

NZ POLICE
REPORT FORM

SUBJECT:

ADDRESS:

TEXT: **OPERATION INLET**

Detective Inspector PINKHAM
District Crime Manager
SOUTHERN

'Operation Inlet' has been the investigation in relation to allegations made against Mr David BENSON-POPE, the Member of Parliament for Dunedin South.

These allegations surfaced in May 2005 through the ACT Member of Parliament, Mr Rodney HIDE and then through the media.

Briefly, the allegations related to Mr BENSON-POPE when he was a teacher at Bayfield High School, Dunedin in the year of 1982.

There are two main allegations involving two fourth form boys who were attending Bayfield High School in 1982.

INCIDENT ONE - (WEAVER complaint)

This allegation involved a student, Philip WEAVER, who was in Mr BENSON-POPE's 4th form Social Studies class in 1982. This class was known as 4G and had 29 students in it.

It has been alleged that during a Social Studies class in 1982, Philip WEAVER had been talking in class and was told to be quiet by Mr BENSON-POPE, but continued to talk. Mr BENSON-POPE had a tennis ball on the end of an arrow in class that he used to hit students on the head with or to hit the desk to get their attention.

It is alleged that Mr BENSON-POPE removed the tennis ball from the arrow and put it into Mr WEAVER's mouth to shut him up. Mr WEAVER removed the ball and threw it onto the floor. Mr BENSON-POPE put the tennis ball back into Mr WEAVER's mouth and then taped his hands to his desk, using a tape similar to duct tape, so that he could not remove the ball from his mouth.

He left the ball in his mouth for the remainder of the class with Mr WEAVER's hands taped down. The timeframe of this was anywhere between 15 - 30 minutes.

At the end of the class, Mr BENSON-POPE as removed the tape from Mr WEAVER's hands and he was able to remove the tennis ball from his mouth.

Nothing further was said about the incident after that, until this year.

I will deal with the evidence in relation to this incident later in this report.

INCIDENT TWO [REDACTED] complaint)

This allegation also involves a former student - [REDACTED] who was in Form 4X in 1982. At the time, Mr BENSON-POPE was running the outdoor education programme at Bayfield High School.

During that time all of the 4th form went to a camp at Tautuku in the Catlins. Mr [REDACTED] was on this camp and shared a bunk room with other pupils, [REDACTED] and [REDACTED] (now deceased).

It is alleged that one night on camp Mr [REDACTED] bunk room would not be quiet and go to sleep. Because of that Mr BENSON-POPE went to the room and made the four boys get out of bed and stand in the hallway. While standing in the hallway, [REDACTED] was telling Mr BENSON-POPE what had been happening in the bunk room.

Mr [REDACTED] states that he continuously interrupted [REDACTED] while he talked to Mr BENSON-POPE. Mr BENSON-POPE told [REDACTED] to shut up, but [REDACTED] continued to interrupt [REDACTED] while he was speaking.

Mr [REDACTED] alleges in his statement that Mr BENSON-POPE gave him a "back hander" to his face, hitting his nose and causing it to bleed.

The four boys then returned to bed, were quiet and nothing further was said about the incident until this year. I will deal with the evidence for this incident later in this report.

Evidence Incident One (WEAVER)

To date we have been able to interview 27 of the 29 class members. One of the class members cannot be located and one who lives in Australia has not been available to be interviewed to date.

Of the 27 interviewed to date, 9 of the class remember the incident involving the tennis ball being put into Philip WEAVER's mouth and his hands taped to the desk. The time for being taped to the desk varies due to the timeframe between 1982 and now, however it was for a period greater than 10 minutes.

There are 15 class members who cannot remember the incident. They cannot say whether it happened or not.

Three class members rebut the allegation and do not believe it ever happened. However they are very supportive of Mr BENSON-POPE as a teacher.

Evidence Incident Two [REDACTED]

In relation to the second incident involving [REDACTED] there appears to be only two surviving witnesses, with one verifying Mr [REDACTED] account and one refuting it. The credibility would need to be left to a jury to decide.

Teaching Staff 1982

Forty three teaching staff have been identified for the year of 1982. Of those 43 staff members, 34 have been located and interviewed. The interviews were conducted by way of a questionnaire to assure that each staff member covered the same matters that were being investigated.

The outstanding 9 teachers are either deceased, or cannot be located because they have travelled overseas.

Areas that were covered in the interview included the type of discipline used by them in their class, what type of discipline was generally used within the school, whether they were aware of the Philip WEAVER or [REDACTED] incidents and their view on Mr BENSON-POPE as a teacher. Also whether or not they had been on the 4th form camp in 1982.

In relation to the Philip WEAVER incident, no staff members were aware of it.

In relation to the [REDACTED] incident, Mr [REDACTED] does remember an incident being talked about, but states he did not witness it, as Mr [REDACTED] said he did. Mr [REDACTED] has stated that Mr [REDACTED] told Duncan GARDNER from TV3 that he did witness the incident. This has not been verified to date, as I do not want to go back to the media at this stage.

The staff had varying views on Mr BENSON-POPE, but the majority were supportive of him as a teacher. A few however were not.

Discipline within the school was generally dealt with within the class, with telling off, lines, detention or being sent out of the room. At the time caning was being phased out at the school and was done by senior masters only. It appears to have been used only for serious offences.

Mr [REDACTED], the principal at the time, said that if either of the incidents had been reported to him they would have gone to the board and may have gone to the police, stating that it was not normal discipline.

A number of staff went on the 4th form camp, but do not recall any incident involving [REDACTED] or Mr BENSON-POPE.

One other form of discipline used at camp was getting the pupils out of bed if they were making noise and making them stand outside barefoot in their night attire. They remember it being very cold. Teachers remember this form of discipline as well.

In relation to the incident involving Philip WEAVER there are 9 independent witnesses who clearly remember this incident occurring in class and 3 that rebut it.

The witnesses that recall the incident all appear to be genuine and do not have an axe to grind in relation to Mr BENSON-POPE.

Evidentially there is sufficient evidence to say that this incident did occur and Philip WEAVER did have a tennis ball put in his mouth and his hands taped to the desk.

DECISION TO PROSECUTE (as set out by the Crown Law Office)

1 Evidential Sufficiency

The evidence that has been gathered is admissible in a court of law and the witnesses for both incidents are credible and reliable. There is sufficient evidence to put the matters before a court.

2 The Public Interest

2.1 It must be considered whether the offences are serious enough, the evidence is strong enough and whether the matter could be disposed of by some way other than a criminal prosecution.

The appropriate charge as I see it, if a prosecution had been brought at the time, would have been assault under Section 196 of the Crimes Act. This would have been appropriate for both incidents as Mr BENSON-POPE was a person in authority and had control over the pupils at the time. This is a major aggravating factor that would take the matters outside common assault under the Summary Proceedings Act; both complainants were 14 years old, so assault on a child is not appropriate, but the age of the complainants must still be considered.

It cannot be said whether Mr BENSON-POPE would be found guilty or acquitted if this matter was placed before the court.

2.2 Other factors to consider within the public interest

(a) The seriousness or the triviality of the alleged offence - it must be considered if these matters had surfaced in 1982, would they have been put before the court or dealt with internally within the school environment.

(b) Mitigating circumstances of offences:

- Time delay for these matters (23 years)
- Different discipline used in 1982
- Character of Mr BENSON-POPE
- Would a prosecution be brought against other teachers

Aggravating Circumstances

- Teacher, pupil relationship
- Serious nature of the offence (taped to desk)
- Age gap, Mr BENSON-POPE 32 years of age, complainants 14 years old, only one year above age of being children as opposed to young people
- Mr BENSON-POPE's complete denial of the allegations

(c) Age, physical or mental health of offender (not appropriate)

(d) Staleness of the alleged offence.

The offences for these matters occurred some 23 years ago, however did not come to light until around May of this year. Whether taking this matter to court would be an abuse of process is something that would need to be considered by our Legal Section or Crown Law.

(e) The degree of culpability of Mr BENSON-POPE. Mr BENSON-POPE is the only alleged offender for these offences and would be fully culpable.

(f) The effect on public opinion of a decision not to prosecute.

There is no doubt this is a high profile case as Mr BENSON-POPE is a Member of Parliament and also a Cabinet Minister. This therefore creates more public interest and must be considered when a decision on whether or not to prosecute is taken.

- (g) The obsolescence or obscurity of the law - in 1982 under Section 59 of the Crimes Act 1961 a schoolmaster is justified in using force by way of correction towards any child or pupil under his care, if the force used is reasonable in the circumstances. "The reasonableness of the force used is a question of fact."

As indicated by the principal Mr [REDACTED] and Mr BENSON-POPE himself, the degree of force used in both cases would have been unreasonable.

This defence has subsequently been removed for teachers.

- (h) Whether the prosecution might be counter-productive - it would need to be shown that any prosecution taken was not proceeded with due to political pressure that has been brought to bear on the enquiry and the reason for it being placed in the public arena. That the worth of the prosecution stands on the serious nature of the offence, the weight of evidence and the willingness of the complainants to proceed.
- (i) The availability of any proper alternative to prosecution. Options that are available today, but were not in 1982, that could be considered would be diversion or restorative justice.

However as Mr BENSON-POPE has denied the offences ever occurred in his interview, these options are limited.

- (j) The prevalence of the alleged offence and the need for deterrence.

This alleged offending would fall outside of these categories as they are not prevalent and the need for a deterrent is not needed as the offending occurred some 23 years ago.

- (k) Whether the consequence of any resulting conviction would be unduly harsh and oppressive.

There is no doubt that any resulting conviction would have a harsh and oppressive conclusion for Mr BENSON-POPE, who would no doubt lose his position as a Member of Parliament. Whether this is unduly harsh for the offences that are alleged to have been committed some 23 years ago while Mr BENSON-

POPE was a teacher is something that needs to be looked at closely by those considering whether charges should be laid or not.

- (l) The entitlement of the Crown and any other person to compensation, reparation or forfeiture as a consequence of conviction.

Not a factor in this case.

- (m) The attitude of the victim of the alleged offence to a prosecution.

Neither of the complainants instigated these complaints. Their names were given to Rodney HIDE and Television 3 by a third party. However since their involvement in the enquiry and the media interest, the complainants have made statements to the police.

Both parties have been waiting to hear what Mr BENSON-POPE's response to the allegation would be, as they appeared to just want an acknowledgement that the incidents occurred and an apology from Mr BENSON-POPE. Since Mr BENSON-POPE has denied the allegations the complainants may well be keen to take these matters further.

- (n) The likely length and expense of a trial.

There will be approximately 15 prosecution witnesses and no doubt a number from the defence. A trial would take one to two weeks and would include flying several witnesses from around New Zealand and Australia.

- (o) The likely sentence imposed in the event of conviction having regard to the sentencing options available to the court.

Whatever sentence the court imposed on conviction would have no effect on the damage a conviction would do to Mr BENSON-POPE. The greatest penalty he could face would be a conviction.

EVIDENCE - WEAVER complaint

- Complainant's statement outlining offence
- 9 out of 29 class members remember the incident and have made statements. 15 cannot remember the incident.

Evidence is strong having nine independent witnesses to the offence that remember the incident clearly. None appear to have any hidden agendas.

EVIDENCE - [REDACTED] complaint

- Complainant's statement outlining offence.
- Of three independent witnesses present at the time of offence, one is deceased, one recalls the offence and one denies the offence ever happened.

The evidence is not as strong in this case, but would need to be put to a jury for credibility to be established.

OFFENCES - WEAVER complaint

This needs to be looked at relevant to 1982. At the high end would be:

(1) Kidnapping - Section 209(1)(a) of Crimes Act 1961

- (1) "Everyone is liable to imprisonment for a term not exceeding 14 years who takes away or detains any person without his consent, or with his consent detained by fraud or duress, with intent"
 - (a) "to cause him to be confined or imprisoned"
- (2) "A child under the age of 16 years shall be deemed to be incapable of consenting to being carried off or detained"

(2) Cruelty to a Child - Section 195 Crimes Act 1961

"Having the custody, control, or charge of any child under the age of 16 years, wilfully ill-treats or neglects the child, or wilfully ..."

In relation to this charge Case Law would need to be researched to establish what has been set down as wilfully ill-treating or neglecting a child.

(3) Common Assault - Section 196 Crimes Act 1961

"Everyone is liable to imprisonment for a term not exceeding one year's imprisonment who assaults any other person."

This could well be the most appropriate charge to be considered as there was no injury to WEAVER and would have been a charge likely to be laid in 1982.

(4) Common Assault - Section 9 Summary Offences Act 1981

If this was considered the appropriate charge action against Mr BENSON-POPE could not be taken due to the time limit for laying an information from the time of the offence of six months.

OFFENCES - [REDACTED] COMPLAINT

- (1) As per (3) WEAVER common assault Crimes Act
- (2) As per (4) WEAVER common assault Summary Offences Act

DAVID BENSON-POPE

Mr BENSON-POPE was interviewed on 21 September 2005 at the Dunedin Police Station by way of audio video tape. (Camera was blocked from filming on Mr BENSON-POPE's request).

All allegations were put to Mr BENSON-POPE in the presence of his lawyer Mr John HAIGH of Auckland.

He denied the WEAVER allegation, stating that the offence did not occur, that the allegation is made up. That as a teacher he would have never done what is alleged as it would have constituted an assault.

He also denied the [REDACTED] allegation, stating it did not happen and he never hit a child in his time as a teacher. Again stating that this would have been an assault.

Mr BENSON-POPE's belief is that the allegations are all politically motivated and that all parties have been put up to this by his political opponents (Mr Rodney HIDE).

A transcript of Mr BENSON-POPE's interview is attached.

RECOMMENDATION

As there is a clear split in this case with what the complainants and witnesses have said and Mr BENSON-POPE denying that the incidents ever occurred, the evidence and circumstances need to be reviewed by Legal Section and possibly the Crown Solicitor.

The points I have covered under the Crown Law Office Prosecution Guidelines need to be considered, with the delay of 23 years, before any decision is made as to whether criminal proceedings should be taken.

FILE

The file has been set out in ring binder folders as follows:

- 1) **General**
This includes this report, school documents, lawyer's correspondence, Mr BENSON-POPE's correspondence, transcript of interview and general job sheets.
- 2) **WEAVER file**
This includes Mr Philip WEAVER's statements and that of the 27 other class members of 4G that have been spoken to.
- 3) **[REDACTED] file**
This includes Mr [REDACTED] statement and the two witnesses to this incident.
- 4) **Teaching file**
Interview of the 35 teaching staff located.
- 5) **Miscellaneous**
Statements from [REDACTED] who started this enquiry by going to Rodney HIDE and TV3. Also [REDACTED] who Mr BENSON-POPE thought started the enquiry.
- 6) **Other files**
Relate to media coverage.

File for your information and forwarding.


M N T INGLIS
Detective Sergeant 6145

26 September 2005

File received 13 Oct 05

