Conference programme and download a booking form or a membership form. Shortly, back numbers of the Journal will be on the web site. I am very grateful to Mary Munro for making all this possible.

Niall Campbell

Starting a new branch

The Council of SASO is very keen to encourage the establishment of new local Branches of SASO. Local Branches and local Branch activities are the life blood of the Association. The Council has prepared a pack of material for any member or group of members wanting to set up a new local Branch.

If you are interested in setting up a new Branch, do get in touch with SASO's Chairman, Niall Campbell, or the Secretary, Margaret Small. Our names and addresses are in the Office Bearers section of this report. We will be very glad to hear from you and to discuss what we can do to help. SASO has funds which can be used to help new branches get started. For instance, it may be necessary to spend money on initial publicity material. We can provide membership lists so that a new branch knows which members live within its area. We can also provide names and addresses of the criminal justice agencies, organisations and individuals in the area who might be interested in becoming involved in a local branch of SASO. Membership forms for recruiting new members and copies of the programmes of other branches to suggest ideas for new Branches can be provided. We can put you in touch with the office bearers of other Branches who can discuss with you direct how to set up a new branch.

SASO can make an important contribution to improved communication within the criminal justice system and it is one of the declared aims of the Association to do this. An increased number of lively local Branches is one of the most effective way for the Association to make its contribution to the important aim of improved communication within the criminal justice system in Scotland. Do not hesitate to get in touch with us if you would like to start a new Branch.

