LIVING IT DOWN

The Problem of Old Convictions

The Report of a Committee set up by

JUSTICE

THE HOWARD LEAGUE
FOR PENAL REFORM

THE NATIONAL ASSOCIATION
FOR THE CARE AND
RESETTLEMENT OF OFFENDERS

CHAIRMAN OF COMMITTEE
THE RT. HON. LORD GARDINER

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THE HOWARD LEAGUE was formed in 1921 by the amalgamation of the Howard Association (founded in 1866) and the Penal Reform League (founded in 1907). It is a charitable organisation which exists to promote constructive proposals for the improvement of the penal system, to spread information about the way offenders are treated, and to encourage an understanding attitude towards prisons and prisoners based on facts rather than on emotional reactions.

[*Continued inside back cover*

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This report was prepared by a Committee set up jointly by JUSTICE, the Howard League for Penal Reform, and the National Association for the Care and Resettlement of Offenders. The members of the Committee were:

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Martin Wright (from October 1971)
Henry Hodge (Secretary)

Its recommendations have been unanimously endorsed by the Councils of all three societies.

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LIVING IT DOWN

Introduction

1. The following are all true stories. Only the names have been altered. As will be seen later, they could apply to a million people in this country.

(a) John was convicted of dishonesty seven years ago. He has since worked and saved, and wants to invest his savings in a small business. His solicitor has told him that he will not be able to obtain the necessary insurances.

(b) Hugh, aged twenty-three, was made redundant at his factory. He applied for a job as a postman. A week later he was told that inquiries had not proved satisfactory and that he could not be employed. It emerged that when he was twelve he and some other boys had sheltered from the rain in a barn and had been reported by the farmer for trespassing and taking eggs. They denied taking any eggs and the farmer withdrew the charges. But they had had their fingerprints taken and were on the police records, although they had not even been prosecuted.

(c) In 1949, Matthew was convicted of a series of thefts. He later settled down and in 1961 married a woman of strong religious beliefs. They opened a boarding house in a seaside town, and later turned it into a convalescent home for old people. Everyone agreed that it was very well run and efficiently staffed. He became a much respected member of the community, doing public work and helping people in trouble. Through carelessness, he exceeded the number of patients permitted without a licence. He was taken to Court, his record was exposed, and he had to abandon all the fruits of his new life, leave the town and change his name.

(d) When Charles was a young man he was convicted of a sex offence. Later he married, settled down, did well in business and became a respectable and respected member of his community. Twenty years after his conviction he was found guilty of a minor motoring offence, and his old conviction was read out in court and reported in the local press.

(e) When George was convicted of having no "L" plates on his motor-cycle, the court was told that several years before he had been convicted of indecent exposure.

(f) James had some early convictions for dishonesty. He then settled down and ran a respectable business in his local town. Eleven years after his last conviction he brought an action in the local county court to recover a civil debt, and found himself cross-examined by the defendant's counsel about his old convictions.

(g) When Robert was a youth, he committed a series of house-breaking offences and was sent to prison, although he was a first offender. After his release, he found work as a shop assistant. In his spare time he took "O" and "A" levels, a university degree and a professional qualification. Later, he married a girl who knew nothing of his conviction, and they had three children. Eventually, he secured a lecturership at a university in the Commonwealth. No question about previous convictions appeared on the application form for the post. He sold his house and furniture, both he and his wife gave up their jobs, and they took the children away from school and disposed of the family's pets. Four days before they were due to leave, the university discovered about the conviction, which was then fourteen years old. (They found out through the High Commission which had had it confirmed by the Criminal Record Office.) The University cancelled the passages and terminated Robert's appointment, compensating him only for the actual expenses he had incurred. It took him another six years to find a comparable job.

(h) In 1929 Joan, then eighteen, was convicted of soliciting. A few years later she married and has ever since led the life of a good citizen. Two of her three children have married and she now has four grandchildren. Neither her husband nor her children know of her conviction. She has always known that if, for any reason, she became newsworthy, any newspaper could publish it. Since it was true, she would have no remedy or redress. No newspaper has yet done so, although others in a similar position have not been so fortunate; but she has lived her whole life under this shadow. Even now, at sixty-two, it is something which she knows may explode under her feet at any time.

2. In such cases, while the man or woman concerned may have spent ten, twenty or thirty years doing everything they can to live down their past and rehabilitate themselves, their "record" will live with them until they die. The conviction will have been recorded in the Criminal Record Office, at the court which has convicted them, and perhaps in the files of a local or national newspaper which reported the proceedings. At any time, on any day, malice or chance may put an end to their rehabilitation, and expose them to endless unemployment and misery.

3. Most civilised societies recognise that it is in their interests to accept back into the community a person who, despite one or more convictions, goes straight for a sufficient number of years. For that purpose a law may be necessary, so as to obviate cases like those we have described. The United Kingdom is the only member country of the Council of Europe which has no such law.

4. That is why JUSTICE, the Howard League for Penal Reform, and the National Association for the Care and Resettlement of Offenders set up this Committee, mainly of case-hardened lawyers (see Appendix A), to consider

whether we ought not to have such a law and, if so, what form it should take.

5. We have not sought to obtain or record any formal evidence from witnesses. We have thought it more helpful to have informal and "off-the-record" consultations and discussions with representative members of the judiciary, with representatives of the Home Office, the police, insurance interests and others, and with those familiar with the position in other countries. We are very grateful to all those who have thus helped us in our task, and we owe a particular debt to the Home Office Research Unit who have taken a great deal of time and trouble in telling us about the work described in Appendix C.

6. We also wish to express our gratitude to Henry Hodge, our Secretary, for his assistance throughout our work, and particularly for obtaining and marshalling for us so much information about foreign rehabilitation laws.

I. The Problem

7. Much of the crime committed in this country is the work of a group of people, sometimes called "recidivists," who spend most of their adult lives in and out of gaol, undeterred and unreformed. They present society with an apparently intractable problem, but they are not the people with whom we are concerned in this Report.

8. We are concerned instead with a much larger number of people who offend once, or a few times, pay the penalty which the courts impose on them, and then settle down to become hard-working and respectable citizens. Often, their offences are committed during adolescence, which is a period of emotional instability in even the most normal people, and can sometimes be delayed if they are "late developers." There may have been a spate of thefts, breaking-in, driving away other people's motor-cars, street-corner violence, or hooliganism. When the phase is over, many of these people grow out of the need to behave delinquently. Mostly, they marry, find work and settle down, and never offend again. Others with whom we are concerned may suddenly commit an isolated crime in later life, such as the trusted clerk who embezzles from his employer through a foolish entanglement with a fast woman or with slow horses. Here again, in the majority of cases such a person will not offend again after he has served his sentence.

9. In this Report, we shall call these people "rehabilitated persons"—meaning that they have done, over a number of years after their delinquent phase, all that society can reasonably expect from its respectable citizens. But for rehabilitation to be complete, society too has to accept that they *are* now respectable citizens, and no longer to hold their past against them. At present, this is not the case, for the rehabilitated person continues to be faced with great difficulties, especially in the fields of employment and insurance, and in the courts.

10. However many years may have passed since he committed any offence, a rehabilitated person may still find it difficult to obtain many kinds of employment, to start a business, or to join a profession. If he does succeed, and if his employer later discovers his past (perhaps through the indiscretion of a police officer), he might be dismissed without being given any reason and could not risk referring a prospective new employer to the old one for a reference, thus leaving an unexplained gap in his career.

11. If he needs certain kinds of insurance, either for himself, or for any company of which he is a director, he will probably not get it if he discloses his convictions, however old. If he does not disclose them, and a claim arises, the insurer can repudiate liability because the convictions were not disclosed. Many employers take out "fidelity bond" insurance to cover themselves against dishonesty by their employees. Where this is of the "block bonding" type, covering all the firm's employees regardless of their responsibility for money or goods, no one with a criminal record, however old, can be employed, as the policy could otherwise be voided by the insurers.

12. If a rehabilitated person finds himself involved in a lawsuit, whether as a party or even only as a witness, he will be deterred from giving evidence in case the old conviction is known to the other side, whose counsel might perfectly properly decide to cross-examine him about it in an attempt to discredit his evidence. If he does not admit it, it can be affirmatively proved against him (see Appendix B). We know of many cases where counsel have advised that witnesses whose evidence might well have been crucial to the outcome of the proceedings should not be called at all for that reason.

13. Matters may become even more difficult if, as sometimes happens, such a person is particularly successful in business or a profession and becomes something of a leader in his chosen community. His friends may try to persuade him to take an active part in public affairs, but he cannot afford to take the risk, lest a political opponent, or a newspaper, might discover about his past and use it to discredit him. In that kind of situation, the possibility of blackmail may also add its weight to the grave distortion of the life which he might otherwise lead.

14. Whilst all this is true for the rehabilitated person who never offends again, it is doubly true for one who again comes into contact with the police. The most petty traffic offence can result in a decade-old record being read out in court and reported in the local newspaper. Although both the police and the courts normally exercise a degree of discretion in this respect, instances of this kind still happen too often, and can have tragic consequences.

15. Once a man has a criminal conviction, his photograph and fingerprints will often be on record. Photographs of persons who have long since become rehabilitated may still be shown to witnesses of someone else's later offence in an attempt to help them identify the culprit. We know of a case where a man with a minor conviction at the age of eighteen, who had since become a respected television executive, was in this way "identified" by a witness and, as a result, convicted of a robbery in a neighbourhood which he had not visited for ten years. He was fortunate in eventually having his conviction quashed on appeal. Meanwhile, he had served nine months in prison. No compensation is available from public funds in cases of this kind.

16. How many people are in this situation? Surprisingly, there is no official figure, nor are there any published statistics from which it could be reliably calculated. But the Home Office Research Unit has been doing some work in a closely allied field, and they have been able to provide us with an estimate. They think that there may be as many as a million people in England and Wales who have a criminal record, but who have been free of convictions for at least ten years. For these people, the chance that they will ever be convicted again is minimal. (For further details, see Appendix C.)

17. A state of affairs in which a million people are forced to live in fear because of an ancient skeleton in their

cupboard plainly requires reform, and the provision of a remedy (if one can be found) which will give them relief without having undesirable consequences in other fields. That is what we have tried to do in this Report.

18. The question is whether, when a man has demonstrably done all he can to rehabilitate himself, and enough time has passed to establish his sincerity, it is not in society's interest to accept him for what he now is and, so long as he does not offend again, to ensure that he is no longer liable to have his present pulled from under his feet by his past. In our view, both the interests of society and the requirements of common justice call for reform in this field.

19. A further consideration lends support to the need for reform. We have reason to think that, for some recidivists at least, the fear of exposure if they do go straight operates as a substantial disincentive against rehabilitation. Many recidivists have told us how they tried to go straight until their employer discovered their past and gave them their cards, or until their landlady discovered it and put them on the street, whereupon they lost hope and reverted to crime. No doubt some of these tales are told more with the object of enlisting our sympathy than with a strict regard for the truth, but we are convinced that the possibility of full rehabilitation might make all the difference between reform and relapse to at least some recidivists at some stage in their career. That, surely, would be to society's advantage.

20. There are a number of reasons why this problem is more acute today than it has been in the past. First, legislation over the past century has created hundreds of new offences never before known to the law. It is becoming increasingly difficult, even for the most respectable citizen, to go about his day-to-day life without infringing some law or regulation. Secondly, there has in recent years been a great expansion in the number of detective agencies and inquiry agents. Five years ago, there were over a hundred in London alone, and they have doubtless increased since. Many of their staffs include retired police officers. Some

of them openly offer to obtain anyone's criminal record for a fee varying between £5 and £7. The fact that this service may constitute a technical infringement of the Official Secrets Act does not appear to act as any substantial restraint upon trading in this kind of information. Thirdly, more and more personal information is today stored in electronic data banks. These no doubt offer many benefits to society, but they are unique in that they can never forget, their records are virtually indestructible, and they are able to reproduce in a few seconds information which it might take weeks or months to find if it were stored on pieces of paper in manilla folders.

II. Solutions Abroad

21. As we have already said, our country is the only member of the Council of Europe without a law by which a man's rehabilitation can be accepted by society. We have therefore taken some trouble to familiarise ourselves with the form which such laws take in other countries. For the reasons which we explain in paragraphs 22 to 24 we do not advocate precisely similar law here, but the conclusions we have drawn from our examination of foreign rehabilitation laws are summarised in paragraph 26.

22. There is in the first place a broad historical distinction between the laws of the Roman law countries and those of the common law countries. In France, for example, a conviction for a serious crime used to result in some cases in the permanent loss of a man's right to give or receive property, make a will, hold public office, vote, teach, wear medals or join the army. In consequence, the main rehabilitation laws of the Roman law countries have to provide for the complete expunging of the criminal record when a certain number of years has passed since the last conviction, the number of years usually varying with the gravity of the offence. Again, in many Roman law countries, there are central registers of the principal events in every citizen's life—birth, addresses, army service, occupations, marriage, children, and death—and these of course include every criminal conviction. An extract from this register may have to be produced for many purposes, such as getting a new job.

23. In England, on the other hand, the old penalty of attainder (resulting among other things in the confiscation of property) was abolished in 1870, and, while serving prisoners still cannot vote, or carry on business, or conduct litigation without the Home Secretary's approval, these disabilities do not outlast their imprisonment. There are Acts which disqualify people in certain circumstances from holding public office for a period after conviction. Removal

from the roll of solicitors, disbarment for barristers, disqualification from teaching and withdrawal of licences to carry on various occupations *can* follow on a conviction; but they are not usually legal consequences in the sense that by law they *automatically* result from conviction. In other words, we have nothing equivalent to the Roman law concept of "loss of civil rights." Nor, of course, do we yet keep a central register on all our citizens.

24. The general aim of rehabilitation laws should be to restore the offender to a position in society not less favourable than that of one who has not offended, but most foreign jurisdictions with such laws seem to concentrate mainly on restoring civil rights lost as a result of the conviction, or on the "expunging" or "sealing up" of the record, rather than on obviating the social consequences resulting from the conviction. But all countries which do have rehabilitation laws seem to agree that they fulfil an important social need.

25. We do not think, therefore, that our examination of foreign rehabilitation laws requires further discussion here, but we add (in Appendix D) a note on the main rehabilitation laws of Austria, Belgium, Canada, Denmark, France, Germany, the Netherlands, Japan, Sweden, the U.S.A. and the U.S.S.R.

26. From our examination of foreign laws we draw the following conclusions:

(a) There are, we think, grave objections to the destruction, or even sealing up, of criminal records if that course can be avoided. Criminological research is still in its infancy and knowledge of all the relevant facts is essential to such bodies as the Home Office Research Unit and the Institute of Criminology. Similarly if a man, however long after a period free from crime, is again convicted of a serious offence, the courts must have available the whole of his past record if they are to come to any sensible conclusion about what to do with him. Absence of a piece of old information may in some cases quite distort the picture. It is also in the interests of

the community that these records should continue to be available to the police, much of whose work can only be done efficiently if they have a pretty good idea of where known criminals are living and what they are doing. The police have to do a good deal of routine intelligence work and this can only be effective if all relevant information is accessible to them. Other public authorities have a responsibility to supervise certain areas of known social risk such as the employment of schoolmasters, the licensing of child care establishments, casinos and gaming clubs, or the appointment of Civil Servants to security-sensitive positions. These bodies too must have access to all official records —including those of rehabilitated persons—if they are to do their job properly. We do not therefore believe that either the expunging, or the sealing up, of the official record is desirable in the interests of society.

(b) We think that there are objections of a different kind to a system in which rehabilitation is marked by the grant of a "pardon," as for example in the Canadian Criminal Records Act 1970. In this country, the connotation of the word "pardon" has been reserved for cases in which the defendant has been shown to have been wrongly convicted for one reason or another—as, for example, because someone else has turned out to have committed the crime, or because, in a later case, a superior court has decided that the facts proved do not constitute a criminal offence. It seems to us, therefore, quite inappropriate to use this concept for rehabilitation: a rehabilitated person is one who *has* committed an offence, but who has lived down the conviction by virtue of his subsequent conduct.

(c) In some foreign countries, the expunging of the record does not take place automatically after a period of years, but requires an application by the person concerned, and a hearing before a competent tribunal. We have come to the conclusion that such a method would not be desirable in the scheme which we propose. It appears to us to be largely self-defeating: the last thing which anyone in this position wants is to have fresh inquiries conducted, many years after the event, among his neighbours, workmates and employers. In our view, the most probable result of such a provision would be that only very few would avail themselves of it.

(d) In most foreign countries which have rehabilitation laws, the conviction-free period which has to expire before society will accept people as rehabilitated varies with the gravity of the original offence. We think that this is a sound principle, and we have included it in the scheme which we propose.

(e) Some reformers in other countries have suggested that employers, insurers and so on should be restrained from asking questions about criminal convictions, except perhaps in a limited form like "have you any convictions which have not been wiped out by operation of law?" At first sight such a proposal looks attractive, but on closer scrutiny it turns out to have very undesirable features. To be effective, such a restriction would itself have to be enforced by law, so that people who asked questions going beyond the suggested formula would become guilty of an offence. In a country like ours, that cannot be right: people must go on being free to ask any questions they like. Instead, we think the law should enlarge the freedom of those who *answer* the question, and give them the opportunity of describing themselves as being of good character if they have lived down their past misdemeanours over a sufficient length of time. Rather then *enforcing* a more charitable social attitude towards rehabilitated persons, we think that the law would be better employed in setting an example by treating convictions of long ago as spent and irrelevant, so that their burden is removed from the rehabilitated offender, and he is made free to answer such questions on that basis.

III. Our Proposals

27. The principal difficulty which has faced would-be reformers in other countries is the unalterable fact that something which has once happened cannot afterwards be made to "unhappen." More than once, they have quoted Omar Khayyam:

> "The Moving Finger writes; and, having writ,
> Moves on: nor all thy Piety nor Wit
> Shall lure it back to cancel half a Line,
> Nor all thy tears wash out a Word of it."

(One author adds that nowadays, when the Moving Finger writes, a dozen Xerox copies are likely to be made).

28. The difficulty is fundamental, and it is logically impossible to overcome it. It follows that any attempt to put a person who has been convicted into the same position as one who has not will involve some degree of artificiality, or appear as an unrealistic device. But there are degrees of unreality, and our concern has been to devise a system which achieves our object with as little artificiality as possible. What we have tried to find is a practical method whereby an offender who has rehabilitated himself into society can conduct his affairs, if he so wishes, as if he had never offended at all—and that without fear of penalty of legally effective contradiction—rather than a method designed to achieve the revocation of the irrevocable, such as the destruction or sealing up of records, or the grant of a later pardon.

29. In our view, the best way in the United Kingdom to encourage society to treat as rehabilitated those who have in fact rehabilitated themselves by their conduct, is for the law itself to treat them in that way. The simplest means of achieving that end is to provide that, where a person has so rehabilitated himself, the courts will not (with certain necessary exceptions) admit any evidence to the contrary.

30. In their relationships with each other, people need

to take into account at least to some extent how the courts would view what they do, since a lawsuit provides the ultimate sanction in the event of a dispute. Thus, newspapers will not in general publish defamatory articles unless they have reason to think that they would win a libel action if it were brought; employers are less likely to dismiss a man if they are advised that they would have no answer to an action for wrongful dismissal: and insurance companies are unlikely to repudiate liability under a policy if they think that their reasons would not stand up in court.

31. If, therefore, the law were to set an example in refusing to perpetuate the past criminal record of a rehabilitated person, others who decided not to follow this example would find themselves taking a substantial risk, since they would not be allowed to prove that the person concerned had been convicted, if the matter went to law.

32. In outline, therefore, the scheme which we recommend is that:

(1) certain persons who have been convicted of criminal offences should be classified as "rehabilitated persons" if they have not been re-convicted for a number of years;

(2) "rehabilitated persons" should be treated *in law*—with certain necessary exceptions—as if they had not been convicted, by making inadmissible any evidence tending to show that they have committed the relevant offence, or been charged with it, or convicted of it, or sentenced for it.

In the rest of this chapter, we consider the working-out of such a scheme.

When should an offender be treated as rehabilitated?

33. Although there is a strong case for saying that all offenders, regardless of the gravity of their offence, should sooner or later be entitled to have their criminal past buried, we fear that such a proposal would be too radical to command general support. Accordingly, we think it better to confine our proposals in the first instance to those whose

past offences have not been so grave as to arouse really strong punitive reactions. We therefore need to draw a line somewhere, and this requires an assessment of the gravity of the offence, in all the circumstances of the individual case. Since this is precisely the task which the court of conviction has to undertake in deciding what sentence to impose, we consider that the sentence should be treated as the yardstick of the seriousness of the offence for the purpose of rehabilitation.

34. Clearly, the more serious the offence, the longer it will be before one can be reasonably sure that the offender has reformed. There should therefore be a scale of "rehabilitation periods" geared to the original sentence imposed: the longer the sentence, the longer the period before the offender is treated as rehabilitated. At the same time, the system must be simple and certain if it is to be workable: both the offender, and anyone else concerned in the matter, must know when the rehabilitation period is at an end, without having to have recourse to an electronic calculator.

35. These requirements are to some extent in conflict: to achieve perfect equity between different offenders there should be many different rehabilitation periods, each appropriate to their different circumstances: to achieve perfect simplicity, there should perhaps be only one. Any solution will therefore be, to some extent, a compromise, and the one which we have adopted in our recommendations is to have three rehabilitation periods, all running from the date of conviction:

(a) five years, where no custodial sentence was imposed on the conviction;

(b) seven years, where a custodial sentence of not more than six months was imposed;

(c) ten years, where a custodial sentence of more than six months, but not more than two years, was imposed.

While this solution is neither perfectly equitable, nor perfectly simple, it appears to us to be the most practical.

36. It will be seen that we have chosen a sentence of two years' imprisonment as the maximum for which "legal rehabilitation" is possible. Here again, there is room for argument, but we have come to the conclusion that in current circumstances this provides a convenient watershed between redeemable offenders and those whom society is likely to regard either as hardened professionals, or as people whose offences have been such that the notion of rehabilitation evokes strong feelings of resentment. A sentence of two years is also the longest which, under our present law, can be suspended.

37. The sentence of six months is, of course, the maximum which may be imposed by a Magistrates' Court for a single offence, and so provides a useful watershed between our shortest and our medium rehabilitation period.

38. At the same time, we do not regard any of these periods as immutable. The principles and practices of sentencing may change, and practical experience with our proposals may show up anomalies which we have not foreseen. Accordingly, we think that the Home Secretary should have power, with the approval of Parliament, to change both the watershed and the rehabilitation periods (upwards or downwards) in the light of experience.

39. The essence of rehabilitation is that the person who has been convicted does not offend again. But suppose that he does receive another conviction just before the rehabilitation period for a previous one would have run out. Are we to say that he can now *never* become rehabilitated? Clearly not. What we should say is that the rehabilitation period for the earlier conviction will not come to an end until the rehabilitation period for the later one comes to an end. But even this could be unnecessarily harsh. Suppose a man receives a sentence of twelve months' imprisonment. After his release, he leads a blameless life. Just before his ten years are up, he is convicted of speeding and fined £2. It does not seem right, that for another five years, anyone can rake up the earlier conviction with impunity. We think,

therefore, that the extension of a rehabilitation period by a later conviction before it has run out should only take effect if the later offence is not one of those which can only be tried summarily—these being what, broadly speaking, most people would classify as "minor" offences.

Young offenders

40. The length of the periods of five, seven and ten years will bear most hardly on the young. Changes of personality take place more quickly during most people's 'teens, and less time is needed to give society a reasonable assurance that the change will last. In our view, therefore, these rehabilitation periods should all be halved where the relevant conviction took place while the person who later rehabilitated himself was still young. Here again, a line has to be drawn to decide who, in this sense, is "young" and who is not. On balance, we think that the new age of majority of eighteen is the most suitable place to draw this line at the moment, but here also we think that the Home Secretary should have power, with the approval of Parliament, to draw the line elsewhere later on, in the light of experience.

When should evidence of previous convictions still be admissible, even in the case of a rehabilitated person?

41. As we have already said, we think it important that a court of conviction should have the full record before it whenever the man in the dock has been convicted of a serious offence. What is or is not serious is a matter of opinion and, now that the distinction between felonies and misdemeanours has been abolished, there is some degree of uncertainty in our criminal law. We think, however, that what most people today would call "serious" offences are those which are tried on indictment, and we accordingly recommend that, in the event of subsequent conviction on indictment, evidence should still be admissible of all convictions, however long ago. (That does not, of course, mean that the prosecuting authorities, and the courts, should not continue to exercise their discretion so as to ensure that

only those offences which are relevant, either in kind or in point of time, should be publicly put before the court.) By the same token, it seems to us quite wrong that a conviction of many years ago should be raked up against a defendant who is convicted of nothing worse than speeding or parking in the wrong place at the wrong time, and this is why we do not think that such evidence should be admissible on a summary conviction.

42. There may be circumstances where a rehabilitated person himself might wish to give evidence of his past convictions before a court in some litigation in which he is either a party or witness. He should, of course, be free to do this.

Should any kind of crime be excluded altogether from these provisions?

43. There will be many who will argue that there are some crimes which society should never forget. Some will say that assaults on children fall within this class. Others will make a case for offences relating to firearms. Yet others would argue that if a man has once been shown to be violent, the chances are that the streak will persist throughout his life. All of us, even within our Committee, tend to have strong feelings on matters of this kind, reflecting our pet dislikes and the kinds of conduct on the part of others to which we object most strongly. We have come to the conclusion that the difficulties of categorisation, taken together with the variety of opinion and feelings on a subject of this kind, make it unlikely that society could evolve a consensus of opinion sufficiently general to warrant the exclusion from our proposals of any specific class of offence. One must remember, in this connection, that the gravity of the offence—taking into account all other relevant circumstances such as previous conduct, family background, work record, and the like—will in any case have been reflected in the sentence imposed: if, therefore, the original court of conviction has marked its view of the seriousness of what has happened by the imposition of a particular sentence, we feel that the rest of us ought to be content

to accept that judgment, and to let the question of rehabilitation depend on it.

Should legal rehabilitation require application to a judicial tribunal?

44. We have already said that, in our view, the need for such applications would be self-defeating, since in the overwhelming majority of cases they would bring upon the head of the applicant precisely the consequences which he has most reason to fear—namely, the disclosure of a past which he has succeeded in living down and which no one in his new chosen environment knows about. At all events, for those who have never been convicted of any offence meriting a greater sentence than two years' imprisonment, the passage of enough time without re-conviction seems to us to be sufficient reason for the offender to be treated by the law as having rehabilitated himself in society.

45. But if it were felt that our proposals are less than fair to those who, at some time in their past, have been awarded sentences longer than two years' imprisonment (and not all that long ago some courts were still awarding sentences which would today be regarded as indefensibly harsh), it may be that a procedure of "rehabilitation by application" could usefully be provided for people in that position. It would, however, in our view be essential that the hearing of such applications should take place in private and should not be capable of being reported.

The consequences of our proposals

46. The chief effect of our proposals would be to make it distinctly unwise for anyone to rake up against someone else offences in respect of which the rehabilitation periods have run out without a further conviction of something more than a summary offence. Suppose, for example, that a newspaper were to publish, twenty years after the event, the fact that some local citizen had once been convicted of a crime (and sentenced to not more than two years) that citizen would, under our proposals, be able to bring a libel action and the newspaper would not be allowed to call

evidence in support of a plea of justification.[1] Again, suppose that in similar circumstances an insurance company sought to repudiate liability under a policy: it would be precluded from calling evidence which would entitle it to succeed on that ground alone. Finally, any rehabilitated person would be immune from any legal penalty if he denied having been convicted, say in an application form for a job, or in cross-examination in the witness box. There could be no more cases like *Faramus* v. *Film Artistes' Association*,[2] where Mr. Faramus had failed to disclose, when he joined the defendant trade union, that he had two convictions in Jersey when he was seventeen and nineteen, the last of which happened in 1940 while the island was under German occupation and resulted in his deportation to Germany, where he ended up in the notorious Buchenwald concentration camp. Eighteen years later, after exemplary conduct, he had become a member of the union's executive committee. When the union discovered the convictions it expelled him, and even the House of Lords could not reinstate him, despite the fact that the union operated a closed shop, and his expulsion therefore spelt the end of his livelihood.

Some objections to our proposals

47. There will be those who will object strongly that such a solution is artificial, unjust and even immoral, and that it is never right to preclude the courts from hearing evidence of the truth. At first sight, that argument seems strong, but we are satisfied that it is wrong. To begin with, there are already many situations of this kind. For example, if a man currently serving a sentence of imprisonment is called to give evidence at a trial, he is dressed in civilian clothes and the prison officers who have brought him to court are kept out of sight so as not to give the

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[1] On the other hand, in libel actions, the defences of absolute privilege, and of qualified privilege without malice, would still be available where the circumstances warranted them, since they do not require proof of the truth of the matter published.

[2] [1964] A.C. 925.

jury the impression that he is anything other than a respectable citizen. Again, the rule against hearsay is only one of many rules of evidence which prevent a witness from giving evidence of the truth as he knows it, because the law has come to the conclusion that it is against the public interest that such evidence—however true—should come before a court. Finally, if it is right to say that a man who has done all he can to rehabilitate himself should be treated on that footing by the rest of the community, then it seems to us to be right that the institutional organs of that community—amongst whom the courts figure most prominently—should be the first to treat him in that way. Under our legal system, that can only be done if no one can be heard to tell the court otherwise. That in its turn can only be achieved either by making this kind of evidence inadmissible, or by destroying or sealing up the documents which would otherwise prove it. For the reasons which we have already explained, we prefer the former course.

48. A similar objection may come from those who will say that our proposals will entitle rehabilitated persons to tell lies—in answer, for example, to questions on application forms for jobs, or to questions put to them in cross-examination when they are giving evidence in a court—without legal penalty. To this objection also the answers given in the last paragraph are applicable: in law, such statements will be true. But, in addition, there is the point that it is open to a rehabilitated person in this situation to choose whether or not he will tell the whole story. Some may prefer to volunteer more than they need and take the risk that society will treat their sense of honour with less than the respect which it is entitled to evoke; others may choose to confine themselves to what they are bound to disclose, and that will be a matter for their consciences. But we are unanimous in our view that, if that is their choice, the law should not visit it with penalties in the circumstances which we envisage. There is already a trend in this direction: in a very recent case [3] Mr. Justice Lawton held

[3] *R.* v. *Sweet-Escott* (1971) 55 Cr.App.R. 316.

that a prosecution witness who denied in cross-examination that he had a criminal record, when in fact he had a number of convictions more than twenty years old, was not guilty of perjury, because convictions as old as these were not "material" to his credibility as a witness. We would also hope that employers, insurance companies and others will follow the law's example and, without the need for any compulsion, adopt the practice of framing these questions in such a way that rehabilitated persons will have no difficulty in answering them.

49. No doubt there will be some who, having been convicted once, will offend again but be more successful in evading detection. They will, under our proposals, be entitled to the protection of "rehabilitated persons" when in fact they are not. But we doubt whether this class constitutes more than a small fraction of the million or so people who would fall within our proposals, and we do not consider that their probable existence should deflect us from our task. Besides, it has always—and rightly—been the policy of the law to treat a man as an offender only after a court of competent jurisdiction has decided that he is guilty beyond reasonable doubt. His record will, in any case, survive in the Criminal Record Office, and the police will not therefore be in any way hampered in their task of keeping an eye on him by the fact that the civil courts will not admit evidence of his previous convictions. These can still, of course, be given in evidence as part of his antecedents, should he eventually be brought to justice for a serious offence.

IV. Miscellaneous Matters

50. Our proposals raise some points which require more detailed consideration.

Custodial sentences

51. Approved school orders, orders for preventive detention in a remand home made before January 1, 1971 and attendance centre orders should be treated as non-custodial sentences. Detention centre orders should be treated as custodial sentences not exceeding six months. Sentences of Borstal training should be treated as custodial sentences exceeding six months but less than two years. Sentences of imprisonment should be treated as custodial whether they are immediate or suspended. Consecutive sentences of imprisonment should be treated as one sentence equal to the aggregate of the consecutive terms. Sentences of death, or life imprisonment, or detention during Her Majesty's pleasure, or as directed by the Home Secretary, should be treated as custodial sentences exceeding two years.

Hospital orders

52. Under section 60 of the Mental Health Act 1959, the Courts have power to send an offender to a mental hospital. By itself, this power is generally exercised only in cases where the offender suffers from what is really a degree of diminished responsibility, and needs treatment rather than punishment. In our scheme, it should rank as a non-custodial sentence, attracting a rehabilitation period of five years.

53. The situation is very different if the hospital order is accompanied by an order under section 65 of the same Act, which restricts the offender's discharge from hospital for a specified period, or an unlimited time. Such orders can only be made if they are necessary for the protection of

the public, and the offender is only released when the Home Secretary is satisfied that the public no longer needs to be protected from him. In such cases, therefore, we think that the rehabilitation period should run on until the offender is released, or for a total of five years if he is released earlier than that.

Offenders who are discharged or placed on probation

54. The courts have power, which they often use, to discharge an offender either absolutely, or subject to the condition that he commits no further offence for some specified period (not exceeding three years), or to place him on probation for a similar period. In the last two cases, the offender is always told that, provided he behaves himself, he will hear nothing more about the matter. No doubt that was what Parliament had in mind when it provided in section 12 (1) of the Criminal Justice Act 1948 that in these circumstances the conviction should be " deemed not to be a conviction for any purpose " other than the proceedings themselves, or a breach of the order (in which case the offender can be brought back to the court to be sentenced for the original offence).

55. Unfortunately, however, this is not always how matters work out in practice. The proceedings are still entered on the official record and there is nothing to prevent them from being recalled many years later as part of a man's " previous convictions." True, they will be formally referred to as " findings of guilt " rather than " convictions," but the damage will be the same.

56. We therefore propose that, under our scheme, what the court tells the accused will mean what it says, by making the rehabilitation period in the case of conditional discharges and probation orders equal to the period of the condition or probation imposed by the court. Provided he behaves himself, the offender will become automatically rehabilitated at the end of that period, so that the proceedings cannot be mentioned against him after that except in the case of a later conviction on indictment. If, on the

other hand, he commits a breach of the order, the rehabilitation period will be measured by the sentence which is imposed on that occasion, and will therefore be longer.

57. Where an offender was bound over, the position should be the same as for a conditional discharge.

58. There is a case for saying that rehabilitation after an absolute discharge should be immediate, since the court has taken the view that the offence was so trivial that it merited no punishment at all. But that would mean that the proceedings could not safely be reported in the Press even on the following day; besides, the offender might come up again a short time later, and the court should then know about the previous occasion. We therefore propose that in such a case the rehabilitation period should be a flat six months.

Care orders, supervision orders, etc.

59. Ever since the Children and Young Persons Act 1933, juvenile courts have had power to make various orders for the welfare of the young people who come before them. Sometimes these are made because the child or youth has been found guilty of a crime, but often they are made where there has been no crime at all, but because the child was being neglected by its parents, or was in need of care and protection. We have been told that these orders are often given in evidence, sometimes many years later, as part of a convicted person's record of "previous convictions." While there may be some logic in this where the order was made on a finding of guilt of a criminal offence, it seems to us utterly wrong that it should ever form part of anyone's "previous convictions" where it was made without any finding of guilt at all. It may still be very important as part of a social report, or a probation officer's report, but that is quite another matter.

60. We therefore recommend that, under our proposals, orders of this kind should only form part of the criminal record when they were made on a finding of guilt of a criminal offence; and in those cases the rehabilitation period

should expire at the same time as the order, just as if it had been a probation order or a conditional discharge.

First offenders

61. We think that, in determining for the purposes of section 1 of the First Offenders Act 1958 (which only applies to Magistrates' Courts and is in any case likely to be repealed by the next Criminal Justice Act) whether a person has been previously convicted, a conviction in respect of which the offender has become rehabilitated should be ignored. This should also be the position in determining whether there has been a previous sentence of imprisonment or Borstal training for the purposes of section 18 of the Criminal Justice Act 1967 (which relates to bail).

Disqualification, etc.

62. A person convicted of an offence may be subject to some disqualification or prohibition as a consequence of the conviction; or the previous conviction may be an ingredient in a subsequent offence. Examples are disqualification from driving a motor-vehicle,[4] holding licences under licensing or betting and gaming laws,[5] serving on a jury,[6] keeping foster children,[7] or holding public office.[8] Some convicted persons are not allowed to possess firearms.[9] Evidence of conviction of theft or of handling stolen goods within the preceding five years can be given in support of a charge of handling stolen goods.[10]

63. Most of these cases present no difficulty in relation to our scheme, either because they only arise in association with a custodial sentence longer than two years, or because the disqualification or prohibition will have effect for a

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[4] Road Traffic Act 1962, s. 5.
[5] Licensing Act 1964, s. 100; Gaming Act 1968, Sched. 2.
[6] Criminal Justice Act 1967, s. 14.
[7] Children Act 1958, s. 6.
[8] Representation of the People Act 1949, s. 139; Local Government Act 1933, s. 59.
[9] Firearms Act 1968, s. 21.
[10] Theft Act 1968, s. 27.

period shorter than five years, which is the minimum rehabilitation period we propose. Where that is not the case (*e.g.* where someone has been disqualified from driving for a long period) we think it would be wrong for the rehabilitation period to expire before the disqualification has come to an end, and we therefore recommend that it should be extended to the end of the disqualification.

Law reports, text-books, newspaper files, etc.

64. Criminal proceedings may give rise to a number of different types of publication. They may be reported in newspapers at the time; if there is a point of law involved, they may be reported in the law reports a little later; from there, they may find their way into textbooks of law, or forensic medicine, or some other educational, scientific or professional articles. Sometimes, they may also become the subject of people's memoirs (such as those of retired police officers or lawyers), or of books or feature articles on famous (or spicy) trials.

65. As the law now stands, all publications of this kind enjoy protection against actions for libel if they were fair and accurate reports of the criminal proceedings. If they were published contemporaneously in a newspaper, they have the protection of absolute privilege [11]; if they were published later, they have the protection of qualified privilege,[12] which can be destroyed on proof of malice. In addition, section 13 of the Civil Evidence Act 1968 enables a defendant in a defamation action to prove that the plaintiff committed a criminal offence by proving that he was convicted of it. Lastly, it is of course always open to such a defendant to prove the crime itself by calling the witnesses who gave evidence in the criminal proceedings.

66. If our proposals were adopted, it would be necessary to ensure that all these protections remain in force where they are needed in the public interest, but cannot any longer

[11] Law of Libel Amendment Act 1888, s. 3, as amended by Defamation Act 1952, s. 8.

[12] *Kimber* v. *Press Association* [1893] 1 Q.B. 65, and many other cases.

be used to cover the deliberate raking up afresh of a past conviction against someone who has since become a rehabilitated person. We think that this end can best be achieved if the legislation which we propose includes the following provisions:

(a) all defences hitherto available in law to actions for libel will continue to be available for

(i) all reports (contemporaneous or otherwise) of criminal proceedings published before the legislation comes into force;

(ii) all reports of criminal proceedings published after the legislation comes into force but before the person subject to the proceedings has become a rehabilitated person;

(b) in the case of any reports of criminal proceedings published (or republished) after the legislation has come into force, and after the person subject to the proceedings has become rehabilitated, these defences should only remain available if either

(i) the report was contained in a bona fide textbook or article published for educational, scientific, or professional purposes; or

(ii) the report was an unintentional [13] republication, in relation to the plaintiff, of a document first published either before the legislation came into force, or before he became a rehabilitated person.

67. Such provisions will ensure that anyone with a legitimate interest in reporting criminal proceedings—newspapers, law reporters, textbook writers, academics etc.—will continue to be able to publish whatever they think is necessary or desirable, without being at any greater risk than hitherto; they will only need to make sure, as they must do now, that their reports are fair and accurate and, if they are not contemporaneous, that they are published without malice. The only people who will have to take

[13] Compare the provisions of s. 4 of the Defamation Act 1952, which can easily be adapted for this purpose.

greater care are those who wish to revive long-forgotten cases, years after they were tried, for purposes other than educational, scientific or professional ones. In their case, they will have to make sure that they do not rake up the past of someone who has since become rehabilitated and is still alive. We are satisfied that this is not an unfair burden to impose in the interests of those who could otherwise suffer serious and irreparable harm.

Foreign countries

68. One of the main difficulties faced by people with criminal records is that they have to disclose them when filling in application forms for immigration and work permits for other countries, and even for travel visas for those countries like the U.S.A. which still require them. No sanctions can be applied in this country to applicants who fail to make the full disclosure required, but they run the risk of being refused entry, or of being sent back to the U.K., if any deception is discovered later. The countries whose regulations affect U.K. citizens most are probably the United States, Canada, Australia and New Zealand. The offences which constitute an automatic bar are those involving "moral turpitude," and none of these countries recognise any rehabilitation or expungement provisions of other jurisdictions.

69. The four countries mentioned, however, do show a degree of flexibility which reflects the spirit of the provisions we have in mind. Australia and New Zealand will consider on their merits applications from persons who have served sentences of less than one year. In Canada, the Governor in Council can waive the general bar if the offence was committed, or the sentence completed, more than five years before the application, or more than two years if the person committed the offence while under twenty-one. In the United States, the bar can be waived after five years in the case of a person who committed an offence under the age of eighteen.

70. The scheme we propose would not directly affect the position of such applicants. They would still be

required to make full disclosure of all offences or risk the consequences, but we hope that it may encourage governments to pay heed to the view taken of an applicant by the authorities of his country of domicile and eventually lead perhaps to some form of international agreement being reached. We are told that applicants for entry visas to this country are not asked any questions relating to criminal convictions, but the authorities of course have a discretion to exclude any persons they regard as undesirable.

V. Criminal Records

71. There remains the question of the confidentiality of criminal records. As we have already said, we think it important that such records should continue to be maintained and be accessible to those who really need them. We therefore have to consider the different circumstances in which their contents may be disclosed. These disclosures appear to us to be of two kinds:

(a) authorised disclosures to various authorities who really need the information;

(b) unauthorised disclosures obtained by outsiders (such as, for instance, detective and inquiry agencies) through friendly police officers or other officials, or sometimes by fraud, *e.g.*, by impersonating a police officer over the telephone, or by bribery.

72. We deal with these in turn.

(a) Authorised disclosures are regularly made to professional bodies, such as the General Medical Council, at the time of the conviction. These would in any case fall outside our proposals; no problem arises until after any relevant rehabilitation period has expired. After that time, there should, according to our proposals, be no further disclosure of the record. However, it is clear that there will be certain bodies who should, in the interests of society at large, still have access to this kind of information. We have already mentioned the police, who must—as part of their function of maintaining law and order on behalf of the community—be able to find out whether any specified person has a criminal record, regardless of whether or not he has meanwhile rehabilitated himself. Other examples are authorities like the Gaming Board, which has a wide-ranging discretion about the kinds of people to whom it will grant licences to run casinos and gaming clubs. Others are the

Department of Health and Social Security, which is concerned to ensure that people are not licensed to run child care establishments if they have, at any time in the past, been convicted of offences relating to children; and the Department of Education and Science, which is concerned to ensure that no one is employed as a schoolmaster who has a previous record in relation to children which could make such employment potentially dangerous. Again, there are a number of jobs in the Civil Service which ought not, in the interests of national security, to be given to people who are vulnerable to espionage activities on the grounds of their past history. In all cases of that kind, information available at the Criminal Record Office must be accessible to the bodies concerned if they are to perform their statutory and administrative functions in the public interest.

(b) We have good reason to believe that the claims made by some detective and inquiry agents, to the effect that they can obtain information about criminal records, are true. Theoretically, someone must have been guilty in each case of an offence under the Official Secrets Act. But there may be difficulties in establishing who provided the information. Besides, the Official Secrets Act is a sledgehammer which is unpopular with the Press and juries alike, and is therefore seldom invoked except in flagrant cases.

73. Although, technically, it will involve an element of duplication, we therefore recommend that there should be created a new offence consisting in the publication, by anyone who has official access to any relevant record, of the previous conviction of someone who has become a rehabilitated person in respect of that conviction. This should be an offence quite independent of the Official Secrets Act, and should be punishable on summary conviction by a fine or imprisonment sufficient to deter those who are likely to be tempted to commit it. Clearly, there must be exceptions

for communications between police officers acting in their official capacities, those bodies or authorities who, in the public interest, ought to have access to information of this kind and whom a Secretary of State—who is answerable to Parliament—is therefore willing to authorise to obtain it, and the courts themselves in circumstances where such evidence is admissible. Where the information is obtained by fraud or bribery, the culprit should be liable to more severe punishment.

74. From an administrative point of view, the only trouble in which this recommendation may involve those who administer the Criminal Record Office is that they may find it useful to mark CRO files with a special flag, label or marker when the last available rehabilitation period in respect of the last recorded conviction on that file has elapsed, thus warning anyone who handles it in the course of his duties to exercise extreme caution about communicating its contents to a third party. We are convinced that this comparatively small amount of extra work on the part of the administration is a small price to pay for the benefit to be derived by the very large number of people whose conduct over the periods concerned will have earned them the right to be protected from accidental or malicious disclosure of a remote past which, in society's view, may be safely and decently buried. As and when the CRO files are transferred to a computer, the system can easily be programmed so as to add the appropriate " flag " automatically after the appropriate time, and (if required) to make the file thereafter only accessible in specified circumstances or to a more limited number of people.

Police photographs

75. We have already had occasion to mention the question of police photographs. On the one hand they are a legitimate and desirable aid to the detection of crime. On the other hand we have reason to fear that they may be responsible for a certain number of wrong convictions. We do not wish to involve ourselves in a difficult and controversial issue outside the scope of our inquiry. We have

been told by a senior Chief Constable that it is not usual for the police to retain, for showing to potential witnesses, photographs which are more than five years old. If that is so, then none of them would relate to convictions in respect of which the offender has become rehabilitated under our proposals, and we do not therefore recommend any special provision for them.

VI. Summary of Conclusions and Recommendations

76. Summarising, therefore, we have come to the following conclusion:

(1) there are about one million people in England and Wales today who have a criminal record, but who have not been convicted again for at least ten years (para. 16);

(2) the likelihood of any of these people being convicted again in the future is minimal (para. 16);

(3) nonetheless, they are faced with great difficulties, especially in the fields of employment and insurance, and in the courts; however exemplary their lives may have been for many years, malice or chance may at any time put an end to their rehabilitation (paras. 10–15);

(4) it is in society's interest that, when someone has done all he can to live down his past, and enough time has passed to establish his sincerity, his record should no longer be held against him so long as he does not offend again (paras. 18–20);

(5) it would not be desirable to achieve this end by destroying or sealing up old criminal records; these are still needed for criminological research, for the information of the police, and for the courts if the person concerned should ever be convicted again of a serious offence (para. 26 (a));

(6) nor is it desirable to restrict the right of people in general to ask questions designed to uncover past convictions (para. 26 (e));

(7) instead, the law should set an example by treating certain people as "rehabilitated persons" when they have not been reconvicted for a number of years, and making evidence of their past crimes inadmissible in the courts; but such a scheme will require a number of necessary safeguards (paras. 27–32);

(8) the necessary conviction-free period should vary with the gravity of the offence, as reflected in the sentence, and there should be an upper limit, at least initially (paras. 33–38);

(9) evidence of all previous convictions should nonetheless remain admissible whenever a rehabilitated person is convicted again on indictment, or if he himself wishes to have it given (paras. 41, 42);

(10) the unauthorised disclosure of the criminal record of a rehabilitated person should be made a specific offence (paras. 71–73).

77. We therefore recommend that legislation should be passed to put into effect a scheme having the following principal features:

(1) a person should be treated as a "rehabilitated person" when he has been convicted of an offence, been sentenced to not more than two years' imprisonment, has served his sentence, and has not been reconvicted of anything worse than a summary offence during the "rehabilitation period" applicable to the sentence (paras. 32–39);

(2) the rehabilitation periods should be the following, reckoned from the date of conviction:—

(a) five years, where no custodial sentence was imposed;

(b) seven years, where a custodial sentence of not more than six months was imposed;

(c) ten years, where a custodial sentence of more than six months, but not more than two years, was imposed (para. 35);

(3) these periods should be halved for convictions where the offender was seventeen or younger (para. 40);

(4) in the case of probation orders, conditional discharges or binding-overs (without any breach), the rehabilitation period should be equal to the duration of the order; in the case of absolute discharges, it should be six months (paras. 54–58);

(5) if any disqualification was imposed on the conviction, the rehabilitation period should run on until the end of the disqualification (paras. 62, 63);

(6) if there is a conviction of an indictable offence during the rehabilitation period, that period should be prolonged until any rehabilitation period applicable to the later conviction itself runs out (para. 39);

(7) the Home Secretary should have power to vary the rehabilitation periods (up or down), and the age below which they are halved, by statutory instrument in the light of experience (para. 38);

(8) there will need to be special provisions for custodial orders other than imprisonment, and for various kinds of non-custodial orders (paras. 51–53, 59, 60);

(9) a rehabilitated person should be treated for all purposes in law as someone who has not committed, or been charged with, or convicted of, or sentenced for, the offences concerned; accordingly, he should not be guilty of any offence, or liable to any penalty or adverse consequences, if that is what he says; and no evidence to prove the contrary should be admissible in any court unless he himself wants it given, or as part of his antecedents if he is later convicted on indictment (paras. 27 to 32, and 41 and 42);

(10) it will be necessary to provide protection against defamation actions for certain publications such as law reports, textbooks, articles and the like, and for the inadvertent republication of reports after the rehabilitation period has expired (paras. 64 to 67);

(11) there should be a new statutory offence consisting of the unauthorised publication of any official record of the previous convictions of a rehabilitated person, and more severe punishment should be prescribed for anyone who obtains such information by fraud or bribery (para. 71).

Appendix A

Members of the Committee

The Rt. Hon. Lord Gardiner (Chairman)

Louis Blom-Cooper, Q.C., J.P.

Kenneth Cooke, O.B.E., Stipendiary Magistrate

Eric Crowther, Stipendiary Magistrate

Mrs. Kate Frankl, J.P.

* Hugh Klare, C.B.E., formerly Secretary of the Howard League for Penal Reform, and Head of the Division of Crime Problems, Council of Europe

Tom Sargant, O.B.E., J.P., Secretary of Justice

Paul Sieghart, Barrister

Eric Stockdale, Barrister

Rupert Townshend-Rose, Solicitor

** Martin Wright, Director of the Howard League for Penal Reform

Henry Hodge (Secretary)

* Until June 1971.
** From October 1971.

Appendix B

Statutory Provisions Allowing Proof of Previous Convictions

It does not seem to be generally known, even among practising lawyers, that the following provisions are on our statute book:

Criminal Procedure Act 1865

1. . . . the provisions of sections from three to eight, inclusive, of this Act shall apply to all courts of judicature, as well criminal as all others, and to all persons having, by law or by consent of parties, authority to hear, receive and examine evidence.

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6. A witness may be questioned as to whether he has been convicted of any felony or misdemeanour, and upon being so questioned, if he either denies or does not admit the fact, or refuses to answer, it shall be lawful for the cross examining party to prove such conviction; and a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for such offence, purporting to be signed by the clerk of the court or other officer having the custody of the records of the court where the offender was convicted, or by the deputy of such clerk or officer (for which certificate a fee of five shillings and no more shall be demanded or taken), shall, upon proof of the identity of the person, be sufficient evidence of the said conviction, without proof of the signature of official character of the person appearing to have signed the same.

Prevention of Crimes Act 1871

18. A previous conviction may be proved in any legal proceeding whatever against any person by producing a record or extract of such conviction, and by giving proof

of the identity of the person against whom the conviction is sought to be proved with the person appearing in the record or extract of conviction to have been convicted.

A record or extract of a conviction shall in the case of an indictable offence consist of a certificate containing the substance and effect only (omitting the formal part of the indictment and conviction), and purporting to be signed by the clerk of the court or other officer having the custody of the records of the court by which such conviction was made, or purporting to be signed by the deputy of such clerk or officer; and in the case of a summary conviction purporting to be signed by any justice of the peace having jurisdiction over the offence in respect of which such conviction was made, or to be signed by the proper officer of the court by which such conviction was made, or by the clerk or other officer of any court to which such conviction has been returned.

A record or extract of any conviction made in pursuance of this section shall be admissible in evidence without proof of the signature or official character of the person appearing to have signed the same.

The mode of proving a previous conviction authorised by this section shall be in addition to and not in exclusion of any other authorised mode of proving such conviction.

Appendix C

Estimate of Number of Rehabilitated Persons

1. At the Criminal Record Office, a file is opened on everyone when he is first convicted in England and Wales. Whenever he is convicted again, a new record goes on his file. From time to time, the files have to be weeded out, to remove those on people who may have died, or for some other reason.

2. The Home Office Research Unit has been following up some of these files to see what happens to people who have been convicted. They chose a random sample of rather more than 4,000 males who were convicted of an indictable offence in the Metropolitan Police District in 1957. Of the total sample, about 45 per cent. were first offenders, and the rest had been convicted before: this agrees quite closely with similar figures which are available from other sources.

The follow-up has so far produced these results:

(a) of the first offenders, 64 per cent. remained free of further convictions for five years, and 60 per cent. for ten years;

(b) of those who already had previous convictions, 33 per cent. remained free of further convictions for five years, and 30 per cent. for ten years;

(c) the reconviction rate after ten years free of conviction was minimal.

3. It follows, therefore (from (a) and (b)), that about nine out of ten of those who go straight for five years are still on the right side of the law after ten years, and (from (c)) that their chance of being convicted again after that is minimal.

4. A sample of this size is more than large enough to make it exceedingly unlikely that these percentages are due

to chance. Other things being equal, one is therefore entitled to apply them to the whole "population" from which the sample is drawn. Applying them to the appropriate number of CRO files results in an estimate of approximately one million people in England and Wales with a criminal record more than ten years old, and with no convictions since then.

5. One must, of course, treat any estimate of this kind with due caution, since the sample was not quite typical of the whole CRO "population." It was restricted to males, convicted in 1957, of an indictable offence, in the Metropolitan Police District. Some corrections would have to be made for these factors if one wanted to be really accurate. In fact, females have a lower reconviction rate than males and form only a small part of the criminal population, so that excluding them would tend to lead to an underestimate. The Metropolitan Police District is not in all respects typical of England and Wales as a whole, but there is no reason to think that the reconviction rates of people convicted there are lower than those in other parts of the country. And 1957 was in no way untypical of other years. Making allowances for all these factors, therefore, the figure still comes out at approximately a million. It may not be very precise, but there is every reason to think that it is of the right order of magnitude.

APPENDIX D

REHABILITATION LAWS IN OTHER COUNTRIES

1. Several American jurisdictions have enacted legislation allowing the expunging of the record of juvenile and adult first offenders. They include Alaska, Arizona, California, Delaware, Idaho, Indiana, Kansas, Michigan, Minnesota, Nevada, New Jersey, Texas, Utah, Washington and Wyoming. "Expunging" usually means the sealing of the record, not its physical destruction, and the aim is to prevent access to the record so that the conviction can be deemed not to have happened. In California (California Penal Code 1203,45), a person under twenty-one who has committed one misdemeanour may "petition the court for an order sealing the record of conviction and other official records of the case, including records of arrest"; if the order is granted, the conviction is deemed not to have occurred, and the petitioner may answer accordingly any question relating to his past. Traffic violations, registrable sex offences and narcotics offences are excluded. The applicant must have served any sentence satisfactorily. The law does not, however, as does the equivalent law applicable to juveniles, require the law enforcement agencies, who also have records, to seal their books.

2. The most comprehensive proposal for a rehabilitation law so far produced in America is the Model Act drafted by the National Council on Crime and Delinquency (*Crime and Delinquency*, Vol. 8, No. 2, p. 97). This provides for a convicted person to apply to a court, at any time after discharge from sentence, for an order annulling the record. If the order is granted he is restored to any civil rights lost, the conviction is deemed not to have occurred, and it may only be cited subsequently to a court of conviction if a further crime is committed. If inquiry is made later about previous convictions it must only be in the form "Have you ever been arrested or convicted of a crime which has not been annulled by a court?" No State has yet enacted this draft.

3. A rehabilitation statute, known as the Criminal Records Act 1970, was recently made law in Canada. A convicted person may apply for a "pardon" after two years in summary cases, or five years in others, from the end of the penalty imposed by the sentencing court. The Parole Board investigates the case, and if satisfied that the applicant has been of good behaviour, recommends a pardon to the Solicitor-General of Canada. If the Parole Board decides not to recommend a pardon, the applicant can make representations. The Governor may grant the pardon after reference by the Solicitor-General. A pardon vacates the conviction and removes any legal disqualifications consequent on it. The record must then be held separately from other records and must not be disclosed to anyone without the Solicitor-General's consent. The pardon can be revoked by the Governor in Council if it was obtained by deception or if the applicant ceases to be of good conduct. The Crown alone is prohibited from asking its potential employees any questions requiring them to disclose pardoned convictions.

4. Belgian law which, like many continental countries, has sweeping legal consequences following on conviction, has rehabilitation provisions in the Code of Criminal Investigation (Articles 619–634). Minor offences, where "police penalties" are imposed, are automatically removed from the record after five years. Otherwise a convicted person must discharge the penalty imposed and then apply after five years, or ten years if he is a "legal recidivist," or a "habitual delinquent," to the local Public Prosecutor who will investigate the case. It is then sent to the Prosecutor General who refers it to the Court, which can grant rehabilitation if the Prosecutor General approves; otherwise there must be a hearing. If successful, the order is notified to the Minister of Justice, the Public Prosecutor and the Mayor of the applicant's district. Rehabilitation puts an end to most of the effects of conviction and prevents a subsequent finding of recidivism, or mention of the case in the applicant's judicial or military record. But it does not restore the applicant's titles, ranks, or offices, if these have been

lost, nor remove a bar to succession, nor does it prevent an action for divorce or for damages founded on the original conviction. Certificates of good conduct, which mayors of districts in Belgium had to provide if requested, have recently been abolished as they were considered to hinder the rehabilitation of offenders.

5. In Germany, criminal records record losses of civil rights as well as sentences, and access to the record is first restricted after five years for lesser cases, and ten years in others, and the entry is cancelled after ten years. Once the entry is cancelled a person is in general entitled to state that he has no convictions, even in court, and if the record is restricted the police will not give notice of it in certificates of good conduct.

6. In Austria records are automatically cancelled after five or ten years; in the Netherlands after four or eight years (but never more than four years for juveniles); and in Japan after five or ten years according to the seriousness of the offence. In Sweden, particulars of convictions become inaccessible ten years after the commission of the offence; in Denmark, five years after completion of the sentence. In the U.S.S.R. there are various periods according to the severity of the original sentence and then the record may be cancelled, sometimes automatically, sometimes after a petition and hearing. Rehabilitation in France can take place, according to sentence, after five to twenty years, and wipes out the conviction and all the punitive incapacities that result from it for the future (Code of Criminal Procedure, Articles 782–799). The conviction is not mentioned in extracts from the criminal records and a legal fiction is created that the reinstated person has not been convicted.

7. Numerous other countries, from Ethiopia to Yugoslavia, have similar provisions in their legal systems.

8. It is interesting to note that, as long ago as 1803, the Austro-Hungarian monarchy had a provision on its statute book making it a criminal offence to rake up against anyone who was conducting himself lawfully, with intent to defame, any previous criminal proceedings. This is still an offence in Austria today.