

II The Causes of Delay

Restrictions on the prolonged questioning of suspects and detention without being formally charged have prevented real delays occurring between arrest and first appearance in court; but serious delay is occurring where summons are issued instead of arrests being made and between first appearance in court and final disposition of the case, either at first instance or on appeal. To an increasing extent, total trial time can be measured in months or years rather than in weeks.

It is axiomatic that before solutions can be proposed, evaluated, or their implications examined, the causes of a problem must be isolated. Governments and court administrators have been finding effective solutions elusive and this is perhaps because the causes of delay are often difficult to determine with any accuracy. Some factors, such as increasing caseloads can be measured fairly precisely by counting the number of people or cases appearing before the courts each year; but others, such as the decreasing use of discretionary screening by police and prosecutors, tend to defy empirical evaluation, forcing the observer to rely on more impressionistic evidence. Solutions based on the latter are generally more tenuous, experimental and time-consuming. In either event, the answers are not materialising overnight.

One initial word of caution must be sounded: there can be no strict correlation between cause and solution. The extensive provision of legal aid to defendants may have the effect of slowing down the criminal justice process but that does not mean that legal aid should necessarily be restricted or abolished. Excessive use of adjournments may be a major cause of delay but it is unlikely that the courts could function fairly without them. In reaching for the answers to the delay problem we must go beyond the elementary causal relationship. There must be an intervening evaluation stage where the benefits of the "cause" are weighed against the possible harm they may be producing. Through this process it may be decided that legal aid and adjournments have intrinsic worth and should, therefore, be retained. The solutions must be directed not at abolishing such causes, but at curbing their worst excesses, and in such a way that participants in the criminal justice system are not deprived of their benefits. We cannot have a totally efficient system. The very nature of the criminal justice process is "inefficient" because it is, and must remain, deliberate.¹ Intelligent choices must be made in order to retain that delay which is necessary while eliminating that which is excessive.

In this chapter the causes which will be discussed in detail are those found outside the courts and those located in the nature and number of the cases appearing before the courts. There are, in addition to these, a good many factors at work within the criminal court system and its procedures which decelerate the processing of cases. For example, there is too much unnecessary business conducted in the courtroom where formal rules and procedures must be adhered to, rather than having as many peripheral matters cleared away through discussion and disclosure between counsel in advance of a court appearance. Strict adherence to the viva voce evidence rule, even where a party does not contest a piece of evidence against him also has an impact as the hearing of oral evidence is exceptionally time-consuming. Jury trial is notorious for the ways in which it lengthens criminal proceedings. In addition, administrative techniques presently used in the courts are no longer equal to the task of dealing with spiralling caseloads. Physical resources are strained and man-power limited. The scheduling of large numbers of cases with correspondingly large numbers of legal representatives involved is precarious, easily crippled by adjournments sought by counsel on both sides when commitments conflict or a case is not prepared. A fuller description of this class of causes will be given more usefully in Part Two where they are immediately followed by a discussion of the measures taken to meet these conditions. The causes of delay discussed here are generally broader both in terms of their origins and their implications and solutions.

Common law jurisdictions, ranging from the very small to the very large, from the developing countries to the industrialised nations, are experiencing vast increases in caseloads. For example, in Britain, the total number of persons tried for indictable offences has nearly doubled since 1963, and the number committed for trial in the Crown Court has nearly tripled. In the magistrates' courts the workload in respect of minor criminal cases has also increased from 1.2 million cases in 1965 to 1.6 million in 1975.² An investigation of the workload of the criminal court in certain areas of India found that it had almost doubled from 1966 to 1973.³ What is producing these increases?

(i) An increasing Crime Rate

The most obvious explanation for the increase in the courts' caseloads is an increase in the amount of detected crime in society. There is certainly widespread belief in the "rising crime rate":

It is a view which has broad public acceptance and is taken seriously to signify real and growing threats to life, property and important social values. The response to the threat has seemed to enjoy almost as much consensus as the belief itself - a 'strengthening' of the law, an increase in the forces of order, and a search for ever effective means of crime prevention and repression. In the United States this was dignified into a 'war against crime' while in other societies more modest schemes have sufficed, such as expanding the police force, building more prisons and hiring more social workers.⁴

There can be little argument that there has been an increase in the absolute number of offences due to population growth which has brought about a concomitant increase in the number of criminal cases in the courts. There is more crime simply because there are more people. But alongside increases in the rate of population growth have been escalations in the crime rate, that is, the amount of crime per capita which takes into account fluctuations in population size. A study in New Zealand has disclosed that over the past 15 years there has been a great increase, not only in the absolute number of prosecutions, but in the rate of prosecutions in proportion to the population. From 1960-1975 the number of charges in respect of which a person was arrested increased by 200 per cent and the rate per 1000 of population rose from 8.64 to 20. The number of traffic prosecutions increased by 219 per cent and the rate increased from 34.87 to 85.75 per 1000 of population.⁵

One possible explanation for this increase in the crime rate in many countries is that there have been occurring fundamental changes in the social and economic structure. This is particularly true in the developing nations which are undergoing accelerated social development. If, as is widely believed, crime is associated with increased social mobility, population densities, family instability and urban growth, it is little wonder that crime rates are increasing where these phenomena are occurring.⁶ Dense populations, increasing commerce and industrialisation and an emphasis on material possessions all make crime easier to commit and more difficult to prevent or detect.

Factors such as urbanisation and increased opportunities to commit certain offences have produced a measure increased criminal activity. But it is debatable whether this increase in the criminal propensities of a population would account for more than a proportion of the increased workload of the courts. An extensive body of literature now exists which illustrates the fallibility of criminal statistics in giving an accurate

picture of criminal activity in society.⁷ From these caveats it is clear that the type of crime, the reporting and recording of crime and police practices have all to be taken into account when analyzing any apparent increase in the crime rate.

As the figures given above for New Zealand show, there has been a massive increase in traffic offences coming before the courts in that country. In Fiji, traditional crime is increasing by about 25 per cent a year, while traffic offences increase by about 55 per cent.⁸ McDonald, in her study of British crime figures, found that the "rising crime rate" turned out to apply not to crimes of violence, as is popularly thought, but to trivial infractions. From 1950-1966 neither total indictable convictions nor charges were found to have increased significantly, whereas summary convictions were increasing significantly at the rate of 5.5 per cent per annum and reported parking offences at the rate of 5.2 per cent per annum.⁹ A similar situation exists in Canada: the Canadian Committee on Corrections found that an increase in summary offences accounted for 98 per cent of the 25-fold increase in the crime rate between 1901-1965. Traffic offences in turn were responsible for 90 per cent of the increase in summary convictions.¹⁰ These figures do not necessarily indicate more perverse driving practices on the part of the population, but rather an increase in the number of drivers and motor vehicles on the road. McDonald found that the rate of registered motor vehicles in Britain accounted for 97 per cent of the variance in traffic violations and 62 per cent of the variance in reported traffic offences.¹¹

Some of the apparent increase in the crime rates may be due to an increased readiness on the part of the public, or to increased efficiency on the part of the police in detecting some sorts of crime.¹² Considerably more crime occurs than is ever discovered. Thus, an increase in police discovery and clearance rates could produce a "crime wave" even although the level of actual criminal activity remains stable. The growth of the crime rate, therefore, may be more a reflection of the level and type of policing in existence at any particular time than of actual criminality.

It is evident that police enforcement policies can have a significant impact upon the workload of the criminal courts. More sophisticated investigation techniques can also have this effect; in the Canadian province of Ontario it was found that dramatic increases in charging had occurred in the offence of "driving while disqualified or while one's licence has been suspended or cancelled". The increases were nearly five-fold over the period 1970-76, after which the trend appeared to be stabilising. It was

thought that this increase could be explained as being a result of a sophisticated computerized system which patrolmen have access to through their radio systems, allowing them to obtain, very rapidly, accurate suspension data from the Canadian Police Information Centre.¹³

The relative size of police forces to population may also affect the number of people being brought into the criminal courts. It follows fairly logically that if there is more police manpower there will be more policing, more investigation, more charges and consequently more criminal cases in the courts because of the untapped source of 'hidden' crime. This seems paradoxical to those people who think of the police as preventing crime and who conclude that an increase in the number of policemen will result in a corresponding decrease in crime. More police generally means more crime and more work for the courts.

Increasing crime rates are contributing to the caseload crisis, but the typical response to the "crime wave" - more policing - is only exacerbating the situation. What we are witnessing is not in fact an increase in crime as much as an increase in the processing of crime and this is the real source of our difficulties.¹⁴ We must respond accordingly.

(ii) "The Law Explosion"¹⁵

Increased enforcement of the law provides more cases for the courts to process; in addition, an increase in the number of court cases can also be attributed to the introduction of new legislation.¹⁶ It seems that basic practical considerations have been ignored in expanding the ambit of the criminal law:¹⁷ in the past few decades many new areas have become subject to laws and regulations which has led to an increase in the number of potential offences, and consequently, to an increase in prosecutions. As indicated above, summary offences have accounted for the major proportion of the increase in the crime rate, and traffic offences are the main source of this increase. In terms of numbers, the motorist is the typical criminal of today.¹⁸

We have for many years now been experiencing an inflation of the criminal law. Legislatures are active in continually creating a vast mass of crimes by outlawing a wide variety of conduct on pain of a criminal sanction. This habit of legislatures regularly to prescribe the criminal sanctions for control of any behaviour has indeed led to a "crisis of overcriminalization."¹⁹

This increased use of the criminal law is seen by some to be a result of the emergence of heterogeneous and complex societies: as society grows

more interdependent, relationships between people who are otherwise strangers become common and more complex, and more reliance is placed upon abstract and formal rules to govern these relationships. This is particularly so in relation to motorists and to consumers and producers of goods and services. As more strangers rely increasingly upon formal rules to regulate their relationships, and as there are more formal regulations to be followed, there is a continual increase in the number of potential cases for the court system, both in absolute numbers and per capita.²⁰ We have societies that are far more complex and vastly more demanding on law and legal institutions than they were previously.

For the most part, this expansion of the criminal law has not created crimes in the traditional sense, but rather regulatory offences, particularly offences of strict liability. A study commissioned by the Law Reform Commission of Canada used a sampling survey to estimate the number of offences of strict liability that exist in Canada. It concluded that there are at least 20,407 offences of strict liability under federal law and at least 17,560 under provincial law in the average province. The researchers did not even attempt to quantify the vast number of municipal offences and therefore the survey underestimates the total number of strict liability offences.²¹ Thus, in any given province, an individual is regulated by laws containing an average of 41,582 offences of which 37,967 (91%) are offences of strict liability; and in any given year in the whole of Canada there are likely to be nearly 1,350,000 convictions for strict liability offences. The number of prosecutions will be considerably larger.²² Traditional criminal cases comprise only one-twelfth of total case volume.

Although it is minor criminal cases that make up the bulk of the caseload of criminal courts, their impact cannot be dismissed lightly. Generally, the basic structure of a trial for a contested parking ticket is the same as the structure of a trial for a more serious offence, and because the minor cases often attract as much paperwork as serious ones, these minor offences are among the chief culprits clogging the criminal courts. In terms of workload and administrative burden, traffic and parking offences are infinitely more important to the administration of justice than serious criminal cases.

Like all else, law comes at a price - especially criminal law. This we forget when some new social problem makes us say "there ought to be a law against it". As though having a law against it were always a perfect solution.²³

A perfect solution it is not. In fact it may be creating more problems in terms of delay than it is solving.

(iii) Geographical isolation

In many Commonwealth countries there exists alongside the growing case-load problem the difficulty of providing prompt access to the courts. Where the population is concentrated in large urban areas there is little problem of getting physical access to the courts either to set a case in motion or to defend oneself against a criminal charge. Courts will either have a permanent base in urban centres or operate there for most of the year. The case may take some time to be processed through the system, but actually introducing a case into the system is fairly straightforward. This contrasts markedly with the situation outside urban areas where a small population is scattered over a vast geographical area. In Botswana, for example a population of approximately 710,000 is spread over 220,000 square miles. The volume of business in any town or settlement may not be enough to justify a permanent criminal court; and where a court travels on circuit, business will have to be accumulated for its relatively infrequent visits.²⁴ In addition, these isolated areas are often inaccessible during certain seasons of the year.

The New Zealand Royal Commission on the Courts which reported in 1978 pointed out that court structure must be appropriate to the conditions prevailing in each jurisdiction. The basic factors that restrict and shape any attempt to restructure the administration of justice in New Zealand, for example, are geographic configuration and the small and scattered nature of the population. These factors produce a conflict between a centralised system making the best use of judicial and other legal talents, including specialised knowledge and skills, as well as buildings and administrative staff, and the need to show the face of justice throughout the country to meet the needs of a local community quickly and with the minimum inconvenience to residents. The spread of population results in significant variations in court workloads in New Zealand. It needs to be recognised that a solution to the problem of delay for urban centres may be inappropriate elsewhere.²⁵

(iv) Police and prosecutorial discretion

Police and public prosecutors (where they exist) in common law countries generally have the discretionary power not to proceed with a case if they see fit. Different considerations can affect the decision to prosecute: whether the offence is minor or serious; whether the suspect has a criminal record and whether there is a strong case to be made against him. Effective screening to prevent unnecessary prosecutions and weak cases appearing in court would provide some measure of relief for courts

sagging under a heavy burden of cases. But there are indications that in one major Commonwealth jurisdiction at least, cases pressure may be having the opposite effect. Emphasis on police productivity coupled with an increasing criticism of the widespread exercise of discretion by police officers may be having the effect of passing on a larger caseload to the prosecutor's office. Unfortunately, in Canada, prosecutors do not appear to be increasing their screening of cases to prevent the weak or unnecessary charges reaching the courts.

The screening of cases by a prosecutor would require review of the cases prior to the scheduled court date if one has been set and a decision made then whether to drop the case or to proceed. It seems to be coming increasingly common that, unless the case is a serious one, the prosecutor's first contact with a case will occur on the date of the court appearance and not before.²⁶ This is a little late in the day for effective screening. That prosecutors have time to screen serious cases is ironic because the decision not to proceed is least likely to be exercised in relation to those offences.

The absence of effective screening is confirmed by prosecutors themselves:

With nearly every prosecutor going into court five days a week, forty-eight weeks a year and spending most of the day in court, he can only deal with what is in court; there is no time to deal with the question of what should be in court. If there is no experienced Crown prosecutor available to scrutinize the evidence and the resulting charges early in the history of a case to determine if the charges are warranted, then the case is submerged in an ever-increasing docket, surfacing months later as a preliminary inquiry or trial with the Crown relying almost entirely on the police to have done the right thing at the beginning. In such circumstances, the role of Crown Counsel is merely that of an expediter, part of a machine for prosecution... The most important of his talents and powers, the exercise of Crown discretion, is excluded from the process. Being unable to screen, he is unable to prevent the system from breaking down from the bulk of the chaff.²⁷

For systems, such as that prevailing in England, where the police perform many of the functions of the prosecutor, this must also be a concern. They too are susceptible to giving the cases which come before them the minimum necessary attention in the face of increasing case-files which must be processed.²⁸ If this source of caseload pressure has not yet manifested itself in a jurisdiction, preventive action should be taken to

ensure that it does not.

The sheer volume of cases coming before the courts is contributing to delays in disposing of the caseload. There are other factors, however, connected with the cases themselves which determine the speed with which they and other cases in the system are handled: the widespread use of legal aid and the complexity of the cases being brought into court.

(v) Legal Aid

In the criminal law sphere, increasing caseloads can hardly be attributed to the widespread institution of legal aid: people are not more willing to be charged, nor are they charged simply because legal aid is available.²⁹ Legal aid, therefore, does not cause delay by bringing more cases into court, at least into courts of first instance. Rather, legal aid affects the amount of time it takes for each case to be disposed of, due to a variety of factors.³⁰

The granting of an individual's right to legal aid in each particular case adds another stage to the already cumbersome trial process. Time is needed for an accused person to apply for legal aid and for administrators to consider his claim. Legal aid introduces a peripheral administration, giving rise to a potential for delay, but such delay can be seen as being necessary. Undue delay may arise not from the administration of the system, but from abuse of it by defendants.

In Ontario, which has one of the most extensive legal aid plans in the world, the Ministry of the Attorney General has observed that accused persons do not always make prompt applications for assistance, even though the courts generally allow a three week adjournment for this purpose. Information which the legal aid administration requires before issuing an entitlement to legal aid is not always speedily provided, thus necessitating a further adjournment to permit completion of the application.³¹ This has also been the experience in the English Magistrates' Courts.³²

Concern is also being expressed that counsel who participate in legal aid plans are causing delays through abuse, for example, by encouraging, or at least not discouraging full defence of a "hopeless" case or election to a higher court and jury trial, because of the economic advantages which will accrue.³³ There seems to be a general feeling that cases in which there would have been a guilty plea some years ago are nowadays likely to be defended because the defendant has nothing to lose financially and his counsel has everything to gain. But this apparent increase could be the

result of people no longer pleading guilty merely because they lack legal representation.³⁴ Measuring the impact of legal aid in this way to verify such suspicions has not been successful because neither legal aid schemes nor the courts have structured their affairs with a view to this particular exercise.

(vi) Case complexity

As we seen above, a vast proportion of the caseload of the criminal courts is made up of relatively straightforward minor cases, but the courts are also faced with a growing number of complex cases which consume an inordinate amount of court time in addition to needing considerable pre-trial preparation.³⁵ Case complexity is a very important factor affecting the length of a trial and, the more time any individual trial takes to complete, the less time there is available to hear other case.³⁶

A case against a defendant which contains multiple charges will take longer to hear than one where a single charge is sought to be proved. According to recent statistics for the criminal courts in England, about 70 percent of those defendants dealt with at magistrates' courts in 1977 were charged with one offence only; at the Crown Court the corresponding figure was about 40 per cent. Defendants charged with five or more offences comprised two per cent of the total defendants dealt with in the lower courts and 13 per cent of those dealt with at Crown Court, which is quite a significant proportion of potentially complex cases.³⁷

One of the areas which has been subject to increasing criminalisation over the past few decades is the world of business. In most jurisdictions there is now close regulation through the criminal law of monopolies, industrial safety, taxation, fiduciary relationships and environmental protection. This, combined with specialised law enforcement has led to more of these cases, generically described as white-collar crime, appearing in court.³⁸ White-collar crime is generally technical, complex and well-hidden, taking place over months, if not years. To the untrained eye these operations are often indistinguishable from legitimate business practice and proof that they are indeed illegal is difficult to find. Long and sophisticated investigations are necessary, inevitably followed by time-consuming and complicated trials. These cases are among the most difficult and time-consuming to try, often generating some of the most complex questions of law for consideration along with tortuous fact situations, and promising a high probability of an appeal if there should be a conviction.³⁹ Another

characteristic of white-collar prosecutions is the mass of documentary material that is often sought to be admitted in evidence by both sides. This can give rise to lengthy voir dires which will consider the admissibility of such evidence.

The increasing use of the conspiracy charge is also producing more complex cases, particularly in Britain and Canada. An indictment for conspiracy, standing alone or in conjunction with a substantive offence,

permits a vague definition of the offence; broader standards of the admissibility of evidence apply; it may provide the solution to prosecutorial problems as to situs and jurisdiction....⁴⁰

The English Law Commission issued a report on the law of conspiracy in 1976 which concluded that the inclusion of a conspiracy count adds to the length and complexity of trials, and, in particular, complicates the task of summing up to a jury. Proof of conspiracy can be a difficult, time-consuming operation often depending on evidence obtained through electronic eavesdropping devices, which in turn tends to produce the complications of a voir dire or 'trial within a trial'. The summing up by defence and prosecution and the charge to the jury can take days and the jury may have to return repeatedly for directions. In a conspiracy case which came before the English Court of Appeal in 1975, prosecuting counsel's opening speech lasted two-and-a-half days; the hearing of the evidence took 48 days; the closing speeches 10 days and the summing-up six days. The jury deliberated for two-and-a-half days before delivering its verdict.⁴²

What we want to do is to invite the attention of both judges and counsel to the need to keep trials as short as is consistent with the proper administration of justice. Trials as long and as complicated as this one are a burden upon judges, jurors and accused which they should not be asked to bear.⁴³

The English Criminal Law Amendment Act, 1977, replaced the common law offence of conspiracy with a more restricted statutory offence of conspiracy. In addition, the Court of Appeal has issued a practice direction, the effect of which is to require prosecuting counsel to justify any joinder of a count of conspiracy and a substantive charge. Unless the interests of justice demand it, the prosecutor must choose between them, simplifying such cases considerably.⁴⁴ In this way, some limited moves are being made to remedy the situation in which needlessly complex cases are brought into court.

In conclusion: the criminal justice systems of the Commonwealth are not growing as fast as either the populations they serve; the extent to which the criminal law is used to regulate behaviour or the amount of crime that is processed through the courts. The finite resources of the courts are having to cope as best they can in dealing with a seemingly infinite stream of cases, both petty and complex. From this rather unequal struggle delays of considerable magnitude have resulted. Long-term solutions to the problem of delay will depend, in part, at least, on this shortfall being reduced, even if it cannot be eliminated.

Footnotes

¹A.W. Mewett, "Inefficiency in the Courtroom", (1975), 18 Criminal Law Quarterly 1.

²"Delays in the Administration of Justice" in Selected Memoranda prepared for the 1977 Meetings of the Commonwealth Law Ministers, Winnipeg (London, 1977), p. 16.

³In 1966 there were 647,000 cases for trial; in 1973 there were 1,147,318 - U.N.S.D.R.I., Delay in the Administration of Criminal Justice (India) (Rome, 1978), p. 28.

⁴L. McDonald, The Sociology of Law and Order (Montreal, 1976), p. 13.

⁵New Zealand, Report of the Department of Justice 1977/78 (Wellington, 1978), p. 5. See also Canada Committee on Corrections, Report of the Canadian Committee on Corrections (Ottawa, 1969), p. 23, which disclosed that the Canadian crime rate underwent a 25-fold growth from 1901 to 1965.

⁶W. Clifford, An Introduction to African Criminology (Nairobi, 1974), pp. vii-ix and S. Arcand and Y. Brillon, "Comparative Criminology: Africa", (1973), 6 Acta Criminologica 199 at p. 201.

⁷See, for example, P.J. Giffen, "Official Rates of Crime and Delinquency" in W.T. McGrath (ed.), Crime and Its Treatment in Canada 2d ed, (Toronto, 1976) and N. Walker, Crimes, courts and figures: An introduction to criminal statistics (Harmondsworth, Middlesex, 1971).

⁸C.H.S. Jayewardene, "Crime and Justice in Fiji", (1977), 5 Crime et/and Justice 240 at p. 242.

⁹L. McDonald, supra footnote 4 at p. 218. The English Magistrates' Courts now process more than two million traffic offences a year (2,216,111 in 1976); this is in addition to those motorists dealt with by way of a caution or fixed penalty notice - Great Britain, Home Office, Offences Relating to Motor Vehicles 1976 (London, 1977).

¹⁰Canadian Committee on Corrections, supra footnote 5 at p. 23. In 1973, traffic offences (excluding parking) accounted for almost 75 per cent of all summary convictions in Canada - Statistics Canada Justice Statistics Division, Statistics of Criminal and other offences 1973 (Ottawa, 1978).

¹¹Supra footnote 4 at p. 224.

¹²N. Walker, supra footnote 7 at p. 25.

¹³Ontario Provincial Secretariat for Justice, Justice Statistics Ontario 1978 (Toronto, 1978).

¹⁴A. Nixon, "Criminal Law", [1978] New Zealand Law Journal 435 at p. 436.

¹⁵The American Assembly, Columbia University, The Courts, the Public and the Law Explosion, (H.W. Jones ed.) (Englewood Cliffs, N.J., 1965).

¹⁶A.A. Adeyemi, "The Criminal Law as a Selection Instrument for the Administration of Justice", in Second West African Conference in Comparative

Criminology, Criminal Law and the Law Courts (Lagos, 1973), pp. 1-38 at p. 19.

¹⁷N. Cameron, "Some Consequences of an Overextended Criminal Law", in R.S. Clark (ed.), Essays on Criminal Law in New Zealand (Wellington, 1971), pp. 147-69 at pp. 149-50.

¹⁸Id. at p. 154.

¹⁹A. Rabie, "The Need for Decriminalization", (1977), 10 The Comparative and International Law Journal of Southern Africa 200. The latter phrase in the quotation comes from S.H. Kadish, "The Crisis of Overcriminalization", (1968), 7 American Criminal Law Quarterly 17.

²⁰N. Cameron, supra footnote 17 and W.G. Skogan, "Traffic and the Courts: Social Change and Organizational Response", in H. Jacob (ed.), The Potential for Reform of Criminal Justice (Beverly Hills, 1974), pp. 131-72 at p. 131.

²¹Law Reform Commission of Canada, Working Paper No. 2, Criminal Law: Strict Liability (Ottawa, 1974), p. 2.

²²P.J. Fitzgerald and T. Elton, "The Size of the Problem", in Law Reform Commission of Canada, Studies in Strict Liability (Ottawa, 1974), p. 55.

²³Law Reform Commission of Canada, Working Paper No. 10, Limits of the Criminal Law: Obscenity: a test case (Ottawa, 1975).

²⁴See, for example, U. Baxi, "Access, Development and Distributive Justice: Access Problems of the "Rural" Population", (1976), 18 Journal of Law Indian Law Institute 375.

²⁵New Zealand Royal Commission on the Courts, Report (Wellington, 1978), p. 245.

²⁶Alberta Board of Review Provincial Courts, Administration of Justice in the Courts of Alberta (Edmonton, 1975) and C. Brookbank, "Aspects of Court Reform", in J.L. Wilkins, The Prosecution and the Courts (Toronto, 1979), pp. 88-167 at p. 105.

²⁷J.P. Rickaby, "The Crown Attorney's Perspective", Crown's Newsletter, December 1975, p. 15. See also K.L. Chasse, "Diversion and the Prosecutor", Crown's Newsletter, July/August 1976, p. 1.

²⁸The English Court of Appeal has recently issued a Practice Direction with the aim of discouraging unnecessary criminal prosecutions - "Practice Direction (Crown Court: Costs of Prosecution)", [1980] 1 Weekly Law Reports 697. Previous practice required the court to have regard to the principle that an order would normally be made for prosecution costs in the Crown Court to be paid out of central funds, unless the proceedings had been instituted or presented without reasonable cause. It became the practice to assume that such an order had been made unless the Court ordered to the contrary. As a result of this new Direction, this practice will no longer prevail. An application for costs must be made by the prosecution in each case - "This will serve to remind the court that where proceedings have been instituted or continued when they should not have been, the court has a discretion not to order the costs of the prosecution to be borne by central funds."

²⁹ It is possible, however, that the availability of legal aid may be causing more appeals to be lodged for it is thought that legally aided appellants have practically nothing to lose by appealing - F. Rinaldi, "Penalising the Appellant in Appeals by Convicted Persons", (1976), 50 Australian Law Journal 9.

³⁰ D. Biles and B. Swanton, "The Future of Criminal Justice in Australia", in D. Biles (ed.), Crime and Justice in Australia (Canberra, 1977), pp. 167-87 at p. 180; and New Zealand Royal Commission on the Courts, supra footnote 25 at p. 195.

³¹ Ontario Ministry of the Attorney General, Annual Report 1975-76 (Toronto, 1978), p. 30.

³² "Delays in Magistrates' Courts", (1977), 141 Justice of the Peace 485 at p. 486.

³³ See, for example, the evidence given by the English Lord Chief Justice, Lord Widgery, to the Royal Commission on Legal Services noted at (1978), 4 Commonwealth Law Bulletin pp. 180-181.

³⁴ J.L. Wilkins, Legal Aid in the Criminal Courts (Toronto, 1975), p. 125.

³⁵ J. Law, "The Thomson Report", 1976 Scots Law Times (News) 89.

³⁶ Even in relatively simple cases the average time taken to dispose of cases has increased in recent years because of the necessity of obtaining such things as probation and pre-sentence reports - Scottish Home and Health Department, The Sheriff Court (Edinburgh, 1969), Cmnd. 3248 para. 30.

³⁷ Great Britain Home Office, Criminal Statistics England and Wales 1977 (Cmnd. 7289), para. 4.4.

³⁸ "The Quality of Justice", (1978), 128 New Law Journal 298.

³⁹ H. Edelhertz, The Nature, Impact and Prosecution of White-Collar Crime (Washington, D.C., 1970), pp. 39-40.

⁴⁰ R. v. Cotroni; Papalia v. The Queen, [1979] 7 Criminal Reports (3d) 185 (Supreme Court of Canada) per Dickson J. at p. 189.

⁴¹ Great Britain The Law Commission, Report on Conspiracy and Criminal Law Reform No. 76 (London, 1976).

⁴² R. v. Turner, (1975), 61 Criminal Appeal Reports 67.

⁴³ Id., per Lawton L.J. at p. 76.

⁴⁴ Practice Direction [1977] 1 Weekly Law Reports 537; [1977] 2 All England Law Reports 540..