to by utilising persuasive tactics to manipulate this 'democratic decision'. To describe four members of a committee determining law reform, in spite of public support for decriminalisation, as democratic was laughable. This is especially so when one of the National Party members, Mr, Harper, based his position on an abhorrence of the inclusion of male homosexual prostitutes in the proposed regulatory framework (Parliamentary Report, 1992).

The next round of lobbying began. Letters were sent to every MLA by various organisations calling for debate in Parliament. The hopes for decriminalisation appear slim as a poll of the 89 members of the Legislative Assembly reported in the *Sun* newspaper showed only 11 MLAs supported decriminalisation. Fifteen Cabinet Ministers refused to comment on their position, two were undecided and the Premier reiterated his 'no' position (*Sun*, 15.11.91). Further, the then Police Minister, Mr MacEnroth, said 'It is now up to the Government to produce workable [anti-prostitution] laws. These are expected to be in place by February' (*Gold Coast Bulletin* 16.11.91).

Well, it is now February and the Government appears to be retreating from its position to have laws operational this month and instead will debate the issue in Parliament some time in March. Meanwhile, the interests of sex workers in their own industry have been ignored amidst the political fighting and the rise of 'expert' opinions from self-appointed guardians of public morality. Silenced from directly speaking on their own behalf with the prospect of increased police powers and heavy enforcement of archaic laws, the prospect of decriminalisation is receding.

References

1. Criminal Justice Commission, Regulating Morality, CJC Research and Co-ordination Division, Queensland, 1991.
2. Parliamentary Criminal Justice Committee, Report on Prostitution, Queensland, 1991.

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TRIALS

Juries going public

GRAHAM JEFFERSON discusses the role of juries in criminal trials following comments to the media by a juror in the Northern Territory.

'jury . . . the stupidity of one brain multiplied by twelve'

Frank McKinney Hubbard, The Roycroft Dictionary, 1923.

The recent drama over the Joh Bjelke-Petersen trial appears to have reopened the debate on the jury system. Unfortunately, like events following the Chamberlain and Murphy trials, much spleen has been vented, but, so far, little has been resolved. It seems there will be an investigation into the conduct of the Joh jury. There is also talk of adopting majority verdicts in Queensland and possibly introducing the American process of juror selection. With so much discussion of the jury system it is surprising that there is so little empirical evidence on precisely what effect juries have on our criminal justice system.[1]

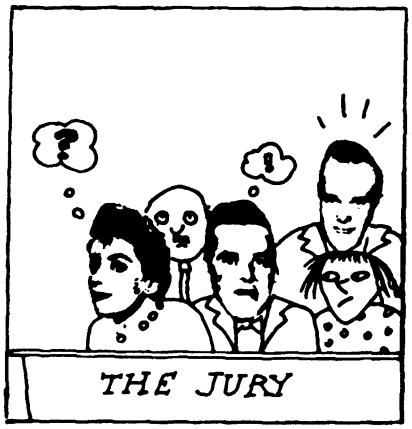
A radio broadcast in Darwin of a telephone conversation between an ABC journalist and a person claiming to be a juror in a recent murder trial has presented some timely insights into the machinations within the jury room. The interview went to air on the day that the convicted man, Scott Aaron Breedon, was sentenced. The most interesting of the comments was the claim that the alleged juror felt 'trapped' into returning a verdict of murder. It was said that as many as five of the 12 jurors did not consider Breedon to be a murderer.

Breedon pleaded not guilty to charges of murdering Stephen Clive Sargent and robbing him of $3800 while armed with a knife. Breedon admitted that Sargent had died as a result of injuries received during a fight between the two. However, he claimed he killed Sargent in self defence. If the jury believed Breedon's claim about self defence they could have found him guilty of manslaughter rather than murder. Murder carries a mandatory life sentence in the Northern Territory[2] so the distinction was particularly significant. It is clear from the interview that the jury considered self defence but eventually rejected it: '[t]here was a possibility that he picked up a knife to defend himself but we felt that that was undue force. Because it was undue force we couldn't actually say it was self defence'.[3] Breedon also denied robbing Sargent but the jury 'ended up all agreeing it was a robbery'.[4]

In the event that the jury found Breedon had robbed Sargent and that self defence could not apply they had been instructed by the judge to return a verdict of guilty of murder. Section 1262(1)(b) of the NT *Criminal Code* is a statutory form of the felony-murder rule. A person is guilty of murder if they kill another in the course of a robbery or other serious crime. The felony-murder rule has been criticised on many occasions.[5] Its application in this case caused the jury much concern. The alleged juror said: '[W]e got very heated over the fact that we were trapped into murder. We got very angry. We felt that we were trapped. That it wasn't right. People were talking about conscience'.[6] At another stage in the interview the alleged juror said '[W]e felt like protesting, but then the foreman said that we weren't allowed to protest because the law's the law'.[7]

A verdict of guilty of murder was eventually returned. However, it is interesting that the five jurors who allegedly felt that Breedon was not a murderer did not take the law into their own hands. The NT *Criminal Code* provides for majority verdicts after six hours of deliberation. Where there are 12 jurors at least 10 must agree on a particular verdict.[8] All that was required to escape the 'trap' of the felony-murder rule was for three

BRIEFS



jurors to refuse to find Breedon guilty of robbery. Although it seems that some form of protest was contemplated there was no indication from the interview if this particular scenario was discussed.

In its report on contempt,[9] the ALRC states that one of the justifications for ensuring secrecy of jury deliberations is the need to maintain the function of juries as rectifiers of the law. 'It has long been acknowledged that juries infuse an important lay element into the operation of the criminal law by sometimes allowing their dislike of particular criminal laws to influence them into bringing in a verdict of "not guilty" when the evidence suggests otherwise'.[10]

While it may be true that some juries operate in this fashion, is it really desirable? In the case of the NT *Criminal Code* the felony-murder rule is an enactment of a popularly[11] elected government. Although it is unlikely that individual electors are aware of the provisions of the Code, it is contrary to our system of democracy for 12 randomly selected people to have the power to reverse a decision of Parliament. If juries are to act as society's conscience in criminal trials there must be limits to the scope of that conscience. At present those limits stem from the fact that juries are judges of factual issues only. In this sense the Breedon verdict can be seen as a vindication of the jury system.

Insofar as the broadcast showed that jurors will follow a trial judge's directions in cases where those directions are inconsistent with personal views as to the moral guilt of the accused, it was both useful and informative. Indeed, if there is to be a wholesale review of the jury system it is a shame that there is not more of this information available. Clearly, before serious research on the role of juries in criminal trials can occur the law relating to disclosure of jury deliberations needs to be clarified.[12]

References

1. Much of the available evidence on how juries behave comes from press interviews with jurors: see generally ALRC Report 35, Contempt, 1987, pp.209-10.
2. Northern Territory Criminal Code, s.164.
3. Transcript of interview between Peter Hughes and alleged juror on ABC radio, September 1991.
4. ibid.
5. Fisse, B., Howard's Criminal Law, 5th edn, Law Book Company, Sydney, pp.70-71.
6. Transcript of interview between Peter Hughes and alleged juror on ABC radio September 1991.
7. ibid.
8. NT Criminal Code, s.368.
9. ALRC Report 35, Contempt, 1987.
10. ibid., p.207.
11. Popular in the sense of elected by the people!
12. The broadcast was prefaced with the statement that although the alleged juror had contacted the ABC shortly after the conviction, 'for legal reasons' the broadcast had been delayed. Presumably, the ABC had legal advice that broadcasting of jury deliberations after the verdict but prior to the passing of sentence places the trial judge in an invidious position and could possibly be seen as a contempt of court: see generally ALRC Report 35 Contempt, 1987, pp.203-217.

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JUVENILE CRIME

In defiance of human rights

Kate Auty and Sandy Toussaint look critically at new sentencing and criminal law legislation in Western Australia.

It's sad out here. Everybody hates everyone else . . . At some places, the police just push you all the time. They just keep pushing you. It's like they're saying 'we've got you . . . we don't give a shit . . . you've got what's coming to you' . . .

Extracted from submission provided by young Aboriginal man to the Royal Commission into Aboriginal Deaths in Custody.[1]

On 7 February 1992, the *Crime (Serious and Repeat Offenders) Sentencing Bill* and the *Criminal Law Amendment Bill* passed through both Houses of Parliament in Western Australia and became legislation. It was apparent to all but the most uninformed, that such legislation was directly aimed at Aboriginal people, especially juveniles, who continue to be grossly over-represented in police and prison custodial settings.

Most members of the Government and the Opposition (apart from two independents) supported passage of the legislation, clearly demonstrating their contempt for human rights generally and Aboriginal human rights in particular. Passage of that legislation was undertaken in defiance of some internal Labor Party opposition, of human rights conventions and of widespread judicial opinion.

The campaign that resulted in the introduction of this legislation has largely evolved from historical and