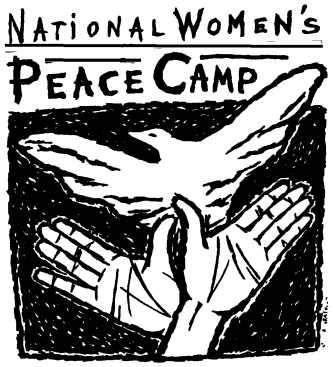
peace protests police

Mary Heath

Police liaison at a National Women's Peace Action against Australian militarism.



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This article would not have been possible without the work of many other people. I give particular thanks to the organising collective of the National Women's Peace Action and to Felicity Ruby, Jane Knowler, Greg Ogle and Jillinda Thomson who all read drafts and commented on them.

Women from around Australia converged on Benalla in north-east Victoria at Easter 1995 to be part of the first Australian national women's peace camp since the 1980s, when such camps took place at many sites including Pine Gap in 1983 and Cockburn Sound in 1984. Benalla was chosen as the focus for the camp because it is the site for a new Australian Defence Industries (ADI) munitions factory. ADI products, including bullets and bombs, are believed to have been used on Bougainville. The ADI factory is located well outside Benalla and the camp was held at a site 10 km from the factory, the location being largely the result of ADI pressure on local police and government.

The action was initiated at the 1994 national conference of the Australian Anti-Bases Campaign Coalition in Adelaide, where a workshop called 'Sexism in the Peace Movement' created a focus for discussion in both single sex and mixed groups on the nature and effect of sexism in the peace movement. One of the outcomes was a national contact list of women and a vague but well received proposal for a women's action, which came to fruition in Benalla. I was part of the legal support and police liaison collective for the action. Police liaison and legal issues raise particular problems and tensions within the activist community. Benalla has confirmed my belief that we need continued debate on these issues if we are to be able to address an increasingly national approach to the policing of protests and be able to set our own priorities rather than responding to an agenda set by the police.

Legal support

Although none of the collective members were practising lawyers, some of us had experience with police and legal work at previous actions, some had law degrees and a few had experience teaching law. The aura of the law is such that even during the process of organising for the action, the mere existence of the legal support collective made a difference. Before the protest, the local authority claimed it had power to prevent us camping anywhere near the ADI factory (even on private land). Our ability to demonstrate that we were prepared to check on their legal powers was a real asset, resulting in more realistic negotiations and showing that we were not able to be intimidated by threats based on 'the law'.

To ensure that information about police liaison and legal support was well co-ordinated, we decided to have one collective dealing with both issues. The collective aimed to make legal information as accessible as possible and to minimise the intimidation women felt in relation to the law and in their interactions with the police. The seven of us who composed the collective at the camp were very diverse in age, political views and activist and legal experience, and this diversity proved a real source of strength. Between us we could draw on experiences of large Australian actions including Nurrungar 1989 and 1993 and AIDEX 1991 and some of us had previously been arrested in the course of civil disobedience. Those who had been involved in

previous actions had accumulated our knowledge and skills in panic management contexts, so we made sharing our experiences and insights with the less experienced members of the collective a focus of our work.

We believed that legal information was crucial for activists and so we produced a long legal section in the activist handbook for the camp, instead of the relatively brief legal information provided in handbooks for many previous protests. We integrated general information about arrest rights, offences, bail and police complaints with information relating to the civil disobedience context in which women were likely to encounter the law at the camp. We sought to encourage a creative, assertive approach to dealing with the police and focussed on acting and preparing together to empower ourselves. We included information about why an activist might choose to answer some police questions rather than to remain silent when arrested, as well as explaining what information she would legally be required to give. We also included advice about what kinds of issues activists might like to consider before a potential arrest, such as whether to introduce themselves to the arresting officer and walk to the police van or go limp and be dragged away (assuming a choice was available), how to use time in custody and how to deal with situations in which activists believe something wrong is happening in custody.

We also produced a single sheet, 'Quick Guide to Being Arrested', and handed it out at every available opportunity. An information provision highlight was the presentation of basic arrest information at the first camp meeting in the form of a performance of 'The Legal Crap Rap', written on the way to Benalla. I have never previously known legal information to be received with applause!

Police liaison

Police liaison has been the focus of heated disagreement and tension between activists at many Australian peace actions in the past[1] — Benalla was no exception. I could express this tension as the result of efforts to find a workable position among opinions ranging from those who prefer to call police liaison 'building relationships with the police' to those who object to any kind of liaison with the police at all. However, this shorthand version does not do justice to the diversity of views within the women's movement about the state. The debate is complex and has moved forward only slowly in the activist community because large actions involving civil disobedience are organised by different groups at irregular intervals and there is no permanent Australian peace camp, making forums for activists to debate the issues and (re)build trusting relationships in the wake of disagreements few and far between. The short length of the Benalla camp made it difficult to convey the intentions of the collective clearly to other activists and to debate positions that had necessarily been developed during the planning process before the camp started.

There is a general activist trend towards treating police liaison as an expected and necessary part of a large action, and the Benalla action followed this trend. The handbook summarised the organising collective's position:

> The Women's Action Coordinating Collective has decided to liaise with police to increase communication channels, increase clarity and thereby minimise fear but not to curtail anyone's political expression.

However, there was still concern among camp participants about the role of the police liaison collective. Some questioned whether a full and frank discussion of all actions could take place in the presence of collective members. Many women at the camp assumed a unity of opinion (as opposed to a minimal agreed position) among collective members which simply did not exist. The police liaison collective decided, for practical and political reasons, to make it clear to the police that we did not control the women at the action and that we could not make guarantees about the women's behaviour (even if we had wanted to do that) in the absence of concrete agreement from particular women in particular actions. What we did do was discuss relevant issues with the police and convey information from the camp to the police as requested (although we made it clear we would not pass on information which we were asked to withhold). We formed a point of contact between the two groups which meant that women who did not wish to have contact with the police could usually avoid being approached by them about matters connected to the camp.

Well before Easter, an experienced member of the collective began liaising with local police. As estimates of the number of women likely to attend increased, she liaised with more senior officers in the police hierarchy. The police decided to bring in the Force Response Unit (FRU), to the concern of some of the collective, as one of the recent activities of the FRU was the violent breaking of the picket line at Richmond Secondary College. Those of us with a sense of history know that Australian women's peace actions have been subject to considerable police violence in the past, with Pine Gap 1983 and the Anzac Day actions of the early 1980s (about women raped in war) being clear examples.[2] However, we believed that the Benalla action would not provoke a heavy-handed police response: the camp was drug and alcohol free and the factory was located well outside the town and was closed over Easter. In addition, the Victoria Police are currently under considerable pressure to improve their tarnished public image.

We worked before the action to obtain agreement from the police that they would not carry firearms or use chemical weapons such as capsicum spray. They insisted that they never carry firearms at protests and that capsicum spray had not yet been released for use by Victorian police. However, some of us had seen gas canisters being carried by police at protests in Victoria, and capsicum spray was known to be available within prisons and some special police units, which may have included the FRU (capsicum spray has now been released for police use in Victoria).[3] The police agreed not to enter the camp unless called and eventually kept this agreement after a few early tours of the camp entrance and a further request from us.

Police liaison during the protest took place at our request, with the officers and the collective sitting on the ground under a tree near the camp. At these meetings, we passed on information, asked questions raised by the women and talked through concerns raised by the police. We conveyed information about our meetings back to the camp. Members of the Australian Nonviolence Network, who organised the largest action at the camp, also liaised independently with the police. Sometimes women invited us to be present at actions and sometimes we had no involvement at all other than being aware that an action the police did not know of was underway. Police were informed of some actions and not others, according to the request of the participants in each action. When at the ADI factory, we introduced ourselves to the officers on duty at the fence and made sure they knew how we could be contacted if necessary.

Limitations of police liaison at Benalla

Our conversations with the police took on a certain similarity after a time. They began with the police insisting that they wished to co-operate with us, especially if agreeing to our requests would make it unnecessary for us to take illegal action to get our point across. However, any concessions they appeared to make soon evaporated when the crucial moment arrived. The reason given was never that they did not want us to carry out the action (unless it constituted an obvious breach of the law). There were always other reasons: they were concerned about us being bitten by snakes; they were worried about our safety in traffic; or ADI simply would not agree in spite of all police attempts to make a compromise.

One example of obstruction by the police concerned the weaving of messages on the fence of the factory. Our information-gathering three months before the camp had revealed a high cyclone mesh fence, ideal for weaving! Women from two different cities had come prepared for actions involving weaving messages into the fence, only to be greeted by a new, waist high fence with very large spaces between the wire, erected as an artificial barrier by ADI several hundred metres outside the mesh fence. This tactic had been used at Nurrungar to similar effect. We requested police to allow weavers to enter the zone between the fences to weave on the high fence if they undertook not to breach the high fence. After we changed the day and time of the protest to fit in with police requests, this seemed likely to go ahead, with a restriction on the numbers of women allowed through to 40 or 50. However, when we arrived at the site, we were informed that ADI had agreed but that only *five* women would be allowed into the zone to weave on the far fence. We decided to turn down this offer and weave on the low fence after all, since for us the process of weaving was the key to the action rather than the message itself. The weaving took place, but again, there was no compromise from the police, who removed everything from the fence after a couple of hours, almost as soon as most of the weavers left the site.

Sometimes the fact that we were a peace camp with police liaison formed the basis of police proposals to regulate our conduct even when it was legal. On one occasion, some women planned to walk from the camp to the factory in solidarity with refugees, most of whom are women and children. When the police were informed of this plan, they proposed an escort — one police car at the front, one at the back and two flanking the walkers — to protect them from traffic. After a lot of negotiating, we eventually succeeded in having the walk take place without escort, but not without devoting substantial time and energy to the issue.

For some women, these kinds of interactions illustrated why we should not have police liaison at all. It simply gave the police an opportunity to control our behaviour further and diffuse our energies. The police constantly reminded us that they were compromising and that we must also be prepared to compromise, but they rarely gave any ground. The concessions they made were possible because of the way in which they and ADI had been able to set up the context in which the protest took place, including the distance of the camp from the factory. The whole situation was rendered even more ridiculous to us by the fact that the organisers of some actions, for example the fence weaving, had specifically asked women not to participate unless they agreed to be non-adversarial. This was defined as meaning that women should do nothing indicating an 'us and them' attitude, including refraining from singing songs perceived as adversarial.

Some arrests were eventually made, again in a slightly ironic context. They took place as part of an action by women from the Australian Nonviolence Network which included theatrical and symbolic aspects setting out the history and impact of the blockade on Bougainville, especially on women and children. The women planned to break the blockade symbolically by entering the ADI site carrying medicines which they intended to take to the dispatch office, with a request to ADI to send medicines instead of bullets to Bougainville.

The Network's strategy involved complete openness and honesty with the police, including telling them when, where and how arrestable action would be undertaken and how many women planned to be arrested. During their action we counted at least 70 uniformed police inside the fence, plus vans, a photographer, video surveillance equipment and horses. The total number of women who crossed the fence during the action and were arrested was 17! Afterwards, police allowed members of the collective to talk to those in custody. However, in contrast to some large actions in the past, they required very clear evidence of the identity of people arrested before they were released. Meanwhile, the police station was so packed with supporters that the legal team adjourned to the nearby laundromat where we could be on call while a general keeping out of the rain, eating of hot chips, telling of stories and tumble drying of soggy garments took place! The people arrested have since been convicted of trespass but have had no conviction recorded and no sentence imposed.

Action in future protests?

It became clear at Benalla that there is an increasingly national approach to the policing of large protests. Tactics from various demonstrations are obviously being pooled by police, whose enormous resources for protest control make it much easier for them to share this sort of information than for the multitude of groups making up social movements to undertake the same task. On the other hand, it was also apparent that the police are still not capable of comprehending the nature of collective organisation, feminist action, or consensus decision-making. Used to hierarchy, they were incredulous at the idea that we did not have a sole spokeswoman and that the liaison collective could not make decisions for the women at the camp or control their behaviour. We were constantly asked how many woman were at the camp and our answer (that we did not know) led to suspicion, as they assumed we must know how many we expected and how many were present. In fact, the nature of a national protest is to work hard to inspire as many women as possible to come, and then wait and see who shows up!

I am more convinced than ever that activists must continue to talk to each other about whether and how to engage with the police and how to address innovations in police strategy. There is still a need to debate these questions thoroughly and to build the skills necessary to undertake effective action. We continue to engage in actions in a context in which many of us have had insufficient opportunities to consider the nature of law enforcement and local government agencies and to prepare our collective response to them. We must work toward empowering ourselves and understanding the actions of these arms of the state in a way that draws on the richness of our diversity, while maintaining a vision of our common project: generating progressive social change. I believe the women's camp at Benalla has made a useful contribution to this conversation.

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TRAVELLING BRIEF

Recent Canadian developments in queer law

The past 18 months have been a momentous period in the evolution of Canadian queer law. Lesbian and gay issues have been at the forefront of legal thought, in a mixed bag of positive and negative developments from the courts and legislatures.

The Supreme Court and sexuality

In May 1995, the Supreme Court handed down its judgment on sexuality and the Canadian Charter of Rights and Freedoms in the case of *Egan and Nesbit* — and what a judgment it is. Lesbian and gay commentators hardly know whether to hail it as a landmark victory or a resounding defeat.

Jim Egan and Jack Nesbit had been partners for 46 years. In 1986, on reaching age 65, Egan received old age security and income supplement. On reaching age 60, Nesbit applied for a spousal allowance under the *Old Age Security Act*. His application was rejected because he and Egan did not fall within the definition of 'spouse' in the Act, which was restricted to people of the opposite sex. The Supreme Court had to decide whether this definition violated Egan's and Nesbit's equality rights (if any) under s.15(1) of the Canadian Charter, which states:

> Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

The Court unanimously agreed that sexual orientation is to be read into s.15 as an 'analogous' ground, as it is a personal characteristic like those specifically enumerated. By a majority of 5 to 4, it then held that the denial of benefits to same-sex couples under the Act was discriminatory, infringing s.15(1): in so doing, the Court gave a new meaning to the term 'spouse'.

L'Heureux-Dubé J, in the majority, stated that same-sex couples 'are a highly socially vulnerable group, in that they have suffered considerable historical disadvantage, stereotyping, marginalization and stigmatization within Canadian society'. She concluded that the protection of, and respect for, human dignity are at the heart of s.15. Cory J noted that the historic disadvantage suffered by homosexuals has been widely documented and found sexual orientation to be more than simply a 'status' of an individual, being demonstrated in an individual's choice of a partner. He considered that the distinction drawn by the Act was made solely on the basis of sexual orientation and not on grounds of need or merit, and hence constituted discrimination; further, the legislation reinforced prejudicial attitudes based on a faulty stereotype of homosexuals as unable and unwilling to form lasting, caring, mutually supportive relationships with economic interdependence in the same manner as heterosexual couples.

However, in spite of this breakthrough, the Court went on to reject Egan's and Nesbit's claim by a majority of 5 to 4. Sopinka J,who had found the *Old Age Security Act* prima facie discriminatory, concluded that the Act was 'saved' by the Charter's general justificatory provision, s.1, which states that the Charter 'guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society'.

Sopinka J reasoned unconvincingly that governments must have flexibility in extending social benefits and do not have to be pro-active in recognising new social relationships. He found that the Act struck a proper balance in providing financial assistance to those shown to be in the greatest need and considered it legitimate for a government to make choices between disadvantaged groups. In contrast, the dissenting judges on this issue stated that discrimination on the basis of sexuality meant that the allowance was not rationally connected to its legislative goal of the mitigation of poverty among 'elderly households'. Section 1 of the Charter could not save s.15 as it was not relevant to a proportionate extent to this pressing and substantial objective.

The *Egan* case has been interpreted by the Manitoba Supreme Court in *Vogel*, as granting 'spousal status under the law by the slimmest of possible majorities, with all the attendant (but as yet undefined) rights and responsibilities'. Some lawyers believe the decision does not bode well for gays and lesbians because the Court seems to have given politicians and employers an excuse not to grant homosexuals equal benefits. However, Egan and Nesbit put the most positive face on the decision and its implications for future political and legal strategies. They wrote in a letter to the Canadian journal *Xtra!*:

> . . . we are entirely delighted with the ruling . . . The court unanimously agreed that 'sexual orientation' must be read into the Charter of Rights as a prohibited ground of discrimination. In short, the Supreme Court has opened the door to an era of litigation. Both federal and provincial governments must accept that any law that creates inequalities between same- and opposite-sex relationships is discriminatory.

A number of Court victories have already occurred, based on this constitutional protection.

The floodgates open...

Spousal benefits

In *Vogel,* decided three weeks after the *Egan* decision, the Manitoba Court of Appeal unanimously held that the denial of spousal benefits under government employment benefits plans to same-sex partners is discriminatory under Manitoba's Human Rights Code, which expressly covers discrimination on the basis of sexual orientation as well as on marital or family status.

Chris Vogel had worked for the Manitoba Government since 1973. He and Richard North had been partners since 1972, and in 1974 were married by Winnipeg's Unitarian Church, although the Registrar of Vital Statistics

cases bring out the best in them . . . It creates a good feeling. If your lawyers are happier, they are more productive and they'll make more money'. Thanks Gary, just keep employing the girls with attitude.

INTERVIEW WITH JUSTICE LINDA DESSAU

In the August 1995 edition of the *Alternative Law Journal*, *Girlie* had the pleasure of announcing the transformation of Linda Dessau, Magistrate, to Justice Dessau of the Family Court. In this edition we bring you the inside story of her amazing makeover, in what is the first in a semi-regular series of interviews with Girlie-appeal legal celebrities.

1. What qualities are you most pleased to have brought to the Family Court?

That's a difficult question because it forces an immodest answer. Nevertheless, I would be delighted to be regarded as fair minded and showing commonsense. In addition, I am pleased to bring to the court a wide range of court and life experience. In this regard, my years in the Magistrates Court have exposed me to a wide range of people and a wide range of problems.

2. What would you most like to achieve during your appointment?

There is much I would like to achieve, from various perspectives. In relation to each case, I would like to be a good judge. In relation to the bigger picture, I would like to remain actively involved in court listings and delay reduction, gender awareness and mediation.

3. Have you found anything about the job that would justify the argument that there is a dearth of women qualified to fill senior judicial positions?

No. I was asked many questions along these lines on my appointment. I don't believe there is even the need for a debate about 'affirmative action'. There is no question that there are many excellent, well-qualified women for judicial appointment.

4. Have you got any tips for newlyweds?

I don't believe for one moment that just because I have become a judge of this court, I suddenly have all the answers to a successful marriage. If I ever form that view, I would be very worried that I had fallen prey to misplaced piety.

5. How does a Family Court judge wind down after a hard day on the bench?

She rushes home to attend to her own more immediate family responsibilities. The dual role of parent and professional is always onerous and involves a great deal of juggling to ensure that everyone and everything receives the requisite attention. On the other hand, the joy of involvement in family activities is a wonderful and relaxing distraction.

6. Do you miss the Magistrates Court?

Yes and no. I am enjoying the new challenge of this job, but that is not to say that I have anything but the greatest affection for the work, and respect for my former colleagues in the Magistrates Court. No other court is quite like it. After all, it's the court which touches most people in the community. Magistrates Courts are busy, thriving places which deal with every aspect of real life drama. Generally, the work is performed with great compassion, fairness and the appropriate humour. The variety of that work is wonderful.

9. What advice would you give our Girlie readers who are aspiring to a spot on the bench?

I think this is a very healthy development that people can begin to see a potential career path in the judiciary. My advice to readers is that if they do aspire to a 'spot on the bench' that they no longer need to slavishly follow a traditional path towards that end. To the great benefit of the community, judges are now being drawn from diverse backgrounds. In my view, a broad base of experience can only make someone a better judge. Lawyers should not be shy of changing career paths from time to time. They should feel confident that the exposure to different areas of practice provides not only good professional experience, but essential life experience. This includes practising in another jurisdiction. For example, I worked for almost three years in Hong Kong. I found that time invaluable to experience different people, different interests and different legal systems — working as I did with lawyers from all over the Commonwealth. Similarly, my time in America last year looking at delay reduction in criminal justice systems provided me with an opportunity to open my mind to North American court systems in a way that stimulated me to consider afresh the changes that would improve our system.

Lou Sidd

Lou Sidd is a Feminist Lawyer

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7. per Toohey J at 407; see Mason CJ at 389, Dawson J at 398 and McHugh J at 429.
8. See Otto, Dianne, Morgan, Wayne and Walker, Kristen, 'Rejecting (In)tolerance: Critical Perspectives on the United Nations Year of Tolerance', (1995) 20 *MULR* 190.
9. See ref. 6 above, p.v, citing the Executive Committee of the UNHCR Program Conclusion No. 39, 1985.

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3. Lawson, Damien & Ruby, Felicity, *Capsicum Gas: Should the Police Have Another Weapon?*, Coalition Against Repressive Police Equipment and Training, Melbourne, 1994. Contact CARPET at PO Box 222, Fitzroy 3065.