

ing to a report in the *Sunday Age* Mr Meagher wrote to the current DPP, Mr Geoff Flatman, QC, a few days after the *Four Corners* program. His memorandum to the DPP, again according to a report in the *Sunday Age*, commented on a number of matters to do with the case, sought an assurance that the DPP was supportive of the prosecution, and expressed concern about delays. The DPP responded with a letter accusing Mr Meagher of having lost his objectivity and stating that the case would be withdrawn from him. Mr Meagher resigned from the case after receiving the letter. Another Queen's Counsel has now been briefed to prosecute the Jensen case when it finally comes to trial.⁸

Police prosecutions

In his final annual report as DPP Mr Bongiorno commented on police prosecutions. He noted that:

Although care is taken to ensure that cases against police officers are prosecuted in exactly the same way as those against other citizens the results obtained in such prosecutions are markedly different. Whereas in the year under report some 79% of all citizens prosecuted in the superior courts either pleaded guilty or were found guilty on one or more charges upon which they were presented, the figure for police officers was about 6% . . . The figures for previous years are not markedly different . . . It is essential to any system of justice that no group in the community should have, or be perceived to have, any advantage over any other in having the law applied to it. It is a matter of some concern that the figures for successful police prosecutions in this State could suggest that police officers enjoy an advantage over their fellow citizens when they are accused of serious crime. [p.8]

The loss of counsel with two years involvement in the Graeme Jensen case is likely to disadvantage the prosecution, particularly given that the coronial inquest into Graeme Jensen's death ran for more than 60 days and generated thousands of pages of transcript.

Conclusion

The Attorney-General's comments, referred to above, are symptomatic of the Government's apparent inability to grasp, and demonstrated failure to honour, the basic principles relating to the separation of power between the Government and judicial officers. Her comment implies that one of the problems with the former DPP was that he made some unpopular decisions. It is precisely because adherence to legal principles may require the DPP to make decisions which are unpopular that his or her position needs to be completely independent of political interference. If people within Government or with political influence are free from the threat of prosecution, or free from the threat of prosecution resourced at a level likely to secure their conviction, ordinary people have one less reason to believe in a system under which the wealthy and powerful already enjoy great advantage.

Jude McCulloch is a community lawyer with the Western Suburbs Legal Servic in Melbourne.

References

1. McCulloch, J., Connellan, G. and Isles, A., 'Putting the politics back into prosecution', (1994) 19(2) *Alternative Law Journal* 78-82.
2. See *Sunday Age*, 16.4.95, p.19.
3. *Age*, 17.4.95, p.3; *Sunday Age*, 23.4.95, p.6; *Age*, 1.5.95, p.2.
4. *Sunday Age*, 7.5.95, p.1.
5. *Sunday Age*, 16.4.95, p.9.
6. *Sunday Age*, 7.5.95, p.7.
7. *Sunday Age*, 7.5.95, p.7.
8. *Sunday Age*, 7.5.95, p.7.

STOP PRESS

On 1 June 1995 it was announced by the Victorian DPP, Mr Geoff Flatman, that murder and other charges against seven former serving police officers charged over the fatal shooting of Graeme Jensen would be dropped. Mr Peter Faris, QC, for the DPP told the Supreme Court that the Crown would enter *nolle prosequis* — intentions not to prosecute — regarding the seven men, but it would proceed with a murder charge against one of the charged police officers, Mr Robert John Hill (*Age*, 2.6.95).

GUN CONTROL

Shoot 'em up Shout 'em down

REBECCA PETERS faced a hostile forum on 'home defence' under the glare of TV cameras.

Last month I flew to Adelaide and stayed overnight in a flash hotel, courtesy of Channel 7. A current affairs show had decided to hold a public forum on 'home defence', following the fatal shootings of intruders by householders in Brisbane and Adelaide.

The shootings had aroused a storm of controversy, with macho blustering from the gun lobby and paranoid spluttering from talkback radio callers who apparently cannot wait for the day when they too will get the chance to be heroes by blowing away a rapist, a burglar or at the very least a lout who puts his feet on the seat on public transport. An obvious choice for a tabloid television forum.

You know the format: fill a studio with vehement opinions, wheel out a couple of bunnies ('experts') to sit up the front, whip up an argument in which most people don't get a word in edgewise. The gun lobby sat impressively in rows in its gorgeous uniform, an olive sportscoat with two crossed rifles over the heart. There were victims of crime, Neighbourhood Watch, and a few bizarre inclusions like a fellow plugging the notion of Citizen Initiated Referenda. The remainder of the audience had responded to an invitation to 'have their say' by ringing a 0055 number. I was there representing the Coalition for Gun Control.

Even though the TV show was being made exclusively for South Australian broadcast, the producers imported me from Sydney because they'd been unable to find a local organisation to oppose the philosophy of 'shoot first, ask questions later'.

Not even a Council for Civil Liberties exists in South Australia: a representative of the Australian CCL had to be imported from Victoria for the show. Nor apparently were there any lawyers or criminologists available on the night, except a representative of the Law Society who was asked just one question: if a burglar breaks into my house and my dog bites him, can he sue me? (Answer: possibly.)

So, is the Festival State so civilised that it doesn't need organisations to advocate non-violence and human rights? Not by a long shot, judging by the scene in the studio that night.

The Coalition for Gun Control lobbies for firearm policies and practices to be based on the public health and criminology research evidence about firearm violence. Hardly an unreasonable stance, you might think. But I was shouted down every time I cited that evidence: that the person most likely to kill you is a member of your own family, that only a minuscule proportion of robberies involve violence, that having a gun in the house increases the chance of both homicide and suicide. That elderly people are the group least likely to be victims of violence (Grey Power had weighed in supporting gun ownership for self-defence). That antisocial and even illegal behaviour is relatively common among 'normal' young men, but they generally grow out of it. In other words, the world does not divide neatly into Good Guys (who should be armed) and Bad Guys (who should be shot).

They wouldn't have a bar of it. Shouting, booing, total rejection of the concept of 'research' or 'crime statistics'. One codger leapt to his feet and urged everyone to read the book *How to Lie with Statistics*. I stressed repeatedly that the popular perception of a society crawling with dangerous criminals is based on media images rather than reality. Shouted down: 'We can see with our own eyes, every night on the television, what is happening out there.' (Excuse me, wasn't that what I just said?)

One gun lobbyist, at least, was somewhat familiar with the law of self-defence and said he would ascertain the degree of threat posed by the intruder and then decide whether to shoot. Most of the audience, however, believed that when the big moment comes there'll be no time for deliberation: 'you have to shoot as soon as you hear a noise'. Thankfully, not many of them actually own guns.

My fellow 'experts' on the panel were four men in suits: a florid gun enthusiast, a reluctant assistant commissioner of police, a minister who (unlike all other religious leaders I've ever met) thought killing intruders was fair enough because the only other possible outcome was to be killed yourself, and a former housebreaker and armed robber who now works in offender rehabilitation.

This last bloke shone like a beacon of dignity in the face of the mob, saying it's preferable to address the reasons why young men turn to crime, rather than rely on the downstream solution of killing them in the act. He'd done his time in prison, 14 years or nearly half his life. No matter, it was obvious this lot would've liked to kill him on the spot — for his past sins, but also for his present opinions.

The cry went up that anyone who harbours 'criminal intent' should have to cop any consequences, including death (Applause). I pointed out that the criminal justice system assigns a graded series of penalties for different offences, and the penalty for breaking and entering is not summary execution (Shouted down). The ex-offender then asked who in the room had never done anything illegal. Even in hysterical mode it seems people are inclined to tell the truth: almost no one put their hand up.

Mercifully, there were a few in the audience not completely intoxicated by the fantasy of righteous violence. One woman said she had been the victim of a serious crime, was very concerned about crime, but was even more concerned to live in a society ruled by law. She was most frightened, she said, by the views being expressed by the people around her.

After 90 minutes the taping session ended. There was a lot of self-conscious coat-straightening as the audience filed out, and you could see a fair number of people felt slightly

embarrassed about having been part of a mob baying for blood. Not everyone, though: as I left the studio carpark a couple of young women jeered after me: 'Lezzo sleeeeeeeze!'

A beautiful and sophisticated night in the City of Churches.

Rebecca Peters is Secretary of the Coalition for Gun Control, PO Box 167, Camperdown, NSW 2050.

LEGAL AID

What the Justice Statement didn't say

The Legal Aid Commission of Victoria has been abolished. MARY ANNE NOONE explains.

The chapter on Legal Aid in the Federal Government's Justice Statement includes this paragraph:

The Government is committed to ensuring that the Australian public receives an efficient and effective service for its investment. The Access to Justice Advisory Committee concluded that the Commonwealth Government had not been sufficiently energetic and innovative in legal aid policy. This Statement will address that criticism and marks a significant shift in the Commonwealth's role in legal aid.

What the Justice Statement fails to mention is that the significant shift in the Commonwealth Government's role includes the abolition of State legal aid commissions and abrogating control of legal aid to State Attorneys-General. The Commonwealth Government has adopted the controversial changes to the Victorian Legal Aid Commission as a model for all State and Territory legal aid commissions. The federal Justice Minister, Duncan Kerr is reported as saying, 'The Victorian legislation is a model that the Commonwealth feels closest to'.

In the *Legal Aid Commission (Amendment) Bill*, the Victorian Attorney-General, Jan Wade, seeks to turn the Legal Aid Commission of Victoria (LACV), an independent statutory body, into Victoria Legal Aid (VLA), a 'new and more business like corporate body' over which she will have control.

Section 12M of the proposed legislation gives the Attorney-General power to direct VLA in relation to the performance of its functions or exercise of its duties and any policies, priorities or guidelines of VLA.

Although the Bill prevents the Attorney-General from interfering with individual grants of legal aid, her power to direct enables her to order that certain classes of individuals should or should not get legal aid, to the exclusion of others. For a large number of legally aided people the opposing party is the government: the police, the Department of Health and Community Services. There have been several recent examples where the Victorian Government has fought vigorously in the courts and been on the losing side (Northlands, Children of God, Richmond Eight). This Bill gives the Attorney-General the power to limit the availability of legal aid in particular types of cases and to particular groups of people.