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WHO CARES ABOUT THE VICTIM: REFLECTIONS ON VICTIM ENCOUNTERS WITH THE CRIMINAL JUSTICE SYSTEM

A paper presented on my behalf at the PACCOA Conference in Melbourne last year foreshadowed some of the major issues that I thought Community Corrections would face in the early years of the new millennium. That paper made a few oblique references to victims, primarily in the context of restorative justice as an emerging issue in corrective services. It was not possible in such a broad-ranging paper to focus on victim issues and needs. The aim this year is to take up this theme and explore it further.

Why should Community Corrections concern itself with victims? Aren't our energies and skills more than fully absorbed in the management of offenders? Can one reconcile the conflict between the claims of the victim for just and fair treatment, and our primary duty to supervise the offender and to address the causes of his or her unlawful behaviour? These questions lie at the heart of any intelligent debate about what we do and the rationale for doing so.

In the 1970's as a young probation and parole officer I recollect a conversation with colleagues in which someone observed that victims were the most palpably neglected people in the criminal justice system. At that time we decided it would be a good idea to rectify this shortcoming, but sadly we talked ourselves out of it on the grounds that we would be seen as too strongly identified with offenders. It was more than another decade before the first formal victim support service was established.

The history and construction of our system of criminal law make it not only unsurprising, but almost inevitable that victims are the least visible participants in the criminal justice process. The criminal law is primarily concerned with the rights and duties of individuals towards the State rather than to each other. An offence is expressed as a violation of a statute or common law provision administered by the State and not as the infringement of the rights of one citizen by another. The criminal justice system aims to punish those who disregard the rules and to deter others from crime. In doing so it is motivated first and foremost by the desire to maintain social cohesion and harmony, rather than to remedy the harm and injury sustained by an individual victim. It is the State that prosecutes and punishes, even though it is a specific individual or group of people who suffer harm as the victims of crime.

Earlier this year, I heard the father of a murder victim relate his personal ordeal to a conference on victims' experiences of the criminal justice system. One can scarcely imagine the agony of losing a family member to a senseless and brutal murder. As if that was not horrifying enough, the subsequent playing out of events in the court process piled further devastation onto someone whose coping resources were already stretched to the bounds of endurance. After waiting in expectation that the trial would produce answers to give some meaning to his suffering, the father went to court. His first surprise was that there was no one to represent his interests, but worse was to follow. When he rose to seek clarification of his rights, the court ordered him to be seated and remain in silence as this was a matter between the State and the defendants and it had nothing to do with him.

As the victims' conference progressed, a litany of other stories attested to the fact that this was not an atypical, idiosyncratic or unique experience.

In the criminal justice paradigm as we know it, the offence becomes the catalyst for a process of State intervention. Once it is under way, the victim might conceivably not be heard from again. He or she will not necessarily be called to give evidence, might not have a victim impact statement tendered in Court, and most probably will have no opportunity to ask the offender to explain his or her behaviour. The offender may have little or no cause to think of the victim as a real person whose rights have been trampled upon. Some critics would go as far as to argue that the adversarial process of the law is a positive discouragement to the offender accepting responsibility for wrongdoing. A trial is a contest in which the astute defendant will quickly realise that the intelligent way to behave is to admit nothing and to force the prosecution to prove its case as best it can. In other words, the battle of tactics and wits that determines winners and losers at trial may or may not serve the ends of justice as perceived by the victim.

There are admittedly powerful and valid reasons why the criminal law has developed in its present form. Clearly, a legal system that is to serve the needs of a democratic community must be consistent, fair and accountable. To do so there must be a body of law that is free of arbitrary action or interpretation, operates by due process, treats like cases in a uniform manner and is open to public scrutiny. Without such a body of rules, it is entirely possible that modern urban communities would find it difficult to function at all. If the victim of a criminal act was left to initiate direct action for revenge or retaliation the end result would be an endless cycle of action and reaction, in which the original source of the problem eventually becomes completely obscured. The outcome would be social chaos.

Although an impartial system of criminal justice administration seeks to create an orderly basis for the resolution of criminal offences, there are widespread community views that the balance has tilted too far in the direction of the offender and his/her rehabilitation.

Why should this matter to Community Corrections and what can we do about it anyway? It does not take a great deal of searching to find some compelling reasons. While there is room for debate about whether public attitudes towards sentencing are as tough as some media would have us believe, it is equally plain that the rate of imprisonment has grown at unprecedented levels in this country throughout much of the 1990's. This seems to illustrate that sentencing practices have responded to a perceived hardening in public opinion.

We may know that increased use of imprisonment does not guarantee higher levels of public safety but we will preach this message in vain if our public credibility is low. Creating a profile in which we have not only profess concern for victims, but are able to give some tangible expression to this concern may assist us to communicate other messages about the positive contributions of community corrections.

Another convincing reason to take our responsibilities to victim issues seriously is inherent in the restorative justice movement. Restorative justice is not yet a universally accepted creed but it offers some astute insights into the failure of retributive justice to recognise the suffering of victims. As restorative justice concepts take root we can expect greater emphasis to be placed on drawing offenders and victims together to find resolutions to the harm and injury caused by the offending behaviour. In this scenario, the dichotomy between those who work with offenders and those who work with victims starts to disappear.

It is true that some victims have no desire to face up to or negotiate with those who have abused, exploited or stolen from them but some will be willing to do so, and others may reach this point over time. Even those who are not able or willing to confront the offender may be prepared to undergo some sort of "shuttle" mediation in which a mediator will move between the two parties without them ever coming face to face. It is argued that Community Corrections staff are as well placed as anyone to fulfil this role, and if by default we do not take it up, then others will move in to fill this void, leaving us increasingly marginalised and irrelevant.

In the past few years victims' rights to be heard at all stages of the criminal justice process are slowly becoming enshrined in legislation. Whether or not individual community corrections officers are directly involved in services for victims, those services are increasingly integrated into the criminal justice landscape. A holistic approach to seeing work with offenders as part of a larger restorative process makes it progressively more difficult to ignore the perspective of the victim. Furthermore, as cognitive-behavioural models of working with offenders have taken root in the past decade, there is a focus on helping offenders restructure their own cognitive process map. Offenders are encouraged and assisted to consider the consequences of the action choices they make, both for themselves and others. In building their critical thinking, reasoning and planning skills offenders it is inevitable that the relationship between their offending behaviour and its impact on victims will be traversed.

A colleague in South Australia kindly sent me a paper earlier this week describing the South Australian Victim Awareness Program for offenders. There I came across an attention-grabbing paragraph from which the following quote is taken:

“One of the arguments that helped acceptance of the program was a growing recognition of the level of victim unawareness that existed amongst departmental clients. Typically, if one were to ask any group of professionals involved in the justice system to identify the most consistent features of offenders, then usually drug/alcohol abuse, or violence, etc are offered. However it is suggested that the single most prominent feature of an offender’s personality observed by the professionals is their view that they have no victims. Many will argue for themselves to be seen as victims, most deny they leave chaos and trauma in their wake.” [Author David Thompson, Manager for Professional Services, S.A Department for Correctional Services].

For all of these reasons, anyone who still imagines that one should not endeavour to juxtapose or integrate victim interests with offender management is a little behind contemporary reality. Most jurisdictions are still feeling their way quite tentatively into some unfamiliar territory, but the overall thrust is all in the same direction – towards more systematic attention to the needs of victims, while causing offenders to confront the consequences of their behaviour.

In Western Australia we have a range of victim services under the umbrella of the Ministry of Justice. Some of them would hold their own very favourably against any other comparable services around the country. The problem is that they are not well integrated into a cohesive victim service framework. This can be very bewildering and distressing to victims who can find the labyrinth hard to negotiate.

Apart from failure to provide timely and expert services to those who need them, the worst possible other outcome for victims is services which are fragmented or disunited. People who have already suffered trauma do not deserve to have a host of different helpers all taking ownership of one small part of the service delivery, but failing to communicate adequately between themselves, or ensuring process simplification and coordination. This is a lesson that we’ve learned at considerable cost in Western Australia but we are still grappling with how to put the process together in the most constructive and effective way. An independent consultant has lately been appointed to examine the strengths and weaknesses of what we presently have and to help us repackage services in a more victim-benevolent manner.

One of the most topical issues relating to victims is their right to receive information about the progress of offender through the system at all stages from pre-trial to post-release. The New Zealand Victims Rights Bill has gone further down this path than any other legislation in Australasia of which the author is aware. Provisions under this Bill include:

An early right to be advised of all of the services and remedies available to victims (Section 6);

Early information about proceedings (Section 7), including:

The progress of the investigation of the offence;

The charges laid or the reasons for not laying charges.

The victim's role as a witness in the prosecution of the offence.

The date and place of the hearing.

If the victim is not capable of understanding the information fully, then a caregiver of the victim should also be given the information.

The prosecutor should inform the judicial officer about any concerns by the victim when release on bail is being considered in certain cases, such as a serious sexual assault or other serious assault or injury. (Section 8).

The victim has a right not to have their address disclosed in court, except where to exclude it would be contrary to the interests of justice (Section 9).

The right to early return of property held as evidence (Section 10).

The Bill also contains comprehensive statements about the provision of victim impact statements to the court. (Sections 11-13).

The Bill adds an expanded range of rights in relation to notification of an offender's release, escape, parole hearing, or hearing to consider conditions on final release. (Section 14).

Rights of victims to be heard at parole hearings, home detention hearings and hearings to consider conditions on final release.

Some Australian States have introduced Victim Registers, Concerned Persons Registers or Victim Notification Registers and Western Australia is presently examining how its current arrangements, under which victims of certain offences are consulted about pending release decisions, can be widened. Needless to say, some issues in this arena are controversial. A common measure on behalf of victims in many United States jurisdictions is to publicly release identifying information about offenders convicted of certain offences. In some cases this has gone as far as publicising in the media any change of address by the offender. Release of photographs is also not uncommon, sometimes in the form of posters distributed to local letterboxes.

The point at issue is not the release of photographs or other identifying information per se, but whether Community Corrections has positioned itself to participate in these debates with an authoritative and considered voice. It is clear that some initiatives and policy decisions relating to victims raise questions that are outside traditional frames of reference for Community Corrections.

The gathering momentum of change in the management of victim issues has ramifications for Community Corrections, from individual case management through to broad questions of philosophy and policy. Whereas we might have once comfortably believed that our role was to provide good advice to courts and releasing authorities, and to manage offenders subject to our various supervision orders, life is no longer quite this clear-cut.

As the demarcation blurs between who takes respective responsibilities for offenders and for victims, we may need to re-define our reasons for being. There was a time when community corrections had little doubt that it was about rehabilitation of offenders as its primary and perhaps only goal. That certainty got turned on its head in the wake of Robert Martinson's 1974 critique of rehabilitation. For a time after that we retreated to a managerialist view – ie if nothing works, then we would demonstrate our worth by managing and enforcing offender compliance with supervision. In the early 1990's there was a rediscovery of rehabilitation under a more intellectually disciplined regime. The "What Works" literature directed our attention to interventions that do or can work in reducing the risk of re-offending, and it made us conscious of the need for rigorous research evidence rather than instinctive beliefs or experiential knowledge alone. It is not within the purview of this paper to analyse the "What Works" movement but I am hopeful that subsequent speakers today might do so. There are serious reservations in some quarters about its narrowness of focus.

Familiarising ourselves with the messages of evidence-based intervention and adapting our role in accordance with the current state of knowledge are necessary elements in what should be a commitment to continuous improvement by all of us. It is argued that this is no longer enough and that our focus on working with offenders must not obscure our responsibilities towards their victims.

If community corrections can no longer plead rehabilitation of offenders as sufficient reason for its existence, what is its underpinning philosophy to be? In the past few years it has been popular for many probation and community corrections agencies to define their mission as the reduction of recidivism. This obliquely acknowledges victims, but only to the extent that if fewer offences are committed, fewer people will be victimised. It says nothing about how the needs of existing victims will be met, or whether and how community corrections should become involved in primary crime prevention and early intervention as a front-end strategy to reduce victimisation levels. This was the subject of part of the paper delivered to last year's conference and it remains an area of personal passion.

The Community Based Services Directorate in Western Australia considers community protection and public safety as the cornerstones of its mission. This makes due attention to victim issues inescapable. Rehabilitation of offenders and reduction of recidivism remain as central objectives but they should become means to a larger end, rather than the end in itself. We have not yet fully worked out how to reach our chosen destination and there is still plenty of room for debate about whether the direction we have chosen to take is where community corrections should be going. Some commentators would argue that to extend one's horizons too far will only diffuse the concentration of effort on those things in which we have the knowledge and credentials to make a positive impact. That is not the view we take but Conferences such as this can help to crystallise thinking about complex matters of this kind.

I would like to see Community Corrections and Juvenile Justice in W.A become far better integrated into the local communities that they serve, encourage and enlist greater levels of community participation in their activities, and that greater public confidence in our services will develop in consequence. This is more likely to happen if communities see us as responsive to community and victim needs than if they dismiss us as being pre-occupied only with the interests of the offender.

Community corrections can not and should not try to become the sole standard bearer for the rights and needs of victims, but it must have a view of how such requirements fold into the total fabric of its other responsibilities. It must also develop and enunciate statements of how it will collaborate and communicate with other partner agencies in the provision of victim services. As indicated earlier, the fragmentation of service philosophy and delivery between agencies can become an additional burden for victims.

There may be agencies represented here today who have learned nothing new or useful from this presentation. In that event, I would be delighted to hail that agency as a model for others to follow and would urge that its knowledge and experience be shared with all of us. I suspect that all of us are reaching for better ways of ensuring that the communities we live in are healthy and safe. The continued vitality of PACCOA and the inauguration of an Australasian Heads of Community Corrections Conference here in Brisbane this week are vehicles through which we can all strive to serve our communities more effectively.

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