

**Senate Foreign Affairs, Defence and Trade
References Committee**

SUBMISSION COVER SHEET

Inquiry Title: Effectiveness of Australia's Military Justice System

Submission No: P65

Date Received: 16 July 2004

Submitter: Leading Seaman Darren Saxby

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Date Authorised:

MS Saxon Patience
The Secretariat
Senate Foreign Affairs, Defence and Trade Committee
Suite S1.57
Parliament House
Canberra ACT 2600

13 July 2004

RE: Submission to Military Justice System Inquiry

Dear Ms Saxon Patience

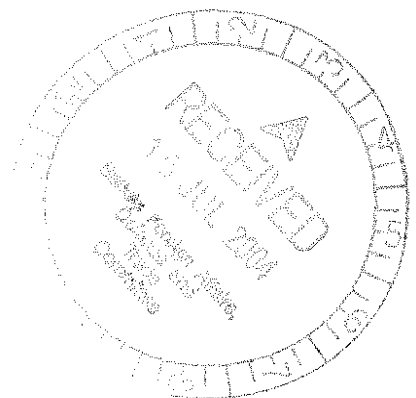
Thankyou for the opportunity to make a submission to the inquiry. Please find enclosed my statement and attached documents.

Thankyou for your assistance

Yours Faithfully



Darren Saxby



Submission By:

Darren Saxby

This submission will address terms of reference part 1(a).

This statement is a summary of events that occurred during March and April 2004 with the supporting documents giving the detail.

As a member of the Australian Defence Force for the last 10 years, I have always considered it important to behave in a manner that is consistent with the standards taught to me at the Royal Australian Navy Recruit training Facility at HMAS Cerberus. With these standards in mind I had an unblemished discipline record until April 2004 when a series of events concluded with a guilty verdict at a Summary Authority Trial onboard HMAS Arunta.

The beginning of this event occurs at sea with a discussion between my immediate supervisor and the Deputy Department Head. On completion of this conversation the Deputy Department Head forms an independent opinion (independent of fact as shown in the attached documents) that I have been undermining the Department Head and accusing her of theft. He takes this independent opinion to the Department Head who then calls me in, proceeds to admonish me for my supposed actions and makes reference to my ability to hold my current position and rank.

Having just been accused of misconduct by my Department Head, verbally attacked and given no opportunity to respond, I went in search of my supervisor for assistance and advice, though when he was found no assistance was forthcoming. Feeling isolated and frustrated that no-one would listen to me, I struck a steel plate that that forms the outside skin of the ship injuring my hand.

During medical treatment for my hand, still frustrated, emotional and now in pain, the medical practitioner inquired into the reason for my injury. My response was "it was better punching the bulkhead (wall) than punching the Supply Officer (Department Head). This statement was a result of my internal feelings at the time. After treatment I was relieved of particular duties and during this time made a further statement similar in content to the first.

Later the same day I was ordered to the Coxswains Office (Discipline Office) berated and informed that I was being investigated for threatening the safety and well-being of a Superior Officer, my Head of Department. This completed my feelings of isolation as I now felt I had nowhere to turn.

Two days later the ship returned to Fleet Base West, HMAS Stirling, where my hand was x-rayed and no injury was found. On return to the ship I was informed that my short leave privilege (my ability to go home that afternoon) was revoked until I had made a statement to the Coxswain. I looked for my supervisor to gain advice, however, he was not on the ship. The next person in my chain of command was the Deputy Department Head who had started the whole event. In the end I had to call my partner for advice as I did not feel I could trust other Officers on the ship.

On the following day I was directed to return to the ship and was formally charged with Prejudicial Conduct and informed that I would go before the Commanding Officers Table (Summary Authority) the following day (leaving me a single night to form my defence). I was told that the ship wanted to get 'it' over and done with 'before the ship sailed so it would not be hanging over my head'.

The evening was spent constructing my defence and again I had to call on my partner to identify a defence member to represent me before the Summary Authority.

The next day I faced trial before my Commanding Officer, who receives his legal advice from the Coxswain who is also the prosecutor. I was found guilty as charged and fined three days pay. The automatic review process for this trial, by a Legal Officer, upheld the decision. An appeal against this decision has been lodged.

I am not trained in Defence Law, nor do I profess extensive knowledge, however, there are some things that are known to me. The charge brought against me requires the prosecution to prove that the act could have affected discipline or reputation. The defence argument against this is that the statement made by me, and said to be the chargeable item, was made to persons of higher rank who professed to not taking their direction from subordinates, thus not affecting discipline. The prosecutor asking leading questions of witnesses abrogated this defence, which is not legal. In addition it is not what the witness thinks about whether an offence has been committed, but whether they would be lead toward anti-disciplined behaviour. This breach of law was committed by the prosecutor and allowed by the Summary Authority and the Reviewing Legal Officer.

Further, to have the Summary Authority Himself ask the same leading question of a witness, supporting the prosecutor's line, demonstrates that the process is not equitable, nor impartial.

In summing up at the completion of the Trial, the Summary Authority lectured me on my responsibilities as a Leading Seaman serving in the Royal Australian Navy. He indicated that a Leading seaman should act in a specific way due to the influence that comes with the rank. That I should show 'levelness and measurement' including when bad things happen to me. That my punishment would make a point that these things did not go unnoticed. That should I appear before him again on a similar charge, the punishment would be much higher. My questions are these:

- Did the Deputy Department Head act in a way consummate with the rank of Lieutenant when he smeared my good name, did he act in a way that brought credit on himself and the Royal Australian Navy when he falsely accused me of disloyalty and other acts.
- Did the Prosecutor act in an appropriate way for a person employed to uphold the law when he did not follow the procedural requirements of the law during the trial.
- Did the Summary Authority act in a way consummate with the person delegated to administer the law when he did not follow the procedural requirements of the law during the trial.
- Did the Head of Department show levelness and measure as she berated me over an accusation I did not make.

- Did the Deputy Head of Department get charged for making a statement that was false and defames my name so that others would not think that such things would go unnoticed.
- Did the Legal Officer reviewing the case show due care.
- Did I receive justice at the hands of the Military Justice System.

On considering the above questions I believe the answer to them all is no. I do not absolve myself of input to the sequence of events. It is fair to say that I could have acted differently, however, I do not believe that my actions are in any way worse than those of others. Yet I am the person whose character was defamed and when I reacted I was berated, abused, charged, found guilty and then lectured on my shortcomings.

I guess the big difference is that I am not an Officer in the Royal Australian Navy, I am a Sailor. That those with power dispense the law upon those without. That those with power don't feel that the law should apply to them.

Thankyou for the opportunity to submit this statement to the inquiry.

Yours Faithfully

A handwritten signature in black ink, appearing to read 'Darren Saxby', with a stylized, cursive script.

Darren Saxby

Attached:

Trial Transcript

Witness Statements