



# Research Bulletin

## **Migrants' Understanding of the Legal Process: A Survey of Prisoners in NSW Gaols**

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## MIGRANTS' UNDERSTANDING OF THE LEGAL PROCESS: A SURVEY OF PRISONERS IN NEW SOUTH WALES GAOLS.

(Prepared by:

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"We see a special need for non-English speaking migrants to have adequate protection in criminal investigations". (Galbally, 1978, p. 80).

A recent study of the language background of prisoners (Mamontoff & Porritt, 1980) has revealed that while migrants of non-English speaking backgrounds (subsequently referred to as "N.E.S.B. migrants") are not over-represented in the total prison population, they are over-represented in the remand population in N.S.W. gaols.

Those not granted bail or unable to meet the bail conditions set are the ones who are remanded to gaol to await trial or sentence. Possible reasons for the disproportionate number of N.E.S.B. migrants on remand would include fewer being granted bail either because of the nature of the charge or through some communication difficulty in understanding the bail proceedings, or being granted bail but not being able to meet the conditions imposed. There may in fact be communication difficulties and misunderstandings of Australian law from the time of being charged by the police.

The purpose of the present study was both to identify possible reasons for this over-representation and also to examine the N.E.S.B. migrants' understanding of the legal process both at the time of being charged by the police and at the hearing before the magistrate.

### METHODOLOGY

162 N.E.S.B. migrants were interviewed, where necessary, in their native language. This represented approximately one in every two N.E.S.B. migrant prisoners in N.S.W. gaols.

Three types of information were sought:

1. **Demographic information:** including country of birth, length of residence in Australia, age, sex, date and place of arrest, charges and sentence status;
2. **Details at the time of being charged by the police:** including whether or not an interpreter was used; if so, the source; if not, why not; satisfaction with interpreters; interrogation procedures during the police interview; explanation of the distinction between "murder" and "manslaughter";

### Summary

This study sought to identify possible reasons for the over-representation of migrants of non-English speaking backgrounds (subsequently referred to as N.E.S.B. migrants) on remand in N.S.W. gaols. Each of the four factors investigated: nature of charges, communication difficulties, ignorance of Australian law and not being able to meet the conditions set for bail, were found to account, in part, for the large proportion of N.E.S.B. migrants on remand.

Type of offence with which N.E.S.B. migrant prisoners were charged seems to be the major, but not entire, reason for the over-representation of these migrants on remand. Almost half of those interviewed had been charged with "murder", "attempted murder", "manslaughter" or drug-related offences, offences for which prisoners would be unlikely to be released on bail.

Ignorance of the right to an interpreter, problems of availability and complaints concerning the quality of interpreters were revealed as obstacles to clear communication. At the time of being charged by the police approximately one-quarter of the N.E.S.B. migrants used an interpreter, half believed they did not need an interpreter and the remaining quarter were those who either did not know they were entitled to one, were refused one or were told that one was not available at the time. Of those who used interpreters almost half claimed they were dissatisfied with the interpreter.

Familiarity with Australian legal procedures was examined. It would seem that approximately half of the N.E.S.B. migrants may not have understood the procedures at the time of being charged by the police and a significant minority may not have been aware of their rights during the hearing before the magistrate.

Steps taken to correct some of the problems identified following discussions with the Police Department and the Ethnic Affairs Commission are described.

### Acknowledgements:

We would like to thank Anna Frenkel for her help in drafting the initial questionnaire, and to thank Inspector Avery and his staff from the Police Department and Mrs. Lozzi Cuthbertson, Executive Officer, Ethnic Affairs Commission, for their contributions both in the form of discussions and action to ameliorate the problems faced by migrants coming into contact with the legal system.

We also gratefully acknowledge the co-operation of the prisoners who were interviewed.

3. **Information concerning the hearing before a magistrate:** including use of an interpreter, who sought the interpreter, knowledge of right to be legally represented, assistance offered in obtaining Legal Aid, whether assigned to probation officer, knowledge of right to be released on bail and whether granted bail.

The results described below all refer to the **perceptions** of the prisoners as reported during the interviews.

## FINDINGS

### The Migrants

#### Country of Birth

Over half the N.E.S.B. migrants interviewed in N.S.W. prisons were born in one of three countries: Yugoslavia (23%), Lebanon (19%) or Italy (15%). People born in Lebanon and Yugoslavia particularly seem to be over-represented in the N.S.W. prison system. The most accurate information available on the number of N.E.S.B. migrants in the community is the 1976 Census of Population and Housing. Of the N.E.S.B. migrants completing census forms in N.S.W. for the 1976 Census of Population and Housing, those born in Yugoslavia comprised 11%, in Lebanon 5% and in Italy 15% of the N.E.S.B. migrant population. However, the high proportions of N.S.W. prisoners born in Yugoslavia and Lebanon could reflect increased migration from these countries in recent years.

The remaining N.E.S.B. migrants interviewed came from a wide range of countries. The most frequently represented countries were Greece (6%), Turkey (5%), Malta (4%), Germany (4%), Albania (2%), Hungary (2%), Cuba (2%). There were twenty-four other countries in which one or two N.E.S.B. migrant prisoners were born.

#### Length of Residence in Australia

At the time of being interviewed, over three-quarters (76%) of these N.E.S.B. migrant prisoners had lived in Australia for at least ten years. Table 1 illustrates in more detail the length of time these prisoners had lived in Australia.

#### Possible reasons for over-representation on remand

##### 1. Nature of the charge

Almost half of the N.E.S.B. migrants interviewed had been charged with "murder", "attempted murder" or "manslaughter" (26%) or drug-related offences (17%). Table 2 depicts the range of offences with which these prisoners had been charged.

This distribution of charges is not typical of the distribution of offences for all prisoners. The proportion of N.E.S.B. migrants charged with murder or assault is approximately twice that of the total prison population as is the proportion charged with drug-related or other importing offences. This is reflected in a smaller proportion of N.E.S.B. migrants charged with property offences.

Table 3 depicts the relationship between country of birth and offence type. A disproportionate number of those charged with murder were born in Malta, Spain, Turkey, Hungary or Yugoslavia. Those born in Lebanon were more likely to have been charged with a drug-related or prohibited import charge. Migrants born in Germany, Greece or Italy had been charged with a wide range of

offences. Insufficient prisoners were interviewed from other countries to determine whether there was a relationship between these countries and type of charge.

When the charges for those thirty-four N.E.S.B. migrants who were on remand at the time of being interviewed are considered, nature of the charge largely, but not completely, explains the number of N.E.S.B. migrants on remand (Table 4).

## 2. Communication difficulties: use of interpreters

### A. At the time of being charged by the police

Only 35 of the 162 (22%) N.E.S.B. migrants reported that they used an interpreter at the time of being interviewed by the police. The majority of those who reported not using an interpreter thought they did not need one. However, one in six (17%) said that they did not know that they could have one, and one in eight (12%) reported that one was refused or having been told one was not available at the time. Three individuals didn't think to ask for one and one said he was too scared to ask for one.

#### Interpreters used

Almost half of the interpreters used (43%) were thought to be accredited interpreters. For the remaining N.E.S.B. prisoners, police officers (27%) or relatives (13%) were used as interpreters. One in six (17%) did not know who their interpreter was.

Six out of ten (61%) who used an interpreter recalled waiting an hour or less for the interpreter to arrive, and only 3% recalled waiting as long as one day. Those who reported waiting spent the time in a waiting room or police office or the airport (for those arrested at the airport). Only one recalled waiting in a police cell.

#### Satisfaction with interpreters

Just over half (53%) were satisfied with their interpreter. The remaining half were dissatisfied. Reasons given for dissatisfaction centred around the interpreter's lack of fluency, possibly speaking a different dialect from that of the migrant being charged, and lack of familiarity with legal terminology. Examples of complaints made include:

"had Yugoslav interpreter, though his Yugoslav is not fluent especially with legal terms";

"I was victimised by the interpreter, the interpretation was incorrect. There were discrepancies between my statement and what the interpreter said";

"Interpreter was not fluent in Spanish and could not understand me. As his Spanish was poor I could not understand him and do not know what he translated";

"Interpreter was Egyptian who spoke a little Italian";

"Interpreter was from Cyprus, should have been from the mainland. His interpretation was incorrect";

"He spoke only Italian and I could not understand him well" (prisoner born in Cuba);

“could not understand her fully, she did not speak Serbian language very well. Could not speak Macedonian at all. The interpreter read the statement in a hurry”;

“because the interpreter spoke Egyptian Arabic not Lebanese Arabic. The interpreter was rude and said that I should be hanged”;

Source of interpreter was related to satisfaction. Not one of those for whom a police officer acted as an interpreter said they were happy with the interpreter. Almost one-third (31%) of those using an accredited interpreter was dissatisfied as were one-quarter of those using a friend or relative (25%) and two-fifths (40%) of those who were not sure of the source of the interpreter.

This study included migrants who had been arrested between 1967 and 1981. Recalled satisfaction with the interpreting services does not seem to have changed over this period.

#### **Other aspects of the police interview**

In five of the cases where an interpreter was used (14%), the prisoner claimed that the interpreter was not permitted to explain the meaning of certain questions.

Only about one in seven of the N.E.S.B. migrants (15%) recalled the policeman saying: “I caution you...”. This was forgotten equally by those N.E.S.B. migrants who were fluent in English and those who were not. This is consistent with the finding of Kraus (1981).

In over three-quarters of the cases (78%) a police officer typed the interview, for others a police officer wrote down what was said (20%), one prisoner wrote his down himself, and another could not remember how the interview was recorded. In none of the cases was a tape recorder used to record the interview.

In eight cases where an interpreter was used (23%), the interpreter did not help the prisoner to read the record of the interview before he signed it. Only eleven of those interviewed in this study wished to make corrections to the record of the interview, however six of these (55%) claimed they were not permitted to make these corrections. These six N.E.S.B. migrants claimed that the interpreter urged them to sign the Record of the Interview even though the corrections were disallowed.

#### **B. During the hearing before a magistrate**

Those N.E.S.B. migrants who were sentenced prisoners were asked about their experiences during their hearing before a magistrate.

##### **Use of an interpreter**

Forty of the N.E.S.B. migrants reported using an interpreter during the hearing before the magistrate. This was not a simple reflection of those who reported using an interpreter when being charged by the police. At the time of interviewing, thirty-two of the thirty-five, who used an interpreter when being charged by the police, had been before a magistrate. Twenty-six of these thirty-two again had an interpreter at the hearing. In addition a further fourteen, who had not used an interpreter with the police, used one at the hearing.

Over half of those who did not use an interpreter (56%), felt they did not need one. Others did not know that they were able to have one (29%); were not granted one, although they requested one (12%); or their solicitor didn't think it was necessary (3%). It would appear that interpreting services are not sufficiently utilised: a finding consistent with Francis (1981).

In almost one-third of cases (29%) the migrant requested the interpreter. In other cases the interpreter was requested by the magistrate (18%), the Police Prosecutor (11%), or the solicitor (13%). Almost one-third (29%) did not know who requested the interpreter.

In ten cases (25%) the magistrate had to adjourn the hearing so that an interpreter could be obtained.

#### **3. Knowledge of Australian legal procedures**

Table 5 divides the N.E.S.B. migrants into three groups based on their use of an interpreter: those who used an interpreter; those who felt they did not need an interpreter and finally those who either did not know that they were entitled to one or were refused one. Knowledge of some specific Australian legal procedures seem to be related to use of an interpreter.

Those who did not need an interpreter were more often aware of their rights than those who used an interpreter or those who were not aware that they could have one. The differences are greater at the time of being charged by the police than during the hearing before the magistrate (see Table 5).

Most of those charged with “murder”, “attempted murder” or “manslaughter” (35 out of 38) said they did not recall having the distinction between “murder” and “manslaughter” explained to them. Only one of the remaining three, the one charged with manslaughter, actually understood the distinction.

From the results depicted in Table 5, it would seem that a majority of N.E.S.B. migrants may not have understood the procedures at the time of being charged by the police and a significant minority may not have been aware of their rights during the hearing before the magistrate.

#### **4. Difficulty in meeting the conditions of bail**

Less than one-third (30%) were released on bail. As would be expected from the nature of their charges, slightly more than half (53%) were refused bail. One in six (17%) had been granted bail but were unable to meet the conditions of bail.

Having an interpreter made little difference to being granted bail. In fact a slightly higher proportion of those who did not know they could have an interpreter (39%) or who felt they did not need an interpreter (31%) were granted bail than those who used an interpreter (22%). The smaller proportion who reported using an interpreter and being granted bail may reflect the type of charges of those people who used an interpreter.

#### **IMPLICATIONS**

The larger proportion of N.E.S.B. prisoners on remand is substantially due to the type of offence with which they are charged (i.e., higher proportion charged with murder and drug-related charges). Some were remanded on minor

charges, and communication problems, ignorance of Australian legal practices or not being able to meet bail conditions could be factors in these prisoners being held in custody.

For almost half of the sample at least one of three problems: **ignorance** of the right to use an interpreter, problems of **availability** or complaints concerning **quality** of interpretation, presented obstacles to communication. Almost half of those who used interpreters at the police station were dissatisfied. They cited lack of fluency, unfamiliarity with legal terms and/or use of police officers as interpreters as problems. Each of these complaints reflect the difficulty the police may have in obtaining a qualified interpreter speaking the same dialect as the N.E.S.B. migrant who is being charged. In a recent study of the relationship between ethnic groups and the police by the Ethnic Affairs Commission of New South Wales (1980), a number of police officers said that it was not the police officer's role to act as an interpreter (p. 28). This same report emphasized that police officers should be given more information on the availability of, and encouragement to use, the existing interpreting services (p. 49). Interpreting services nominated were the Commission's own Community Interpreter and Information Service (C.I.I.S.) which employs specially trained police and court reporters and the Commonwealth Government's Telephone Interpreter Service (T.I.S.) which operates 24 hours a day, 7 days a week telephone service.

There appears to be a need for interpreters with knowledge of legal terminology and some understanding of legal procedures, as having an interpreter did not seem to improve these N.E.S.B. migrants' knowledge of their legal rights.

Inability to meet bail conditions was a problem for about one in six of the N.E.S.B. migrants. Although granted bail these migrants had to remain in prison on remand.

## **ACTION**

The findings of this study represent the perceptions of prisoners reported during interviews. To supplement these perceptions, opinions from the Ethnic Affairs Commission and the Police Department were sought.

Representatives of the Police Department stated that they were aware of the problems presented in the survey. In fact, Police Regulation 85 explains the use of interpreters and stresses that untrained interpreters should not be used, except in an emergency when qualified interpreters are not available. Unfortunately, at times qualified interpreters are not readily available, and because the law requires that people are not held at a police station beyond a certain time, unqualified individuals have to act as interpreters.

The question of bail was also examined. It was felt that the new Bail Act should assist with a quicker release on bail whenever minor offences are concerned. However, those without the necessary surety would still be disadvantaged.

A spokesperson for the Ethnic Affairs Commission stated that the Commission has been trying for a long time to extend and upgrade the interpreting services. However, shortage of funds and lack of facilities for the Level 3 training of interpreters have been hindering satisfactory progress.

Following the above discussions, members of the Police

Department conducted a survey of police stations to determine whether information concerning interpreting services was displayed. Out of 45 police stations chosen at random, only 10 had such a display. Posters and pamphlets were immediately supplied by the Ethnic Affairs Commission for distribution to all police stations. Furthermore, the Police Department has contacted various police stations to identify the most frequently used languages so that simple posters, similar to those displayed in N.S.W. prisons, could be produced in various languages and placed wherever necessary. The use of tapes playing simple sentences in different languages was considered, but was found to be impractical.

It was also agreed that wherever required, the Ethnic Affairs Commission will test police officers who act as interpreters and thus ascertain their standard.

## **Recommendations for further action**

1. The findings of this study be presented to the N.S.W. Bureau of Crime Statistics and the Bureau should be encouraged to examine the interpreting services and migrant understanding of the legal procedures at the courts.
2. To assess possible improvement, another survey of N.E.S.B. migrant prisoners on remand should be conducted in 1983.

## **REFERENCES**

- Ethnic Affairs Commission of N.S.W. *Ethnic groups and police: a N.S.W. Survey*, 1978.
- Francis, R.D. *Migrant crime in Australia*. St. Lucia: University of Queensland Press, 1981.
- Galbally, F. *Migrant services and programs: report of the review of post arrival programs and services for migrants*. Canberra: Australia Government Publishing Service, 1978.
- Kraus, J. Police caution of juvenile offenders. *Australian & New Zealand Journal of Criminology*, 1981, 14, 91-94.
- Mamontoff, I., & Porritt, D. Language background of prisoners. *Department of Corrective Services, Research Bulletin*, 1980, No. 2.

**Table 1: Length of residence in Australia**

Length of Residence	Percentage of N.E.S.B. Migrant Prisoners
Less than 6 months	2
6 months to less than 1 year	3
1 year to less than 2 years	2
2 years to less than 5 years	4
5 years to less than 10 years	14
10 years to less than 15 years	36
15 years to less than 20 years	14
20 years or more	25

**Table 2: Charges**

Type of Offence	Percentage of N.E.S.B. Migrant Prisoners
Murder	26
Assault	5
Kidnapping/other acts endangering life	2
Sexual	4
Robbery	10
Fraud	3
Offences against property, N.E.C.	16
Driving and Related	2
Against enforcement of order	4
Possess/use drugs	17
Offensive behaviour	1
Unlawful importation or exportation of goods, N.E.C. (including some drugs)	7
Unlawful possession of firearms	2
Prohibited Migrant	1

**Table 3: Relationship between country of birth and offence type**

Offence Type	Yugoslavia	Lebanon	Italy	Greece	Turkey	Malta	Germany	Hungary	Spain	Other	TOTAL
Murder/ Attempted Murder, Manslaughter	14	4	3	2	4	5	0	2	2	5	41
Drug-related or Prohibited imports	2	16	6	3	3	1	1	0	0	7	39
Other	21	10	13	5	1	0	5	2	0	25	82
<b>Total</b>	<b>37</b>	<b>30</b>	<b>22</b>	<b>10</b>	<b>8</b>	<b>6</b>	<b>6</b>	<b>4</b>	<b>2</b>	<b>37</b>	<b>162</b>