

Three Strikes – A Blot on our Judicial Landscape

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The passing into law of the Sentencing and Parole Reform Bill (the three strikes legislation) last week, was a milestone of a kind – it marked the passing into law of arguably the worst piece of criminal justice legislation in New Zealand history. While the legislation is a shocker, the way in which it was managed through the legislation process is a case study in political manipulation of the democratic process, lending weight to Lord Acton's famous words, "All power corrupts; absolute power corrupts absolutely."

In a pre-election deal between the ACT party leader Rodney Hide and the Sensible Sentencing Trust's spokesperson, Garth McVicar, SST's legal adviser, David Garrett was offered a list position, on the understanding that if successful, Garrett would promote three strikes legislation through the legislative process.

Garrett was successful, and in the subsequent coalition deal with National, the government agreed to support the bill to the Select Committee stage. At that time, no one took the legislation seriously – and no one believed that it would get very far.

National changed its mind, and thus began a manipulation of the legislative process which was more than cheeky – it stunk of arrogance. Once the original Bill was found to be seriously wanting, it was drastically revised. However, only those who had made submissions on the first Bill were permitted to make submissions on the second, and none of them were permitted to appear personally before the Select Committee. Citizens who decided not to make a submission on the original Bill in the belief that it would not succeed, were denied the opportunity to present a view, once the amended Bill acquired some teeth.

Next dirty trick - the Chairperson of the Select Committee denied dissenting Select Committee members, the opportunity to submit a minority report – a long standing parliamentary convention . Dirty trick number three - given the resistance of the Minister of Justice and the Attorney General to the Bill (it breached the Bill of Rights), the Bill was transferred from the Justice and Electoral Select Committee to the Law and Order Select Committee, coming under the patronage of the Minister of Corrections and Police, he Hon Judith Collins.

One of the reasons government politicians gave for supporting the Bill, was that the public had lost confidence in the justice system. Well, if the judicial system includes the process for passing legislation, one can understand why.

The Bill passed last week. A Research NZ survey showed that while 81% of those surveyed supported the legislation, only 66% had heard of it! Sixty one percent believed it would not have any deterrent effect.

Similar research overseas is most revealing. Where respondents have been asked to impose sentences in hypothetical cases involving mandatory sentences, or have otherwise been informed as to how mandatory sentencing operates, surveys have found even lower levels of support for proposed mandatory sentencing. In a study conducted in Ohio on three strikes legislation, respondents were asked whether they supported the law without been given any context to the question. ¹ Eighty-eight percent of respondents supported the proposal. When asked to impose sentences in a number of detailed case scenarios, the proportion of respondents supporting the proposal dropped to 17%. ²

¹ Applegate, B, Cullen, F, Turner, M and Sundt J (1996). 'Assessing public support for three-strikes-and-you're-out laws: global versus specific attitudes', *Crime and Delinquency*, vol. 42, no. 2, pp. 517–34.

² Roberts, J (2003). 'Public opinion and mandatory sentencing: a review of international findings', *Criminal Justice and Behaviour*, vol. 30, no. 4, pp. 483–508.

A more recent survey evidenced similar changes in public opinion when the effects of mandatory sentencing legislation were explained.³ Respondents were given some of the arguments for and against mandatory sentencing and were asked whether they thought such a scheme was fair. In response to this initial question, 61% of respondents indicated that they thought mandatory sentences were not fair. Respondents were then provided with a detailed case scenario involving the application of mandatory sentencing and were again asked whether they supported mandatory sentencing.⁴ This time, 72% indicated that they opposed mandatory sentencing.

If the research on public attitudes to sentencing is correct, even satisfying the anger of the public alone may prove to be a misallocation of money. In satisfying this sentiment, mandatory sentencing may indirectly *further* instil fear and may also give rise to an incorrect view of the prevalence of crime and success of crime control measures. Paradoxically, these are precisely the issues that mandatory sentencing is meant to address. Engaging with the public to inform and educate will cost less and will bring a greater level of understanding of, and satisfaction with, the criminal justice system, not to mention lower levels of fear. The research certainly indicates that the majority of the informed public does *not* approve of the outcomes of mandatory sentencing. An even dimmer view of mandatory sentencing might be taken by the public at large when the economic costs to the community itself are considered.

Effective public education is certainly a key to changing public attitudes to crime and criminals. Rethinking Crime and Punishment recently formed an independent charitable trust to more actively address crime and justice issues. It is named the Robson Hanan Trust after John Robson, former Secretary for Justice and the Hon Ralph Hanan, former

³ Belden, Russonello and Stewart (2001). *Optimism, pessimism, and jailhouse redemption: American attitudes on crime, punishment and overincarceration*,

⁴ Belden, Russonello and Stewart (2001). *Optimism, pessimism, and jailhouse redemption: American attitudes on crime, punishment and overincarceration*, Belden, Russonello and Stewart, Washington, DC.

Minister of Justice, two outstanding justice reformers who between 1960 and 1970, introduced major reform to the criminal justice system.”

John Robson and Ralph Hanan typified what could be achieved in justice reform, with policies and programmes that were logical, effective, based on good evidence, compassionate, and subject to consultation with criminal justice professionals and service providers. I recall that the Hon Ralph Hanan, a National Government Minister of Justice, crossed the floor and voted against the death penalty. My bet is that he would have also crossed the floor on the three strikes legislation.

The decision to put the Rethinking project on a permanent footing, was prompted by the recent criminal justice legislation and policy changes, which are highly punitive, unjust, breach human rights legislation and don't reduce offending.

The Hon Russell Marshall will chair the Board of Directors, which includes a number of well known New Zealanders. Sir Paul Reeves, Sir Eddie Durie, the former Bishop of Waiapu, Peter Bluck, Major Campbell Roberts of the Salvation Army, Sam Chapman (one of this years New Zealander of the Year), Greg Fleming of the Maxim Institute, Celia Lashlie, the former Director of Public Prisons, Phil McCarthy, Charles Waldegrave and Sharron Cole are amongst the 19 Directors

The Trust members are directed toward long term and sustainable changes in the criminal justice system, and an effective system that doesn't rely only on punitiveness and state control, but provides support for both offenders and victims toward healing, reparation, reconciliation, transformation; and effective reintegration into the community.

You can read more about this new venture at:

http://www.rethinking.org.nz/Print_Newsletters/Issue_74.pdf