

The Future of Committal Hearings: the Victim/Witness Point of View

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On the morning of 5 March 1990 the long-awaited committal hearing of Bevan Spencer Von Einem began in Adelaide. The media had reached frenzy point discussing the possible charges and the circumstances of the alleged offences. 'Mystery witnesses' who were to give 'sensational new evidence' were promised, and the scene was set for the committal hearing to end all committal hearings. Von Einem had been convicted of the murder of Richard Kelvin in 1983 and both the police and the general public had long suspected that he was part of a 'Family' of homosexuals who had been responsible for the deaths of a number of young men in Adelaide around that time. The committal hearing, some seven years later, was to decide whether he had a case to answer for the murder of two young men whose frightful injuries were similar to those of Richard Kelvin. The committal was publicised widely. Evidence was given suggesting that Von Einem was responsible for the disappearance of three young children in 1966 and also for the abduction of two other young girls from the Adelaide Oval several years later.

For the families of the two murdered young men, the committal hearing undoubtedly raised their grief and horror to levels not experienced for years. Mixed with revival of their grief has been the beginning of the hope that, at last, their loved ones' brutal deaths might be explained. But overall for these families, including those whose children disappeared over twenty years ago, the committal hearing experience has been one of grief and anguish, or as Dr Gerry McGrath (1989) of the National Police Research Unit recently described it, 'horror revisited'.

The Victims of Crime Service

The Victims of Crime Service in South Australia was established in 1979 to provide support, friendship, counselling and information to crime victims and their families. As far as VOCS was concerned, victims of crime a mere decade ago were the 'forgotten people' of the criminal justice system. The foundation members of the organisation were in fact families of the victims of the 'Truro' and serial 'Family' killings. Throughout the process of uncertainty and grief these indirect victims of crime had felt isolated from the main stream of society. No-one, they thought, understood their pain, no-one could offer them the support, advocacy and direction that can only come from having lived through a similar experience. VOCS gathered such people together, and within the organisation they grew in strength.

The past decade has seen great advances in the recognition of the needs of crime victims, both in Australia and around the Western world. In South Australia, for example, we now offer a combination of professional and voluntary support services to crime victims through VOCS, the Police Department has its own Victims Unit; a Criminal Injuries Compensation fund has been established; victim impact statements are a part of the sentencing process in most court jurisdictions; and all State Public Service organisations have given their assent of a statement of victims' rights. Reform within the courts system has begun, both at the level of amendments to relevant Acts of Parliament as well as the provision of upgraded physical facilities for victim/witnesses.

Victims are certainly no longer the 'forgotten people' of the criminal justice system. They have become, at least in South Australia, a significant political force and it is their opinions about committal hearings that will be represented in this paper.

The Victim\Witness Point of View

Victims of serious crime generally recover from the trauma. With the support of family, friends or organisations like VOCS and with the assistance of individuals within the criminal justice system, they generally regain their previous level of function, or hopefully learn from their experience about human qualities they only suspected they possessed before the crime was committed. The recovery process commences very soon after the crime is committed and continues for varying periods of time depending upon the individual. From a counselling and support point of view, delays within the court system often mean that the victim's process of recovery is interrupted by such events as committal hearings. Inevitably, the trauma is rekindled or revisited by this process in order that a criminal might be brought to justice. It is therefore, from the victim/witness's point of view, essential that the court process be as brief as is possible and that the waiting time between the offence and any subsequent court hearings be as brief as possible.

A comprehensive survey of victims of crime, which has been undertaken by the Office of Crime Statistics (1990) indicates that, by and large, crime victims accept the trauma of the court process as an essential part of the desired outcome. Their major concerns are quite often focused on waiting facilities and the amount of time spent waiting in the precincts of the court. Victim/witnesses are also frequently disturbed by having to face the offender in crowded, uncomfortable and often spartan waiting rooms. Most comments in this vein related to committal hearings at Courts of Summary Jurisdiction but the problems were also experienced in other jurisdictions. Eighty per cent of victim/witnesses reported that they encountered the offender and/or the offender's family and friends outside the courtroom. Their reactions were variously described as 'no reaction', to 'anger and hatred', 'fear', 'harassment' and 'felt uncomfortable'. This certainly underlines the potential trauma of court appearances be they in the context of committal hearings or hearings proper.

A very high percentage of the population of South Australia probably believes that the present Von Einem committal hearing is, in fact, a trial in progress and often a victim/witness is inclined to a similar belief about their own case. They are for example, orientated to the belief that 'guilt or innocence' are pertinent issues, and for them the committal process is particularly confusing. The rules are quite different from those they observe while watching TV courtroom dramas. For example, the defendant remains entirely silent and it is the victim/witness who is enthusiastically put through the wringer by the defence counsel who pulls out all the stops, engaging in what barristers often describe as 'going fishing'. There is no jury to offend or put offside, and the object of the exercise from the defence point of view, is to break down the prosecutor's witnesses including, of course, the victim.

A belief sometimes held by people other than victim/witnesses, is that participation of the victim in the committal hearing prepares them for the trial, should a trial eventuate.

Having experienced cross-examination and the unfamiliarity of the court setting, as well as the strangeness of language and appearance of court officials, the victim/witness is supposedly better prepared for his or her appearance on behalf of the Crown, at trial. I would suggest that a committal hearing, whilst generally similar to the trial process, is often less inhibited and more stressful for the victim. Suggesting that it provides the opportunity to practice being a witness, is somewhat akin, from the victim's point of view, to suggesting that one should attend one's dentist to have a tooth extracted some months prior to the extraction proper.

In conclusion, the 11th of the 17 Victims' Rights in South Australia states:

The victim of crime shall have the right to not be required to appear at the preliminary hearings or committal proceedings unless deemed material to the defence or prosecution.

(See Appendix 1 for complete list of Victims' Rights in South Australia). In cases involving sexual assault or child abuse allegations, victims are rarely called upon to appear. It would seem that in these circumstances so called 'paper committals' are more than adequate in terms of reaching a decision as to whether there is a case to answer. A survey of Courts of Summary Jurisdiction in South Australia in 1987 indicated that of 681 committal hearings conducted only 57 or 8.4 per cent were dismissed. Such a low percentage should be taken into account when consideration is being given to alternative forms of committal.

On New Year's Eve in 1989 a middle-aged woman and her husband were set upon by six assailants, five adults and a juvenile, outside the Adelaide Casino. The woman and her husband sustained severe injuries. The six alleged offenders were arrested and charged and the committal process commenced on 14 November, 1989. After 27 adjournments a conclusion was reached on 19 December of the same year, committing all five adults for trial. Regarding the offenders; one failed to appear initially, one failed to appear after lunch on the first day of the committal, one arrived intoxicated to the adjourned hearing and one, being a juvenile was referred to the Childrens Court where the matter was dismissed. The trial is listed for 16 July 1990 in the Adelaide Supreme Court. The Victims of Crime Service has been counselling and supporting the victims of this offence through this extraordinary process and their opinion about committal hearings is quite clear. I also wonder, how such experience will affect their performance as witnesses during the trial.

References

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Appendix 1

Declaration of Victims' Rights

1. be dealt with at all times in a sympathetic, constructive and reassuring manner and with due regard to the victims' personal situation, rights and dignity;
2. be informed about the progress of investigations being conducted by police (except where such disclosure might jeopardise the investigation);
3. be advised of the charges laid against the accused and of any modifications to the charges in question;
4. have a comprehensive statement taken at the time of the initial investigation which shall include information regarding the harm done and losses incurred in consequence of the commission of the offence. The information in this statement shall be updated before the accused is sentenced;
5. be advised of justifications for accepting a plea of guilty to a lesser charge or for accepting a guilty plea in return for recommended leniency in sentencing;
6. be advised of justification for entering a nolle prosequi (i.e. to withdraw charges) when the decision is taken not to proceed with charges. (Decisions which might prove discomfoting to victims should be explained with sensitivity and tact);
7. have property held by the Crown for purposes of investigation or evidence returned as promptly as possible. Inconveniences to victims should be minimised wherever possible ;
8. be informed about the trial process and of the rights and responsibilities of witnesses;
9. be protected from unnecessary contact with the accused and defence witnesses during the course of the trial;
10. not have his or her residential address disclosed unless deemed material to the defence or prosecution;
11. not be required to appear at preliminary hearings or committal proceedings unless deemed material to the defence or prosecution;
12. have his or her need or perceived need for physical protection put before a bail authority which is determining an application for bail by the accused person, by the prosecutor;
13. be advised of the outcome of all bail applications and be informed of any conditions of bail which are designed to protect the victim from the accused;
14. have the full effects of the crime upon him or her made known to the sentencing court either by the prosecutor or by information contained in a pre-sentence report; including any financial, social, psychological and physical harm done to or suffered by the victim. Any other information that may aid the court in sentencing including the restitution and compensation needs of the victim should also be put before the court by the prosecutor;
15. be advised of the outcome of criminal proceedings and be fully appraised of the sentence, when imposed, and its implications;
16. be advised of the outcome of parole proceedings;
17. be notified of an offender's impending release from custody.

