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Submission No. 22

Joy & Roger Membrey



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The Chairperson and Members of the Victorian Law Reform Commission,

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Dear Chairperson and Members,

We, Joy and Roger MEMBREY are the parents of **Elisabeth MEMBREY**, who is deemed by VicPol Homicide Detectives to have been murdered on or about December 6, or December 7, 1994.

Although difficult for us to do, we will try to explain in the following why we have interest to make this submission.

Despite public awareness, 21 year investigation, and many heart-rending ups and downs,

- * Elisabeth's body has never been recovered,**
- * we have no idea of the murder motive, and**
- * no person has been convicted of her murder,**

Before our daughter was murdered, we were a family of five - including children of two boys, and Elisabeth who was the youngest.

It may be too trite to say that it has changed our lives - which, in general terms it unmistakably has - but there are a number of fall-outs which we have unwillingly had to deal with, and even after all the years we still have difficulty in doing so.

We are not saying this as a complaint because it is, as it is!

Most murders have some material aspect that will verify events in part or whole. We are in the category where there is almost nothing, which is a minority. The ramifications for us include an extraordinary burden of continuous emotional, physical and damaging psychological issues which consume personal resources.

There are more, including financial impact.

However, as a minority group for this type of murder, we are caught in continuous grieving. We have had some good and bad experiences of the "system". Some people say *"It's time to get over it and lead your own life"* Like so many "words of wisdom" there is both a bit of truth, but also a bit of untruth! Over the current two plus decades so far, there have been many, and still more, events in connection with Elisabeth's investigation.

As parents, it is our (wanted) duty to keep Elisabeth's murder before the public. Obviously, there is likelihood that including the murderer/s there are people who know something significant, and the mass media is our best way to reach a large if not saturation audience.

It may be useful as a background if we endeavour to put a few words together on the way we try to manage our lives?

Unlike other murders, as tragic as every murder is, our reality is that the grieving is continuous because without something to work on, we have no exit point for the grieving process to work through the stages.

One of the important matters to us includes the location of Elisabeth's body, as the murderer/s have no right to know where Elisabeth's body is located, and to keep that criminal power over us - as we **do not know!**

We'll keep working on this, as well as some other matters.

We have to be careful that it is not cumulative and as a necessity, we actively work on "management" of our lives.

The reader of this may well say *"well what do you want all the rest of us to do about it?"* In our opinion, which is based on 21 years+, from an apprenticeship of innocence to the cumulative of actuality, there have been a lot of experiences – some of which have been

- * emotionally damaging,
- * suppositions and even mistruths,
- * behaviour which is political to suit their organisation and/or their ego's,
- * legislation which seems to be extraordinarily unfair,
- * and so on.

But, all this has made us to try to understand our world of today, and whilst there are some great aspects, some of our own experiences have not been great.

The relevance of this letter is that although there are some stand-out exceptions, we are disappointed particularly in our dealings with the Justice and Police systems.

The police systems are not directly related to the requirements of this letter so they are only briefly mentioned.

We are not able to say that all, nor any, of our comments are well founded with fact, it is rather a personal letter of comment on rightly or wrongly how we feel that we have journeyed – possibly superficially - through the justice systems.

Eyebrows rise every time we question the long-held Australian/English legal system, where a defendant has to be proven guilty rather than the other way.

We understand that “the other way around” is successfully practised in other parts of the world, and that those countries (EG France?) apparently consider it satisfactory and fair.

It is often suggested that centuries ago when the English justice system was initially being developed, it was designed to favour the then wealthy and powerful “upper class”? Perhaps little regard was given to fairness and altruism - and just perhaps a small amount of these attributes still exist under the guise of tradition in indirect ways today in Australia?

Sometimes it is said that we only need to look as to how successful our justice system is to judge it – but should we also consider how unsuccessful it may have been/is/will be? Do we challenge our legal system enough?

Traditionally, are only law officials the ones to seek and analyse court user views, and if so, is that objective or subjective??

In 2011/2012, we sat through a Supreme Court murder trial which spread over 8 months. The defendant was a man [REDACTED] who had been charged with our Elisabeth’s murder which is believed to have taken place on Dec 6 or 7, 1994.

We, as Court novices, feel that whilst there were good aspects, we were also occasionally shocked by (to us) the apparent system bias and/or unfairness?

For example – IN COURT (not in order of priority)

- 1. We were surprised that as parents of Elisabeth, and as her next of kin, that we were officially “**non-persons**” to the Court and had no special rights.

At times we found the Court system atmosphere stifling - and way over the top? We had been pre-warned not to bring attention to us (why would we want to?), and every action - how we sat, and especially where we focussed our eyes, seemed to some to be all important?

Clearly it was assumed and expected that we were required to conform exactly to the expectations, heavily controlled and be locked into the system - which we thought was unusual to say the least, and particularly somewhat artificially rigid?

2. *Are you late again? What is your excuse?*

Relying on country road coaches to get us to the Court each day, meant that occasionally, depending on traffic delays, we arrived at the Court after it had been in progress for usually only minutes, but occasionally up to ten minutes.

We felt it was unintentionally rude to the Court and that we needed to apologise to the Judge of our transport problem.

So, in the break we asked the Judge's lawyer if he would pass that on to the Judge - which he said he was pleased to do.

We were later told that the Judge thanked us!

We still cannot believe the reaction from the police detective in the Court at the time who very angry with us.

He made it clear that our action was **WRONG** and may (in some way) jeopardise the trial, and he made it clear that anything we feel might need to be passed on to the Judge, must be given to him first and if necessary he would pass it on.

As presumably the Detective was acting in a manner which was proper in Court rationale, but the "talking to" felt like we had stepped out of kinder – and we thought that it was ridiculous, particularly as the Judge clearly did not think so?

3. Whilst we didn't expect to have a padded armchair, as Elisabeth's parents and next-of-kin we had to sit on hard wooden, cramped and very uncomfortable bench seats. We thought it was a bit rough?

Additionally -

We were offered **NONE** of the Court papers, forensic photos, transcripts etc., etc., that the jury, the media, and others had been given.

This meant for the Court activity centred around a photo or a paper (and there was a fair bit!) for us, the discussion was not understandable.

We felt like saying, just a moment we are the next of kin and surely for our daughter's sake, in order to follow what is being discussed, we **NEED to see the photo/paper, etc., too!**

But regrettably, by then we were bluffed so (to our disappointment) we did not ask boldly enough (at that stage we had all but given in to the power of the rigid system)!

We began to feel even more disenchanted by the organised court system elite-ness and what appeared to us to be penalising our victim daughter whilst the accused received no-blame at all?

The unfairness that we saw was inexplicable and way beyond being reasonable!

4. We were appalled that the Defence Barristers presumably had the Court's permission to employ what we thought were tactics of bully, undermine, embarrass and belittle witnesses for the Prosecution?

It was extraordinary to us that it seemed that respect and humanity were NOT on the agenda in any way?

Of course, the defence barristers have a duty to try to win for their side, but at all cost?

It seemed to us that it was clearly and astonishingly "no holds barred" and humane decency etc., was totally ignored, as it seemed that anything is OK to win?

As far as we recall (and we are in our 70's), we have never ever used the belligerent and sarcastic language (that was used in the Court) in an endeavour to put the other party at a psychological disadvantage. Surely heated discussion is tamed much more easily and objectively if a more temperate mood and language is used?

It seemed to us that defence barristers employed the language and tactics that made the witnesses who were already nervous and scared by the establishment, and rightly or wrongly it made us feel sick with sympathy for them.

If the aim of the Barrister was to shatter the confidence of the witness to such a degree that the witness loses track of what they want to say, then we are frightened that our system may have degenerated so far down, that it may bestow real dangers to society?

We also saw an unfolding of calmness into panic with a witness who got such an initial barrage about her personal (medical) life - and which we felt was at best, borderline to perhaps irrelevant.

She collapsed on the stand yet NO-ONE went to her aid other than us, and Joy (a retired nurse) helped her to the toilet to recover enough to return to the stand.

Later in a Court break, the Prosecution lawyers VERY FIRMLY took Joy to task which included the words which were given to us every now and again, presumably as a threat and of something like "if you do anything like that again then then we will be in danger of losing the case".

We felt that we were in a horror nightmare?

Is this system not humane enough to the right people, and is it far from being good enough?

5. It appears that NOTHING could be said about the very relevant crime that the defendant had been involved in previously when women had been VERY severely abused and injured by the defendant, whom it was claimed had a chronic dislike of women.

But nothing or no-one was allowed to criticise the defendant!

On the other hand, anything (lies included) and everything could be said against our daughter, which we had to see and hear but not intervene in any way.

Is this reasonable and balanced justice???

6. **Because of the background of the accused, some of the prosecution witnesses had criminal backgrounds.**

One witness spent some jail time with the defendant when the latter was on remand, and in which it was claimed it included some sort of confession.

To our personal astonishment and dismay, **police did not record it for evidence!**

We overheard this same witness saying before the Court commenced that he felt good to be able to do something right (for a change).

He was dressed in a suit for the occasion ... BUT ... we felt that as soon as he got to the stand the defence lawyers immediately totally belittled the witness and virtually eliminated his vital evidence by his total character being destroyed?

Did the Defence barrister, by his bullying go beyond what could be considered as being reasonable?

We were later told by police, that after the Court hearing, the witness remained upset, because he (and so did we) felt the Court hostility which destroyed his opportunity to say what he wanted to, as a sworn witness?

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7. We are troubled by the expression “beyond reasonable doubt”.

Note that this is not an attempt to criticise or suggest that there was any error of judgement in the trial.

We understand that this is not the place or time to canvas that.

Rather we felt that there were some directions by the Judge and conduct by the defence barristers which we could not understand.

We also have to mention that it was made very clear to us that under the apparent restrictions of the Court system, we as Elisabeth’s parents were not entitled to ask questions or receive any handouts, minutes, etc., and we only had the status of a member of the public. We had no more rights than our shadows?

That also seemed very wrong to us because Elisabeth is our daughter, yet under Court procedure, Elisabeth was not allowed any representation.

We were also told that even if we could afford it (which we couldn’t), we would not even be allowed to be represented by a barrister in Court.

The Judge when addressing the Jury, as we recall, addressed what “beyond reasonable doubt” means.

As our murdered daughter’s parents, we were not allowed to even ask for or see the transcript so we have to rely on our memory - and because of the circumstances, we believe that we remember the very intense intent described by the Judge.

We believe that the Judge said something like –

“If (the Jury) have even the slightest doubt of the culpability of the defendant, then you **MUST** find a decision of Not Guilty”.

These were powerful words and we assumed that the Judge was implying that it was necessary to be totally sure without even the slightest doubt.

Was that asking for super-human power?

For another report we analysed the words “beyond reasonable doubt” and we believe that the words do **not** mean any doubt at all (that is, absolute certainty) but taking all matters into account there is hardly any (but possibly a small degree) of doubt left and in all probability the person is

Surely no-one is able to say, without any shadow of any doubt whatsoever at any time – let alone in a murder trial such as for Elisabeth’s murder, that they are totally certain?

Was the Judge proclaiming by implication that **NO** case where the murder happened some years ago, can be ever successful because no person has a memory which can be unequivocally 100% certain in retrospect over time?

It overwhelmingly seemed like it to us, and we couldn’t help feeling that a lot of money and time could have been saved because of trials being held like for Elisabeth’s where her murder happened two+ decades ago, that no such file would succeed in finding a guilty verdict? That’s how it came across to us!

8. No representation was/is allowed for (*mere*) parents?

Another puzzling thing to us was that in a response to a question, the judge gave the definition of murder and manslaughter and we think that he then made the declaration that the trial was about murder only and not manslaughter.

Yes, we thought it was about murder too, but what happens if the jury feels some doubt of murder as such, but are surer of manslaughter?

Would that have been possible?

There was probably more that we could mention, but hopefully the above illustrates our suggestions to your Commission.

We have confined our remarks to the Court procedures and attitudes, but we are aware that the Supreme Court, and before that, the Coroner's Court, criticised the police investigation.

In particular, in more recent times it was conceded by VicPol that the first six years of the police investigation had substantial flaws which may have led to foregone investigative opportunities.

These aspects have not been detailed in this letter as we presume that they are not of material concern within the confines of the tasks for your Commission?

If you read the above, then we thank you accordingly.

It was written as a genuine attempt to describe our experience only, and of course others might have similar or different experiences.

Our comments are about the system and it is not intentioned that they should relate to individuals – and we acknowledge that there might well be reasons, law and other matters which dictate how the system should proceed, and which we do not have that knowledge.

Yours faithfully



Joy & Roger Membrey



We are ordinary people who, over the last 21 plus years have been embroiled in an extraordinary emotive and chaotic circumstance.

Our last contact with our 22 year old daughter, Elisabeth was on December 5, 1994, and she is deemed to have been murdered on December 6 or 7 1994.

Despite an enormous effort by a few, and a disappointing effort by others, we still have no idea why she was murdered, let alone who murdered her!

You can only imagine what all that means, but we live it, almost every day!

Over the 21 years we have received much spontaneous comment on how pretty she was – as a person and physically.

Never before have we, nor our family, been involved in the aspects circling our plight, which are not by choice, but are thrust on us.

It stands to reason that at times we are our tinted by the emotions of this huge issue, but we hope that we have the capacity to stand back and put the important issues - like this letter - in a rational perspective.



Yes, we were naïve and the learning paths were littered with our tears and more, but we have a dominant drive to firstly find Elisabeth’s body so that we can give her a funeral and allow a small section of our overall grief to fade, secondly to find the person/s and know the reason why they committed her murder, and thirdly we want to help others and be in the “ranks” as long as we can to help to improve the systems.

In this letter/essay we have tried to be as accurate as we can remember, and we believe that our love for our daughter drives our memories to retain detail on important issues. We are very grateful for a lot of very hard work on the investigation by the Homicide Detectives in the decade before the Supreme Court trial in 2011.

As humans, their work could not be perfect, but it was surely a very thorough investigation.

Unfortunately there is opinion that in about the first six years after Elisabeth was murdered, the then Detectives may have made in some ways an inadequate contribution, which if correct, may have substantially added to the difficulty in the preparation and witness impact in the 2011/2012 Supreme Court action?

We understand that made Court difficulties, however as stated above, our comments are related to the system, rather than individual criticism, and we believe and hope that with our “fresh faces”, we may be able to suggest some things that may be worth consideration.