Submission No: 187

RECEIVED
10 JUN 2004
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7 June 2004.

Senator Bronwyn Bishop.
Parliament House.
Canberra.

RE: INQUIRY INTO CRIME IN THE COMMUNITY, Raymond Terrace 7th June.

Dear Mrs. Bishop,

Thank you for your invitation for me to write to you on several issues that were touched upon at the Raymond Terrace hearing.

POLICE RESOURCES.

There have been numerous initiatives to reduce the amount of paperwork police generate as part of their duties. Fundamentally, the police officer undertaking functions has to start and finish the paperwork. It is part of the accountability. There have been other initiatives that have increased the amount of paperwork. I draw to your attention what is called the "Brief Handling Procedure." Some years ago, in NSW, this procedure was implemented to speed up the court process by requiring police to prepare a full brief of evidence within a limited time frame. The purpose is, the timely preparation of a brief to reduce court delays in defended matters. It was not long before some members of the legal profession saw other advantages in the system and a plea of not guilty entered to firstly see what evidence the prosecution had available. I do not criticise the lawyers for this, and other similar tactics, as they must do the best they can for their clients and they take advantage of the system. The point that I am making is that the introduction of this initiative impacted substantially on the workload of the active police officer. Prior to this system, police were required to prepare only a facts sheet until the defendant pleaded not guilty. It was then that the police commenced preparing a brief of evidence. The hearing date was usually some months away and the brief was prepared during quiet times or when rostered for that purpose.

In most cases, the Brief Handling Procedure now requires the police officer to commence his brief at the outset. The result is that the time to process a charge increases and the officer is in the station typing statements during a shift when he is rostered to be on the road. The process also requires the police officer to serve the brief on the defendant or his/her solicitor well before the next court date, which in itself involves an element of time. Indeed, the police absorbed every component of the extra work involved whilst other stakeholders received the benefits.

The Brief Handling Process is now one of the Police Force's most time consuming activities. In many cases, the work involved in obtaining statements and brief

preparation can involve several days' labour. If considered in the context of the number of criminal cases put before the courts, it is not difficult to answer the community's questions as to where the police are and what they are doing? It also results in unjustified complaints that the police are hiding in their stations when they should be on the beat. An allegation made by The Hon. John Bartlett MP, Member for Port Stephens at the Tilligerry Crime Forum, 17 May 2004.

I do not necessarily disagree with the need to prepare briefs of evidence, but there is a limit to capacity and it cannot be expected that an active police officer can prepare detailed briefs as well as maintain a proactive police presence on the road. A similar example exists in relation to the sound recording of records of interview. Again, the Police Service absorbed the extra work whilst others reaped the benefits. I do not suggest the changes were not for the better, just that the Police absorbed them and they created much more work inside the station.

POSSIBLE SOLUTIONS.

To raise the funds for more police resources as compensation for this extra workload, it may now be appropriate for a judge or magistrate to consider ordering costs against a defendant as a "brief preparation fee". Something like User Pays.

The relevant Act may require amending to allow more cases to be processed through the courts without the need for a brief of evidence. In purely indictable matters, even when a plea of guilty is to be made at the higher courts, police are required to compile a full brief of evidence. I query the value of that requirement in all but the most serious of matters. It seems to me that to process a plea of guilty for most cases, a facts sheet, or a mini-brief is sufficient for a court to grasp the nature and severity of the offence. I doubt whether any judge or magistrate reading a brief of evidence tendered in a guilty plea would read all the corroborating witnesses statements. Sometimes a brief may have numerous witnesses, yet only two or three are necessary to grasp sufficient detail to dispose of the case. The advice of the D.P.P. should be sought on these issues.

STANDARDISING PROCEDURES.

In relation to working efficiency of police forces generally, it has often occurred to me that that it would be beneficial to standardise police procedures throughout Australia. In New South Wales, there are separate procedures to be followed when investigating offences by juveniles and adults. These issues crystallise when cases are being heard at court, particularly when dealing with juveniles. It often occurs that a juvenile is arrested and is not truthful about his identity and age and therefore interviewed as an adult. In other cases, particularly in border towns, a young person wanted for a crime may be arrested and interviewed interstate and sometimes overseas. In such cases, if the correct procedures have not been followed under NSW laws, then, notwithstanding a magistrate has some discretion, the evidence may be ruled inadmissible and the case lost. I believe that now more than ever, there is a need for an Australia-wide approach to police procedures dealing with this and possibly other associated issues. Such a code should be applied when dealing with all classes of person, irrespective of race, age or ethnic background and provided the procedures have been followed, the evidence ruled admissible in all courts.

Finally, I can see no useful purpose in continuing the archaic practise of warning a suspect that "he is not obliged to answer any questions or say anything unless he wishes to do so etc." I note that in England, a modified form of caution is now used and which includes a warning along the lines that if the suspect declines to say something and later seeks to rely upon it as a defence, then it may act to his detriment. The fact that England changed the form of the caution must signal a need for change in New South Wales.

I have had the benefit of reading a submission to you from a Mr. Kevin Moran from Western Australia under cover of a letter from the Family Council of W.A. dated 22 July 2002. It is identified as Submission 8. After perusal, I endorse most of that submission, particularly his comments about the Pursuit of Private Judgements against Juveniles and the Forfeiture of Civil Action by offenders. I do not support the notion that we return to the whipping of offenders, irrespective of the crime. I do not believe we should fall below a certain line. Justice should never demand blood. The caning of errant schoolchildren is supported but only if meted out by the principal. It could be a mistake to give that authority to all teachers.

JUVENILE CONTROL.

Years ago in New South Wales the Child Welfare Act (if I remember it correctly) had provisions for charging children with being uncontrollable. The Act also had some draconian provisions, such as being neglected and for being exposed to moral danger. Those latter sections seemed to make the child responsible in circumstances where they were in fact victims. But the uncontrollable complaint did seem to have merit. I also acknowledge that sometimes it was a cop-out for dysfunctional parents, but usually that became apparent during the hearing. I have recollections of police, Child Welfare Officers, as they were then called, and sometimes parents making application to the Children's Courts to have children dealt with as uncontrollable. Evidence was taken to prove the "complaint" following which the errant child was placed on a bond and under the supervision of the Child Welfare Officers. Only in the most serious cases did the courts ever invoke an order for detention. Similar provisions to this may be of advantage in our current environment.

As stated during the hearing, I believe that victims of crime have a need to see some balance of justice. I do not believe it is necessarily a revenge issue or a compensation issue but a genuine seeking of justice. At the moment, the only persons who seem to get the advantages of justice are the actual offenders. In the case of juvenile offenders, particularly in small rural communities, the juvenile is often known to the victim, who must wear the cost of the offence and then must suffer the indignity of knowing that nothing has happened to the juvenile as a result of some diversionary scheme. In the present circumstances, justice seems to thumb its nose at the victim. At least that is the victim's perception.

Thank you for your further consideration.

Peter Mason