

Contemporary Comments

Frisky Business – Police, Search Powers and Young People

Was there ever a time when authorities didn't regard young people with suspicion? Was there ever a time when the risk-taking behaviours of many young people, their need to assert personal space and authority during their transition to adulthood, and their counter-culture instincts were regarded without fear? I have been on this earth since 1966 and my earliest memories of media treatment of juvenile justice issues don't illuminate a situation that was much different from today.

Young people (around the ages of 12 to 18) are, in the eyes of politicians, shock jocks, and regressive types, *prima facie* capable of extraordinary crime; senseless violence, constant thieving, and are therefore menacing in the extreme. Young people particularly display these anti-social traits, according to some commentators, when they venture out onto the streets. However many young people who take to the streets are fleeing violent or non-supportive home environments, or domestic situations that are racked by the devastation of unseeing and uncaring fundamentalist economists. They are moved on from every park, playground, schoolyard, shopfront and shopping centre by police, private security firms, and commercial operators. For many young people the only friendly faces they see are the other young social refugees on the street.

The community is frightened of young people. We know this because they tell us through the newspapers, on radio talkback programs, and through thousands of letters to their political representatives. They become anxious about groups of young people moving about, wearing American street wear, talking loud, sporting body ornamentation, and speaking in a different language. Never mind that these are typical brandings for young people desperate to fit in somewhere, never mind that the greater majority of them are not armed, never mind that the last thing most of them want to do is get into an abusive or violent situation. These young people must be squeezed out of the last public places that they are still found and returned to the protective custody of their homes, schools and detention centres. They must wait and learn to conform to the sensibilities of the mainstream older population before they are able to enjoy the same human rights.

We demand that police be given extra powers - they are our only hope against this army of marauding young people. And the police want these powers too. It's a nice fit. The only people who don't want them are the young people themselves and a motley crew of academics and human rights and youth advocates. Young people can't vote, they have no economic muscle, and have the flimsiest of support networks. There is not much political opposition, and plenty of political mileage. It's an easy decision to give the police more powers.

Most recently, the public safety lobby has been successful in convincing the NSW Government to bless us with s28A of the *Summary Offences Act 1988*. This redefines a police officer's right to request a person to submit to a search where the officer suspects, on *reasonable* grounds, that the suspect may have a dangerous implement in their custody.

I should state that I do not support the right of every person to carry a knife on their person for the sole purpose of self defence. I am not particularly pleased about the rise in the number of young people carrying knives and other offensive implements. I am saddened that so many young people and other good citizens are afflicted by violence occasioned by knives. We must develop strategies to reduce the incidence of knife carrying for non-utilitarian purposes, and we must provide an environment that young people feel secure in.

What I am most concerned about is not so much the powers that police have to search young people, but more the abuse of those powers. With all due respect to honest police officers, the greater the discretion, the greater the scope for abuse. With young people, that abuse of power by some police officers is frequent, largely unchecked, and unmitigating. Many of these officers have no real malicious intent, but simply act on community and political expectations secure in the knowledge that children and young people are unlikely to formally challenge their actions even if they had the resources to do so.

I do not believe for one second recent statements by the Premier and Commissioner Ryan that 100% of recent searches of people under the new provisions resulted in the detection of a knife.¹ The Premier and Commissioner Ryan are not lying, they are basing their statements on formal statistics. Those statistics are flawed however. What is happening is that police are only recording searches that result in the detection of an offensive implement, and not recording fruitless searches. If, at the same time, we asked young people to phone in incidences over the same period where they had been asked to empty their pockets, been patted down, or had a metal detector passed over their body, and nothing was found, I am certain that the 100% detection rate would be shown to be the fiction that it must be. I live in western Sydney and have seen as recently as two weeks ago police officers ask young people to empty their pockets – I saw no recording of details or results. To be fair, the officer involved was polite, and perhaps was doing the young people a favour by not recording their details. The point is, this fruitless search was not recorded.

So what is the problem with searching a young person?

Firstly, police historically have a poor record on exercising discretion on the street and anywhere where a young person comes into contact with an officer in the absence of an independent, knowledgeable adult. Section 28A uses the great legal catch-all word 'reasonable', a word that is used whenever legislators don't actually want to do the hard work of defining procedure and appropriate modes of intervention. Often this is left to the Police Service to define more particularly.

We all know that before the Royal Commission the Police Code of Practice was routinely ignored in relation to young people. Children were strip-searched in the absence of a support person but in full view of peers and other adults, and searches were often conducted to stall for time or to provide a pretence for detaining the young person. I am not convinced that post Royal Commission we are much better off. 'Reasonable suspicion' is a phrase that is in dire need of concrete guidelines. Rob White referred to a study by James and Polk (1989) in his essay *Street Life: Police Practices and Youth Behaviour*:

it has been shown that the police develop a set of cues or expectations regarding the potential threats or trouble posed by certain groups of young people. This leads the police to pre-empt possible trouble by harassing those young people whose demeanour, dress and language identify them beforehand as being of potential concern (White 1994:119)

1 For comparison purposes see the Youth Justice Coalition's 1994 study, which found that of 82 young people searched by police, 17 were in possession of 'something illegal' (Pisarski 1994:26-27).

A recent text, *Anh Mai, Young Asian Background People's Perceptions and Experiences of Policing* contains many direct and frank quotes from young people growing up in Ca-bramatta. For example:

I just wish they'd get it through their thick heads that we're human and stop treating us like shit. They call me 'little Asian bitch' and they strip search us in the street. We are not like humans to them – so they can search and humiliate us for no reason (14yo girl), (Maher et al 1997:35)

and

two male cops they took my boyfriend and they made him strip down. When he got to his underwear he said 'You've got no right to make me do this. If you're gonna search me then search me in the copshop'. And one cop held up the baton and said 'Fuckin' drop your pants'....There's a whole rank of taxis sitting down there and everyone was looking at him'(17yo girl), (Maher et al 1997:35:37)

Searches are not harmless. They are an invasion of bodily integrity, an invasion of privacy, and an open door for new charges – frequently resist arrest, offensive language, and assault police. Searching a person is confrontational, and it is no wonder that some young people offer mild resistance to being searched. If you have never been physically patted down you may not understand just how degrading this can be. It is often rough, and it is an extremely unpleasant contact with a person who professionally has a dim view of you. It should only be used where the officer has formed a strong opinion that the person has on their person in an illegal manner an illegal object or substance. For example, where the officer has seen it, or has received a complaint about it.

Section 28A(d) says that a police officer may conduct a search:

In the case of a person who is in a school and is a student at the school, a search of the person's locker at the school and an examination of any bag or other personal effect that is inside the locker.

Schools are increasingly becoming catchment areas for police activity and law enforcement. Around the country, police are placing surveillance equipment into schools, entering school grounds, conducting searches of school students and their property. Schools should not only be safe havens from criminal activity, but also from arbitrary breaches of fundamental human rights. For many children, the schoolground is the last safe haven in their life, and we are destroying that sanctity

The *UN Convention on the Rights of the Child*, to which Australia is a signatory, says at Article 16:

2. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
3. The child has the right to the protection of the law against such interference or attacks.

Section 23A(1)(d) is not consistent with these provisions.

At the National Children's and Youth Law Centre we have heard harrowing accounts of incidents of gross invasion of a child's privacy and dignity while at school. Searches on spurious grounds resulting in the display of incontinence pads, the withholding of personal love letters, and the inspection of personal poetry found in lockers. Lockers are the personal space of students, the one small area where they should be able to enjoy some privacy. Everyone has secrets, and for many children, the secret world is the safe world, the world where one can express oneself. The world where spiritual and relationship matters can be ex-

plored, where sentimental keepsakes are secreted, and where you can be all the things the rest of the world (including other children) won't let you be. Yes, these same lockers will also contain rotting fruit, odorous sports wear, pornography, and sometimes knives.

If police and others must violate this sanctity they should do so only on the grounds of apparent and immediate danger. Otherwise, let children enjoy their human rights without hindrance. It is appalling that we afford more protection to the personal space of adult employees than we do to children and young people. Our schools are beginning to resemble airport entry zones, and it is a huge stain on our credibility as a nation. It may sound trite, but if you want to instill civic responsibility and an understanding of tolerance and respect, you must first demonstrate the same attitude.

My advice to a young person is – if a police officer wants to search you make sure they give you reasons and show you identification if they are not wearing a uniform. If they wish to conduct a strip search demand your right to have a support person (I suggest a good lawyer), and make sure they take you somewhere where you are out of the public gaze. Try to remember the officer's name and the reasons they gave you for conducting the search. Make a complaint to the ombudsman if you feel you have been unfairly treated, or treated without respect.

How effective anyway is ad hoc and sporadic searches of young people and their property in reducing the incidence of knife carrying? On talkback radio recently I was surprised by the number of young people who called in to say that the only reason they were carrying knives was because other people were carrying them. I am not sure that isolated police action is the answer here in terms of a long term reduction. We must make it clear to everybody that it is against the law to carry a knife without reasonable cause, and we must address the perception that carrying a knife makes you safer. We must also give children and young people the opportunity to tell us what they want in the way of facilities, and then set about providing those facilities. We will be waiting a long time for safer streets if we expect that extra police powers are going to solve this problem.

Now just in case the police think I have made them redundant, I quote here from an address by Don Weatherburn, NSW crime statistics guru, to a recent forum on crime control:

The fourth precept is not to underestimate the capacity of intelligent policing to reduce crime...there's now plenty of evidence that intelligent policing can make a big difference, particularly where it's done in close partnership with the community. Failure to capitalise on this evidence will only play into the hands of those who have a more irrational view of policing.

Zero tolerance, age and race discrimination, and harassment of young people is not intelligent policing. Perhaps we should focus on searching for answers for a while, rather than offensive weapons and drugs. We could best start by asking young people themselves what might work, and how they can assist us in the effort to reduce crime in our community.

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REFERENCES

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