



Law & Order – A National Priority

An address to the Sensible Sentencing Trust
by Don Brash, Leader of the National Party,
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Introduction

Thank you for inviting me to address you this afternoon.

Law and order is one of the five big issues that will be addressed by the next National Government, and today I want to outline our approach to this issue.

I don't pretend to be somebody who has had a career involved in issues of criminal justice or policing – although some of my colleagues have, and I am indebted to their advice.

So essentially I stand here today, looking at these issues from much the same perspective as any other member of the public, observing what everybody else sees in the daily media, and trying to figure out why we respond to crime in the way we do.

I am left baffled. And appalled. Why do we put up with it?

The most basic responsibility of government, every government, is to keep the public safe.

Law abiding people have a right to expect that they will be kept safe from those who prey on them, their families, and the wider community.

But at present the public do not, and cannot, have that expectation.

I don't intend to recite a lot of statistics to make my case. We all know that New Zealand has a terrible record. It is in front of us each day. The police tell me that in New Zealand one woman is killed every five weeks by her partner, or ex-partner. Ten children are killed every year in acts of family violence. [1]

Every day, the media carry stories of horrendous crimes – appalling family violence, resulting in death and disfigurement for women and children; random killings by drug-crazed criminals out on parole; brutal muggings of young tourists visiting our country; dangerous and often drunk drivers, many with numerous previous driving convictions, killing people on the roads.

And what is our response? Not much.

As a society, we seem to have lost the confidence to defend ourselves, lost the determination to stand up and defend our core values. And as a result we have created a society where women and older New Zealanders are forced to

significantly modify their behaviour because of the threat of violence. Our children are much less safe than they should be. All of us are at risk.

There are many factors which contribute to this intolerable state of affairs.

We have tolerated the growth of inter-generational welfare dependency and the educational failure that often goes with it. This has created a breeding ground of at-risk children from which the next generation of hardcore criminals is likely to be drawn.

We have disregarded the importance of families, and down-played the importance of having fathers on site as positive role models. And all too many men have abandoned their responsibilities as fathers.

We treat dangerous driving offences as of no great moment, and tolerate repeated conviction for driving under the influence as if it were a bit of a joke.

Likewise, we regard grossly fraudulent white-collar crime as of minor consequence, when some crimes of this kind have a devastating impact on victims and deserve harsh penalties.

We have scarce police resources, yet instead of focusing them on the most serious crime, we too often use them to generate revenue.

We don't even take existing penalties seriously. The courts wiped \$32 million in fines last year. Fewer than 40% of those sentenced to do community work turn up to serve their sentence. Community service is intended as a warning shot across the bows of an offender that, next time, they are destined for imprisonment. But if we tolerate only a 40% compliance rate, what sort of warning shot is that? In Rotorua, fewer than one in four turns up; in Christchurch just one in five!

We have done far too little to attack the growing epidemic of methamphetamine and, because almost all of us are implicated in one way or another, we have turned a blind eye to the problems created by the binge drinking culture which is behind so much of the violence in our society, especially family violence.

We have under-funded our police, with the result that, despite having arguably one of the highest crime rates in the developed world [2], we have one of the lowest number of police per head of population – 18 per 10,000 of population, compared with 22 in New South Wales and 25 in the United Kingdom. [3]

We have failed to give our police the tools they need to deal with the gangs which, through their control of the drug trade, have amassed fortunes which make them all but impervious to traditional policing methods.

We have put up with a parole system that allows the seemingly erratic judgements of the Parole Board to override the judgement of those who have sentenced criminals to jail. The difference between the sentences handed out

by judges and the sentences actually served would be considered farcical if it were not such a human tragedy.

We allow violent and recidivist criminals out of jail early, with minimal follow-up, when the public wants and should be able to expect that such people, if released at all, are released on strict terms, with close supervision, as they re-integrate into the community.

And because we are unwilling to spread across all taxpayers the considerable upfront costs of dealing with these problems, we have cynically left the victims of crime to bear the brunt of the cost alone.

For too long, lawmakers have gone soft on crime when the public wanted policy to get tougher – much tougher, as was made abundantly clear when 92% voted for longer sentences in the referendum of 1999.

The public was right.

Policy-makers were wrong.

And the Labour Government has simply ignored you.

As always, crime is a bigger problem in areas of relative deprivation. Whatever their income level, the overwhelming majority of people are honest and law-abiding citizens. But those in poorer neighbourhoods are the biggest victims of crime. Those most at risk are women, Maori, young people, beneficiaries and single parents. [4]

These are the groups that have the most to gain from a crackdown on crime.

Over and over again, I have been told by police that most crime is committed by a tiny number of usually-well-known criminal families. Indeed, in Rotorua last month I was told by the police that most of the crime in that city is perpetrated by just 10 or a dozen families. We must go after this small but malevolent core of career criminals.

Today I am going to do something which does not come naturally for me: I am going to advocate spending more taxpayers' money. There is no free or even cheap way of dealing with the serious problems I have just summarised. If we want to get serious about these problems, we must spend more money – more money on preventing young people heading down a path to crime, more money on policing and detection, more money on keeping dangerous offenders behind bars.

But the cost of not dealing effectively with the current epidemic of crime is at least as great, both in direct financial terms and in terms of the suffering which results.

Strengthening families, reforming welfare, improving education

Though we naturally focus on how best to protect our families and the wider community from the most vicious offenders, those criminals and the crimes that outrage us are a manifestation of wider social problems.

Too many criminals are the product of dysfunctional families, families where the parents have been on welfare for years or decades, families where children have been abandoned by fathers unwilling to accept responsibility for their financial and emotional support, thus leaving the burden to fall on mothers. Too many children have passed through the school system and come out the other side with lamentably inadequate reading skills, leaving them unable to get any but the most basic jobs.

We cannot deal with the problem of crime in our society unless we fundamentally reform the welfare system. To pour money into more police, more prisons and better rehabilitation services, while also pouring cash into funding the lifestyles that are producing many of our problems, is to set up a policy tug-of-war – all funded by the taxpayer.

Of course, it absolutely does not follow that the children of adults on benefits will all grow up as criminals: the overwhelming majority will not. But it is unfortunately from this environment that a disproportionate number of criminals will spring.

But beyond acknowledging the enormous importance of reforming the welfare system, strengthening families, and improving the ability of our schools to produce well-educated children, I do not intend to elaborate on these issues today. They are fundamental issues, and I will be addressing them directly at another time.

Solutions

Let me move on now to considering some of the solutions to this serious situation.

Our first steps must include early intervention with at-risk young people.

We need to deal firmly with young offenders so they are not under any illusion that their anti-social behaviour is acceptable. Anybody with an ounce of commonsense can see that, if our initial response to young people involved in crime is weak, those on the fringes of criminal activity will regard law enforcement as lacking in authority, and behave accordingly.

At present, those between the ages of 10 and 16 make up 11% of the population, yet are responsible for about 25% of all resolved offences. Seventy percent of youth crime is burglary and property damage – they are comparatively less serious than violent crimes, but burglary and street disorder are nevertheless major sources of disruption and cost to our communities, and a significant risk to our families. [5]

Many young people offend at some stage while they are growing up, but most do not offend seriously. We must exhibit a degree of compassion when dealing with the early stages of a life which may, but need not necessarily, progress from anti-social behaviour to petty crime, through to more serious crime.

I believe any parent would want to see the justice system giving a second chance to a young person who has, for whatever reason, had a minor brush with the law. After all, most of those attending a first or second Family Group Conference will not offend again. [6] People make mistakes. Most learn from them.

But for those who keep re-offending, endlessly recycling through these conferences is pointless. After two of these conferences, the offender should be referred directly to the Youth Court.

We must ensure that a young person embarking on what may become a life of crime knows exactly where the boundaries are, and knows that we will not tolerate repeat offending. And we must focus our efforts on the small group committing almost all the crimes.

At present we allow some young people who have committed serious and violent crime to escape largely unchallenged because of their age. [7] If BJ Kurariki had only injured Michael Choy rather than killing him, he would have been managed within the system but not charged. This is a loophole dating back to the 1920s. The world has changed. The next National Government will reduce the age of criminal responsibility from 14 to 12 years of age.

The second aspect of our attack on crime involves policing and detection.

We believe the police need at least three additional tools to enable them to do their work more effectively.

First, we need to expand our use of DNA testing. DNA testing is the modern equivalent of a fingerprint or photograph – it is an identification tool. It is an enormously powerful method of establishing either guilt or innocence, and can make a huge contribution to solving crime. At present, we only add to the DNA database samples from those convicted of offences generally attracting sentences of more than seven years. But we take the fingerprints of everyone arrested, and if that person is convicted then their fingerprints are added to the fingerprint database. If that person is not convicted, their fingerprint record is destroyed.

Under National, every person arrested will also be DNA tested. And if they are convicted, then their DNA will be added to the DNA database. If they are not charged or are acquitted, the DNA sample will be destroyed. A more comprehensive DNA database will greatly assist the police in targeting that small group of criminals committing most of the crime.

Second, we should acknowledge the seriousness of the methamphetamine epidemic and devote additional resources to it. The National Party has been telling the Government for the past four years to put more resources into the problem. All that time the epidemic has continued to spiral out of control, with huge growth in the number of clandestine laboratories being uncovered, [8] while we face drug testing backlogs which could see drug dealers walk free from the courts.

The weakness in our processes and lack of commitment to enforcement send precisely the wrong message to the gangs which dominate the production and distribution of hard drugs. We need more resources to eliminate the drug testing backlogs quickly, and we need tougher criminal non-association laws.

Third, we believe the police need help in smashing the gangs which are involved in organised crime in New Zealand. We need to take the profit out of crime. And central to this is an amendment to the Proceeds of Crime Act along the lines of the similar statutes in some Australian states. This would involve providing police with the ability to apply to a judge for approval to investigate the assets of people suspected of involvement in gang-related organised crime. At that point, the burden of proof shifts to the suspects to establish that their assets have been acquired legally.

This is a powerful weapon in the fight against organised crime, but it also reflects the difficult trade-off between fighting crime and protecting civil liberties. That is why such a power would need to be tightly circumscribed, and subject to approval and audit by judges.

It is idle to expect that a meaningful difference can be made to law enforcement without addressing the issue of police resources. And that is an issue that a National government, led by me, would confront. It has become fashionable for politicians to imagine that the strength of their commitment to law and order can be measured by the number of additional police officers which they promise to deliver.

I am not going to join that auction.

To be honest, there is no way, as an opposition politician, that I can pretend to know precisely how many additional police will be required as part of the package of measures which my Government will adopt.

Today I promise you that this question will receive rigorous and immediate scrutiny. We will have decisions made within our first three months in government. And whatever is required will be delivered.

The third broad aspect of our attack on crime involves sentencing and parole.

Even with strong law enforcement, prompt legal processes, and effective risk assessment and rehabilitation services for young offenders, some will always move on from petty to more serious crime.

It is clear to me that years of ad hoc decision-making and confused objectives have created a sentencing system which is so complex and so arcane that it defies easy comprehension. The current parole system thwarts the intention of Parliament and undermines the work of judges.

The result is a scandal. Of all those released from jail, around 40% will be re-convicted within one year and more than 55% will be re-convicted within two years. [9] An astounding 86% will be caught re-offending within 5 years. [10] Only around 65% of parolees will honour their parole conditions. [11]

In the past week, even the chairman of the Parole Board expressed surprise at the low level of supervision of criminals released on parole. And he admitted the Board “live(s) in hope” that the Corrections Department has enough people to ensure the safety of the public. [12]

Auckland journalist Kylie Jones was viciously raped and killed by convicted rapist Taffy Hotene, who had only been released from prison on parole two months earlier. William Duane Bell slaughtered the RSA workers while on parole. Both of these men had breached their parole conditions well before those tragedies, and the system did nothing.

Arthur Gray tried to kill a German tourist at a Nelson backpackers just 11 days after his release on parole. He was sentenced to nine years, but can apply for parole after three.

Judges are giving sentences which everyone knows the offender will never serve.

I believe we need to go back to basics and ask ourselves when we are trying to rehabilitate, when we are trying to punish and deter crime, and when we are simply trying to incarcerate an individual in order to protect the rest of society.

Most New Zealanders, I believe, would share my own view that first offenders deserve a second chance. Our criminal justice system should offer real opportunities for rehabilitation for those involved in their first brush with the law, especially the young.

But where offending becomes persistent, or where more serious offences are committed and imprisonment results, I believe our current laws and processes struggle to identify what our goals are. We need some simple ground rules.

The most important principle, in my view, is this: the primary objectives of imprisonment are to punish the offender, deter crime, and protect members of the public from those who pose a real and serious threat to their safety.

It follows that those who are sentenced to imprisonment should serve their time. In recent years, our bail, sentencing and parole policies have developed something which is much more akin to a charter of prisoners' rights than a serious criminal justice code.

We should be much more concerned about the rights of law-abiding citizens.

We need to keep violent and repeat offenders out of circulation. Keeping these criminals in jail longer is the fastest, surest way to a safer community.

Parole is a failed experiment.

The next National Government will abolish parole as we know it.

The current Minister of Justice continues to defend our parole system, and has argued that we need parole because that allows us to enforce post-release monitoring and recall. But this is to get the issue completely upside down.

If we want to enforce post-release monitoring, we simply need to make that an obligatory add-on to any sentence, not reduce the sentence because we want the power to monitor.

The one certainty about prison is that most prisoners will eventually be released. We must do more to manage the return of inmates into our community. There's no crime prevention in opening the prison gate, and leaving a prisoner standing there alone with a small bag of clothing and a \$350 so-called Steps To Freedom grant. Of course they'll be back!

I am firmly of the view that post-release monitoring should be routinely enforced. We want a "prison to work" policy. That's the best way to stop re-offending.

Currently, parole involves nothing more than sporadic contact between a released criminal and his parole officer. For most, contact is at first weekly but then quickly becomes monthly. How does monthly contact prevent re-offending? It doesn't.

We need a system that works with inmates some months before their release: sorting out their future accommodation, trying to find a job, and dealing with any family issues, so that when they are released they have somewhere to go and something to do.

For first time, low level, non-violent inmates we should consider time off for good behaviour with intensive supervision and surveillance. It's their one chance.

For this small group, time off for good behaviour after 75% of the sentence is completed – not after a minimum of one-third as currently – will be dependent both on behaviour in prison and successful completion of courses of study and remedial learning. A condition will be that the prisoner is judged not to be a threat to the community, but that in itself will not be a sufficient reason for this concession.

This small concession will not be available to the 85% of the inmate muster who are violent offenders or have been previously imprisoned. They gave up that chance when they re-offended.

For those in prison now, the current sentencing terms must apply – to change the basis on which people have been sentenced retrospectively would be quite inappropriate. But there will be an immediate tightening of parole surveillance and supervision. And I believe the Parole Board should hold its hearings in public.

Finally, there is a point where the conduct of an individual is so anti-social, so offensive, so violent, that there must be a presumption against their ever being released. A very small group are simply predators on our society, and we must lock them away. This is the point where preventive detention is the only solution.

We must use the sentence of preventive detention more proactively. If we are serious about making a difference to the character of our society, we must acknowledge the fact that we now have a class of serious repeat offenders who know no respect for other members of the community, and whose actions leave us with but one sensible choice: to lock them up and throw away the key.

Official data reveal that each inmate in New Zealand prisons has an average of 35 convictions, that the worst 1000 average 112 convictions each, and the worst 100 average 266 convictions. Some inmates have served more than 20 prison terms.

These are 'career criminals', and they are mocking the justice system and their victims.

These career criminals should be spending most of their lives in jail. They shouldn't get bail. And they certainly shouldn't get parole or early release.

There's no point in recycling them – that only creates more victims.

It is often said that prison does not work because it becomes a university of crime. And there is no doubt some truth in that.

But prison does work to prevent criminals harming innocent citizens. While in prison they cannot harm the community. While in prison they are not in your neighbourhood.

The key aspect of this approach is quite simple. Criminals will spend more time in jail. When they are released, their re-entry to society will be carefully monitored and supervised. If they breach those conditions, they will be returned to jail.

Cost?

The first objection raised to this policy approach will be that it is expensive. Yes, it will be.

But so is the cost to society of career criminals. Some estimates place the cost to society at around \$3 million per criminal career, [13] and that is without counting the social cost of the suffering and grief which every criminal causes.

For the families of victims – many of whom are here today – the cost is immeasurable.

At present we have a revolving door: as I have noted, around 40% of prisoners who are released are re-convicted within one year. Along the way, the community faces the cost of the crimes committed until the criminal is once again caught; we face the cost of tracking them down, the cost of prosecuting them, the cost of providing them with legal aid for their defence counsel, and then once again the cost of re-imprisoning them.

With the more serious recidivist criminals, we may well reduce the overall cost to society by, as it were, cutting out the middlemen, and keeping them in jail for longer periods.

Even with a lower crime rate, however, we can expect a move to longer sentences to cost a significant amount extra per year.

To operate the prison service now costs around \$600 million annually. If the prison population increased by 50% as a result of the abolition of parole (which is possible if offending rates do not reduce), the increase in annual operating cost could rise by around \$300 million after about five years. Additional prisons will also involve significant one-off capital costs, possibly of up to \$1 billion, though to keep taxpayer costs as low as possible we would contract the running of these to the private sector. [14]

These rough estimates represent the top end of a likely range. Non-violent first-time prisoners may get a small concession for good behaviour and rehabilitation. We would retain the option of home detention for non-violent offenders. And by making sure that crime does not pay, we would expect overall crime rates to fall.

But the cost of doing nothing is also high. Crime rates must fall, and we will, as a tax-paying community, have to face up to the cost of achieving that. It is not good enough to leave the situation as it is, and allow whomever happens to be a victim to face the full cost of our neglect.

In a more general sense, we are all victims, but none more so than the most vulnerable in our society. When our elderly live in fear of burglary and home invasion, when young women have to look over their shoulder as they walk home, when mothers live in fear of their children being assaulted or abducted, they have lost a crucial aspect of their freedom.

I can remember a time in New Zealand when we didn't much worry about locking the door at night, but sadly that time is long since gone.

Our message to criminals is clear. We mean business, and I expect re-offending rates to fall substantially as a result of this policy.

Conclusion

Let me conclude by summarising the moves the next National Government will implement.

- We will launch an all-out assault on crime in our communities – on crime of all kinds. We should be safe in our homes and on our streets. Our kids should be able to walk home safely from school, and we shouldn't feel uneasy parking our cars on city streets in the evening.
- We will deal compassionately with young first offenders, but will reduce the age of criminal responsibility from 14 years to 12, and will move offenders from the children's system to the Youth Court after two family conferences.
- We will record the DNA of all convicted criminals.
- We will provide additional resources to combat the methamphetamine epidemic and strengthen criminal non-association laws.
- We will amend the Proceeds of Crime Act to target the economic base of organised crime.
- We will recruit and resource the additional police officers necessary to do the job.
- We will abolish parole for all violent and repeat offenders.
- We will introduce post-release monitoring with tough sanctions.
- We will make greater use of preventive detention for violent repeat offenders.

I see these moves as a clear statement of our determination to defend the core values that underpin the rule of law.

We value our families, our neighbourhoods, and our communities. We have confidence in the values that guarantee social cohesion and mutual trust.

And we will vigorously defend those values and our communities from those who stand against them.

- [1] Briefing paper by Rotorua Police for the Rotorua Judiciary, June 2004.
- [2] United Kingdom, Home Office Statistical Bulletin 04/00. International Comparisons of Criminal Justice Statistics 1998. Statistics compiled by the New Zealand Parliamentary Library.
- [3] Australian Institute of Criminology. <http://www.aic.gov.au/policing/stats/2003/> and United Kingdom, Home Office. http://www.policereform.gov.uk/docs/press_notice_09504.html.
- [4] New Zealand National Survey of Crime Victims 2001.
- [5] Maxwell, G. and Morris, A. "Young Offenders", New Zealand Law Journal, February 2000.
- [6] New Zealand Ministry of Youth Affairs. Tough is Not Enough. June 2000.
- [7] "Too Young for Charges", The Press, 29 November 2003. "Police and youth justice experts have warned that the recent surge in serious offending by 12 to 14-year-olds is just a fraction of what is to come, and the inability of the police to charge serious offenders under the age of 14 is preventing the chance of early detection."
- [8] New Zealand Parliament. Answers to Parliamentary Questions WQ507 and WQ 508 (2004) show that the following number of clandestine labs were found: 41 in 2001; 147 in 2002; 200 in 2003; with about 245 anticipated for 2004.
- [9] New Zealand Department of Corrections. Annual Reports for 2002 and 2003.
- [10] Spier, P. Reconviction and Reimprisonment Rates. New Zealand Ministry of Justice, 2002.
- [11] New Zealand Department of Corrections. Statement of Intent 2004/05.
- [12] Justice Tony Ellis on Radio New Zealand's "Nine to noon" programme, 28 June 2004.
- [13] New Zealand Department of Corrections, About Time, 2001, p28.
- [14] The country's only privately managed prison, the Auckland Central Remand Prison, beats the state operated prisons on almost every measure, including cost, education and health programmes.