affirmation . . . their cause was indeed lost". And he quotes Sydney composer Malcolm Williamson's remark that "We must be terribly proud to be Australian; but we must also, I think, shut up about it".

GORDON HAWKINS*

Proceedings of the Institute of Criminology. The University of Sydney, 1967. Government Printer, N.S.W., 1969, 127 pp. ($4.00).

Report of the Proceedings of the Seminar on Sentencing

The purpose of the Seminar, according to Sir Leslie Herron, was "to promote a greater judicial understanding of the problems of sentencing and to achieve at least some measure of uniformity". Apparently relatively few members of the magistracy and judiciary were present, but the quality of the papers at the Seminar and the obvious wide range of discussion must have promoted greater interdisciplinary understanding.

The Seminar was divided into three sessions. At the first, papers were read by experts from different correctional fields. At the second, hypothetical cases were considered by members of the judiciary and magistracy. The third session was devoted to discussion, which unfortunately was not reported, and concluding addresses which were delivered by Sir Stanley Burbury and Mr. J. C. Maddison, Minister of Justice for New South Wales.

One of the obvious merits of the Seminar was its width. Occasionally depth was sacrificed for width, but this was probably inevitable. Some comments contained in the papers threw new insights on to old problems. Some comments were provocative. Not everyone would share, for instance, Sir Leslie Herron's view that "an examination of the general policy of the Court (of Criminal Appeal) reveals no lack of readiness to experiment with rehabilitative measures where this can be done without exposing the public to undue risk of injury". However, most would accept his opinion that a wider range of objectives in sentencing calls for wider information. Mr. Justice Allen's paper contained some helpful information on the functioning of the Parole Board, and a reassuring admission that, ideally, every applicant for parole should be seen by the Board. Less assuring was his observation that the Board interviews parole officers only occasionally.

Mr. Morony (then Comptroller-General of Prisons) must have refreshed the audience by his concern about the high proportion of fine defaulters amongst the prison population, about the likely failure of prison sentences to deter, and by his admission that neither the very short nor the long sentence can be justified on the grounds of rehabilitation. Some welcome suggestions were made by Mr. Keefe, Principal Probation Officer. He wondered whether pre-sentence reports should be mandatory for some categories of offenders. He considered that offenders in respect of whom a pre-sentence report has been prepared respond better than others to orders for supervision, that most probationers require only two years' supervision or less, that conditions of abstinence from liquor provoke deception between probationer and his officer, and that orders for payment of compensation can be instrumental in rehabilitation. Mr. Hayes' paper, on "The Prison Field Service", was somewhat peripheral to the subject of sentencing. Dr. Barclay, Director of State Psychiatric Services, made a significant contribution by emphasising the problems of treating patients who are "under detention" in mental hospitals

* B.A. (Wales), Associate Professor (Criminology), University of Sydney.

in view of staffing difficulties and the unavailability of psychotherapy in secure units. He urged that sentencing courts should pay special attention to reports of psychiatrists who are able and willing to treat offenders. He disapproved of bonds which contain conditions for psychiatric treatment without also containing an order for probation, on the grounds that treatment is hampered if the psychiatrist alone may be responsible for reporting a breach. Mr. Eriksson, Director General of the Swedish National Correctional Association, quoted statistics which are eloquent as to the significance of non-custodial measures in Sweden. In 1967 there were 16,000 men on probation, 4,000 men on parole and only 5,000 men inside penal institutions.

The hypothetical cases considered during the second session covered a wide range of offenders but it was unfortunate that more background information was not supplied to the syndicates. A comparison of the sentences which the syndicates considered appropriate force the writer to disagree with Sir Stanley Burbury's view that "there were very few instances of any great divergence". In fact, there was only marked agreement between the syndicates as to the proper disposal of Case 3, and with regard to Case 7 the range of sentences extended from life imprisonment to two and a half years' imprisonment, with a non-parole period of one and a half years.

The final address, by the Minister of Justice, must have given the organisers of the Seminar well-deserved encouragement, particularly when he admitted "it has become clearer as a result of the discussion that the administration has been tried and found wanting in more ways than one".

Report of the Proceedings of the Seminar on Fitness to Plead

The standard of the papers written for the Seminar was generally high. Mr. Roulston examined the relevant provisions of Part VII of the New South Wales Mental Health Act, 1958-1961, and observed some interesting deficiencies in the legislation, including the proliferation of authorities to which power is given to make orders under the Act, and the perpetuation of problems in defining the term "mentally ill". Attention was drawn to Section 4 of the English Criminal Procedure (Insanity) Act, 1964, which enables a court to postpone consideration of fitness to be tried until any time up to the opening of the case for the defence. If, before the question of fitness to be tried is reached, the jury returns a verdict of acquittal, the question of fitness is not determined.

Both Mr. Roulston and Judge Goran were critical of the imposition of an onus of proof in unfitness cases and the Judge also criticised two decisions (*Russell* v. *H.M. Advocate*[1] and *R.* v. *Podola*[2]) in which it was held that a genuine loss of memory as to events surrounding the offence did not render the accused unfit to plead. Judge Goran concluded his paper with the pertinent question as to whether something in the nature of a medical tribunal may be more desirable than a jury to determine the issue of fitness to plead.

Mr. Lewer pointed to the problems involved where a defendant in a Magistrate's Court seems less than "mentally ill" but nonetheless unfit to plead, and the difficulty of determining an unfitness issue if the defendant is unrepresented and indigent.

Other papers were presented by Mr. Davoren, Dr. Radeski, Dr. Evans and Mr. Morony, and referred respectively to the problems of an advocate, a psychiatric expert witness, a mental hospital administrator and a prison administrator. Dr. Evans noted the unfortunate discrimination in the Mental Health Act between "ordinary patients" on the one hand, and those admitted from the penal system (including those unfit to plead) on the other. Mr.

[1] (1946) S.C. (J.) 37.
[2] (1959) 3 All E.R. 418.

Morony understandably disapproved the practice of leaving in prison for an unspecified period some persons who had been found unfit to plead by a jury. The reader of the *Report of the Proceedings* is unlikely to glean much of the problems of the expert psychiatric witness because Dr. Radeski's paper was unfortunately not expanded sufficiently for publication.

It would have been helpful if the written record of the *Proceedings* had included a summary of the recommendations which undoubtedly emerged both from the papers and from the unreported discussion at this valuable Seminar.

MARY W. DAUNTON-FEAR*

BOOKS RECEIVED

Automobile Insurance . . . For Whose Benefit? (A Report to Governor Nelson A. Rockefeller) State of N.Y. Insurance Dept., New York, 1970.

Barry, *The Courts and Criminal Punishments* (Three lectures), The Government Printer, Wellington, N.Z., 1969.

Benjafield and Whitmore, *Principles of Australian Administrative Law* (4 ed.), Sydney, Law Book Co. Ltd., 1971.

Carey, *Unprotection of Civil and Political Rights*, New York, Syracuse University Press, 1970.

Crimes Cometidos em Estado de Embriaguez (Vol. 1), Centro de Direito Comparado da Faculdade de Direito de Coimbra, Coimbra, 1968.

Emerson, *Judging Delinquents*, Chicago, Aldine Publishing Co., 1969.

Finch, *Introduction to Legal Theory*, London, Sweet & Maxwell, 1970.

Harding, *Police Killings in Australia*, Melbourne, Penguin Books Australia Ltd., 1970.

Hill, *Stamp, Death, Estate and Gift Duties* (N.S.W., Commonwealth and A.C.T.) and Supplement, Sydney, Law Book Co. Ltd., 1970.

Hutley, *Australian Wills Precedents*, Sydney, Butterworth & Co. (Aust.) Ltd., 1970.

Imam, *The Indian Supreme Court and the Constitution*, Lucknow, Eastern Book Co., 1968.

Kalinowski, *Querelle de la Science Normative*, Paris, R. Pichon and R. Durand-Auzias, 1969.

Martin, *Essays in Australian Federation*, Melbourne, Melbourne U.P., 1969.

Matte, *Aerospace Law*, Toronto, The Carswell Co. Ltd., 1969.

Mills, *Industrial Laws: New South Wales* (3 ed.), Sydney, Butterworth & Co. (Aust.) Ltd., 1969.

Mills, *Workers Compensation (New South Wales)*, Sydney, Butterworth & Co. (Aust.) Ltd., 1969.

Nygh, *Lawasia* (Vol. 1 No. 1), Sydney, The Law Association for Asia and the Western Pacific, 1969.

Quadri, *Annuario de Diritto Internazionale 1967-1968*, Rome, Giorgio Domenici De Luca, 1970.

Roulston, *Proceeding of the Institute of Criminology* (Faculty of Law, University of Sydney):

No. 2 (1968) Seminar on Computers and the Lawyer.
No. 3 (1968) Seminar on Drug Abuse.
No. 1 (1969) Judicial Seminar on Sentencing; The Sydney Project on Sentencing.
No. 3 (1969) Seminar on Bail.

Sutton, *The Pattern of Law Reform in Australia* (Inaugural lecture delivered at the University of Queensland), Brisbane, Queensland U.P., 1970.

Walker, *The Scottish Legal System*, Edinburgh, W. Green & Son Ltd., 1969.

Whalan, *The Law and Computers* (Inaugural Lecture delivered at the University of Queensland), Queensland U.P., 1970.

Wilson, *The Sexual Dilemma*, Brisbane, Queensland U.P., 1971.

Wolf, *Hobbes' neue Wissenschaft*, Stuttgart, Friedrich Fromman Verlag (Günther Holzboog), 1969.

* LL.B., LL.M. (Tas.), Senior Lecturer in Law, University of Adelaide.

THE SYDNEY LAW REVIEW

PUBLISHED ANNUALLY BY THE FACULTY OF LAW
OF THE UNIVERSITY OF SYDNEY

Obtainable in Australia from:

Law Book Company Limited
127 Phillip Street, Sydney (Book Shop)
301-305 Kent Street, Sydney (Correspondence and Mail Orders)

Current Subscription Rate: *Two Dollars* (*Australian*)