



MENTIONS

CALL FOR CONTRIBUTIONS Where will law be in the year 2525?

The editors of the December 1996 issue of the *Alternative Law Journal* are seeking many brief but varied responses to the above question. Responses will be published in the December issue which will pursue the theme Law into the Future.

We envisage the approaches will range from playful to serious — but will be thought provoking, imaginative and visionary. Please keep responses to 10 lines maximum. Include your name and a brief description of occupation.

Topics of interest include the legal profession, information, copyright, family law, information, technology, crime, courts, evidence, policing, cyberspace, human services, arts, immigration, administrative law, legislation, dispute resolution, children, etc.

Some questions which might help you answer the question:

- What will be the issues?
- What do the trends indicate?
- Do definitions need revisiting?
- Will there be increasing specialisation or globalisation?
- What will be the effect of human and socio-economic factors?
- Are there potential positives or negatives or both?
- What are the potential domestic and international issues?

Please reply by 30 September to:
Alternative Law Journal,
c/- Law Faculty, Monash University,
Clayton, Vic 3168 or Email:
L.Boulton@law.monash.edu.au

ALRC GOES ONLINE

The Commission has established a home page on the Internet at

<http://uniserve.edu.au/alrc/>

The site is being developed as a location for electronic access to the Commission's publications and other law

reform sources as well as a place to contribute to and keep in touch with current Commission inquiries. The home page provides access to the five most recent ALRC reports with the remainder to follow in the near future. All future reports will be available online.

HIV/AIDS SENTENCING KIT

by Geoffrey Bloom, Amanda Hall and Alida Stanley; AIDS Council of New South Wales; 2nd edn 1996; 21 pp; free on request.

A prison sentence for a person with HIV may be more burdensome than for a person with long life expectancy. Alternatively, a person with HIV charged for cannabis use may escape a sentence, if the use was for therapeutic purposes.

The HIV/AIDS Sentencing Kit explains the various ways in which a person's HIV status may be relevant to a court's sentencing discretion. It is addressed to legal representatives of people with HIV/AIDS. The kit:

- gives basic information about the transmission of HIV, life expectancy and the progression from HIV to AIDS.
- details the ways in which imprisonment may be more burdensome for people with HIV/AIDS than people without, for example weakening of the immune system, breaches of confidentiality and the likelihood of psychological trauma. It also lists the type of medical evidence relevant to sentencing decisions.
- explains why HIV/AIDS may be a mitigating factor to reduce sentences or an aggravating factor when for offences which involve a risk of HIV transmission.
- examines why people with HIV/AIDS using cannabis for therapeutic purposes may be treated more leniently than others charged with cannabis offences.

A sample letter from the AIDS Council of NSW to sentencing courts outlining the burdens of imprisonment particularly relevant to people with HIV/AIDS is contained in the kit. The letter can be adapted to fit the circumstances of a particular case and has been used successfully in the past.

The full text of relevant case law and contact list of HIV organisations and

drug rehabilitation agencies complete the kit.

The HIV/AIDS Sentencing Kit is available on request from the HIV/AIDS Legal Centre at the AIDS Council of NSW, P.O. Box 350 Darlinghurst NSW 2010, tel 02 206 2000; fax 02 206 2069.

ABORIGINAL LAW BULLETIN

We regretfully advise that the *Aboriginal Law Bulletin* and the *Alternative Law Journal* are to part company after many years of happy association. Those with current subscriptions to the *Alt.LJ* will continue to receive the *ALB* until the end of their subscription period. When your renewal is due we will send you details of how to subscribe directly to the *ALB*.

Our association will continue in that if you are a subscriber to the *Alt.LJ* you will get a \$10 discount on a subscription to the *ALB*.

WORKPLACE REFORM — A MOTHERHOOD ISSUE

The National Women's Justice Coalition's submission on the Government's Workplace Relations Bill highlights regressive effects on women's maternity rights. The NJWC is calling for amendments to the Bill to ensure that existing maternity rights are not reduced in the award 'stripping down' process, and to insert a right to 12 weeks paid maternity leave for all employees.

Copies of the submission are available from:

Marian Sheridan, Executive Officer,
National Women's Justice Coalition, tel
06 247 2075 or fax 06 257 3070 or GPO
Box 3148, Canberra, ACT 2601.

CONFERENCE

**Cultural Heritage Conference:
Legal and Philosophical
Aspects**

Date: 3-4 October 1996

Venue: Lincoln College, North
Adelaide

Cost: \$70 full, \$35 concession

Further information:

tel 08 201 3198 or email
helen.macdonald@flinders.edu
.au

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against whom awards of damages are made generally are indemnified by the police force, and the state, meaning that the award as an instrument of specific deterrence or general deterrence of police wrongdoing is almost meaningless. A further difficulty is that in most Australian jurisdictions, those few damages awards, together with costs orders, that are made do not come directly out of police budgets, precluding even that form of fiscal accountability. The result of all these factors is that civil litigation of the kind brought in *Gordon v Graham*, particularly when the decision maker is a judge rather than a jury, does not operate as a significant means of making police accountable or of breaking up the police culture of inappropriate loyalty, resort to force and failure to respect minority individuals' rights and liberties. Change to this situation so that civil damages actions operate as a means of changing police cultures of violence does not appear imminent.

References

1. It is also relevant for the institution of such proceedings that Legal Aid Commissions understandably impose as a criterion for funding that there is a reasonable likelihood that a plaintiff will recover a sufficient amount of damages. In Victoria, this figure is currently \$5000.
2. This, of course, would also formally constitute a defence for police or the state in relation to their potential vicarious liability.
3. See, for instance, *Coyne v Citizen Finance Ltd* (1991) 172 CLR 211 at 216; *Carson v Citizen Finance Ltd* (1993) 178 CLR 44 at 55.
4. Stone, J., 'Double Count and Double Talk: The End of Exemplary Damages?' (1972) 46 *Australian Law Journal* 311; Luntz, H., *Assessment of Damages for Personal Injury and Death*, 3rd edn, Butterworths, Sydney, 1990, p.68ff; Mendelson, D., 'Backwell v AAA' (1996) 4(2) *Journal of Law and Medicine* (forthcoming); see also Daniels, S. and Martin, J., 'Myths and Reality in Punitive Damages' (1990) 75 *Minnesota Law Review* 38.
5. *XJ Petroleum (NSW) Pty Ltd v Caltex Oil (Australia) Pty Ltd* (1985) 57 ALR 639 at 655 per Brennan J. See also *Backwell v AAA*, unreported, 20 March 1996, Victorian Court of Appeal per Ormiston JA, p.23.
6. The same sum was awarded to a shopper who was found to have been falsely detained by Myer employees and police and to have endured a wrongful search of his house: *Myers Stores v Soo* [1991] 2 VR 597.
7. See Clayton R. and Tomlinson, H., *Civil Actions Against The Police*, Sweet and Maxwell, London, 1987, p.367ff.
8. Compare the 29 June 1996 decision of a Victorian County Court jury in *Rupa v Harrison* where a drunk train commuter was awarded \$3500 in general damages, \$3500 in aggravated damages and \$3000 in exemplary damages for an assault by a police officer.
9. Unfortunately, in spite of the fact that the sums involved come out of the public purse, no comprehensive figures are available on the number of civil actions brought against police, their grounds, the percentage of them abandoned, settled, or proved or the amounts of damages awarded or the terms on which they are settled.
10. See Chevigny, P., *Edge of the Knife*, The New Press, New York, 1995, pp.104-5.

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10. See, for example, the Ministry of Public Security Notice on Putting in Order People Being Held in Detention for Investigation passed on 26 April 1993; and Cui Ming, above, at 93.
11. Ministry of Public Security Notice on Rectifying Living Conditions of Detainees in Watch Houses, Administrative Detention Centres and Detention for Investigation Stations, issued on 18 December 1983.
12. Fan Chongyi (ed.), Xiao Shengxi (vice ed.), above, p.145.
13. Administrative powers are used by public security personnel against people who do not carry out their legal duties, breach state regulations concerning public order or have committed a minor unlawful act which is not sufficient to constitute a criminal offence. Li Huayin, Liu Baiyang (eds), above, 174-5, Dai Wendian (ed.), *Gongan Fagui Jiaocai* (Teach-

ing Materials on Public Security Regulations), Zhongguo Renmin Gong'an Daxue Chubanshe (China Public Security University Press), 1988, Beijing, pp.133-4; Mou Shihuai (ed.), *Gongan Xingzheng Guanli yu Xingzheng Fuyi Susong* (Public Security Administrative Regulation and Administrative Review and Litigation), Zhongguo Renmin Gong'an Daxue Chubanshe (Chinese People's Public Security University Press), Beijing 1992, pp.3-4.

14. Zhang Jianwei, Li Zhongcheng, above, pp.55-6.
15. Zhang Jianwei, Li Zhongcheng, above, p.58, see also general discussion in Zhang Xu, above, p.20 and Sun Jiebing, above, pp.27-8.
16. [85] Gongfa #50 Document article 8 provides: Detention for investigation work must be directly subject to the supervision of the People's Procuratorate.
17. Fan Chongyi (ed.), Xiao Shengyi (vice ed.), above, p.149.
18. Wang Xixin, above, p.110.
19. Zhang Jianwei, Li Zhongcheng, above, p.58.



MORE MENTIONS

POLICING VICTORIA SEMINAR

On Thursday, 11 July 1996, the *Alternative Law Journal* in conjunction with the Victorian Council for Civil Liberties held the first in a series of seminars on socio-legal and civil liberties issues. The purpose of these seminars is to encourage debate about topics which are of concern and raise issues of civil liberties and human rights as well as to raise the profile of both the Alt.LJ and the VCCL.

Three speakers, Jude McCulloch, Ian Freckelton and Carmel Guerra led the discussion exploring issues such as military approaches to policing, civil liability of police, and policing youth.

The success of the inaugural seminar will hopefully lead to similar joint ventures in the future. The organisers are hoping that the next topic will be *Aboriginal People and the Justice System*. Stay tuned.

LEGALITY OF NUCLEAR WEAPONS

On 8 July 1996, the International Court of Justice handed down an advisory opinion on the legality of nuclear weapons after a sustained international campaign by peace activists.

The Court held itself required by the current state of international law to find that the use of such weapons was neither specifically authorised nor universally prohibited. It decided that '... the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict'. The Court was unable to conclude definitively whether the use of such weapons in 'an extreme circumstance of self defence' would be lawful.

While this decision was welcomed by some parts of the peace movement, others noted that it falls well short of the complete prohibition on the use of chemical and biological weapons in international law. In this context, the Court's finding that states have an obligation to pursue negotiations leading to nuclear disarmament in good faith is cold comfort, made colder still by the stalling of the Comprehensive Test Ban Treaty negotiations.