

Probation and Community Corrections Officers' Association Incorporated

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Welcome to 2007, we enter into a new era and the philosophical shift becomes increasingly evident, with discussion about the Dangerous Sexual Offenders Act 2006 occupying my time at the moment.

I am pleased to include the continuation of David Daley's law lecture and have acquired parts of a PACCOA conference paper to highlight elements of effective case management.

Wendy Vernon

David Daley has very kindly provided the series of lectures on the "Law" that he presented to Edith Cowan University. The first of these lecture papers continues in this newsletter.

Week 1 part 3: The Basis of the Criminal Law in Society

The Origins of the Law

As already stated, the system of laws by which citizens of any community are governed derive both from case law and legislation. We turn our attention to custom and case law first, before moving on to discuss legislation as the other primary source of law.

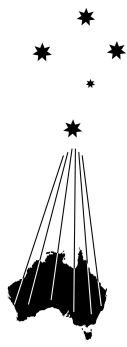
Modern English law, from which the Australian legal system is derived, traces its origins back to at least Saxon times. After the Norman conquest in 1066, the Norman kings initially used the existing Courts of the

country but they soon began to send their own judges throughout the country to hear cases locally. According to Bates (1975) this allowed the Norman Courts to compete with the local courts for the fees paid by litigants. In order to attract litigants from the local courts, the royal courts began to offer better methods of trial. These methods proved successful to the extent that eventually all law courts came under royal control.

By the twelfth century, England had been divided into circuits and justices were sent around the country to the towns on the circuits. The main purpose of the circuit judges was to supervise local administration and tax collection but they also endeavoured to settle local disputes by reference to local customs which they sought to administer in a fair manner. Over time the minor judicial powers that they had begun to assume increased in importance.

Early justices were clerics as they were the only people who could read and write. As a legal profession emerged, the circuit commissions from the King were issued to lawyers. In their administration of the law the circuit judges sought to discover the local custom with the help of a jury. Over time judges would compare notes on the various customs discovered. They would agree on some and reject others, leading to the evolution of what is known as the common law. A custom became a rule of common law when it was recognised as valid by a Court.

As judges began to take note of what their fellow judges had decided, they would pay particular attention to the decision made by judges in higher courts. These would then be taken as precedents to guide them in adjudicating similar cases in future. The



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invention of the printing press and the greater accessibility to record of other decisions accelerated the process. By the nineteenth century, the House of Lords had made it clear that precedent must be regarded in subsequent cases.

We need not consider the intricacies of common law and judicial precedent in any detail. It is enough to note that judicial precedent consists of a series of rules about what precedents are binding on other courts and which are simply persuasive precedents. In general, Courts are bound by the decision of a superior court in its own jurisdiction. It is not bound by the decision of a court of equal or lesser standing. Persuasive precedent may include decisions of other judges not binding on the court in question or decisions of judges in other common law systems. Judicial precedent allows for a degree of consistency in legal decisions over time but it can also rigidify the law. As social circumstances and needs change over time, the reliance on precedent established in earlier times may act against the flexibility, which the law must also have if it is to reflect contemporary values and mores.

The other problem of judicial precedent as a primary source of law is that it can lead to endless argument about whether the case currently before the court is in fact exactly comparable to the one for which precedent has been quoted. For litigants this can make recourse to the law a very expensive, time consuming, frustrating and mystifying process.

In Australia, the early English settlers brought with them and applied such English law as was suitable for the conditions of the colony. In 1788 New South Wales received all current

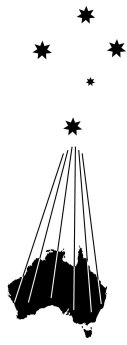
applicable English law. In due course Tasmania split from New South Wales as a colony in its own right in 1825. When it did so, it also took with it the inherited law of England as it stood in 1788. The problem about which English law was applicable was eventually clarified by the passage of the Imperial Act of 1828 by the English Parliament. This provided that all of the laws and statutes in England at the time of passage of the Act would apply to the colonies in Australia.

From 1828 onwards later changes to English law were not automatically received. After that time it was up to the colonies to develop their own inherited law as they saw fit. Current English statute law does not necessarily have any direct bearing on Australian law making, although Australia might choose to enact laws which parallel legislation adopted in other places. However in matters of case law, the English case law will continue to have a bearing. Where there is no relevant statutory law an English decision may well be followed by an Australian Court.

Excerpts from the paper presented by Bill Whyte at 2006 PACCOA conference: Sex Offender Supervision in the 21st Century: Future Vision

Effective Approaches to Case Management.

“Effective case management imposes an immensely demanding role for practitioners faced with a clientele whose social problems are wide scale, complex and potentially very harmful.” Using meta-analysis, Dowden and Andrews ranked Andrew and Keisslings’ (1980) five dimensions of the qualities of practitioners



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(based on social learning theory) “against those associated with reduced re-offending in order of effectiveness [numbers are associated with the original ordering by A&K, ed.]

- **Quality of interpersonal relationships (5)**
- **Effective use of community resources (4)**
 - a. *Evidence of advocacy* (i.e., job referrals, medical referrals, etc.) or brokerage (speaking on behalf of the client at home, school, work, and other organizations)
 - b. *Skills factors*—the program staff used directive, solution-focused, structured, non-blaming, or contingency-based forms of communication with the offenders.
- **Appropriate modelling and reinforcement (2)**. The programme staff used a coping model, demonstrated the behaviour in concrete and vivid ways, rewarded the clients for exhibiting the behaviour, or was generally a source of reinforcement rather than punishment for the offender.
- **Effective use of authority (1)**. Staff members kept the focus of the message on the behaviour and not the client performing it. In addition staff were direct and specific concerning their demands, used his/her normal voice, specified the choices with accompanying consequences, gave encouraging messages, supported words with action, used a firm -but- fair approach or respectfully guided the offender toward compliance.
 - b. **Effective reinforcement**—The client was immediately told why the staff member approved of the behaviour or the client was encouraged to think about why the behaviour was desirable.
 - c. **Effective disapproval**—The client was immediately told why the staff member

disapproved of the behaviour or the client was encouraged to consider why the behaviour was undesirable. Staff members who immediately stopped showing disapproval and started showing approval as soon as the client expressed anti criminal behaviour were also coded as adhering to this CCP.

d. **Structured learning procedures**—Staff members who defined the skill, modelled the skill, role played, provided progressively difficult role-playing scenarios or provided feedback regarding the offender’s performance were coded as adhering to this CCP.

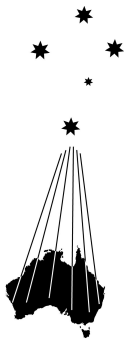
- **Problem solving (3)**. Staff members who identified the problem, helped the offenders implement a plan, clarified goals, evaluated options, generated alternatives, or evaluated the plan were coded as adhering to this staff practice.”

“The ‘core conditions’ of effective psycho-social interventions relate to the ability of practitioners to convey accurate empathy, respect, warmth and ‘genuineness’; to establish a working alliance based on mutual understanding and agreement about the nature and purpose of the treatment; and to develop an approach that is person-centred or collaborative. These findings are similar to the kinds of issues highlighted by Chris Trotter’s work in Victoria and Sue Rex’s in England.”

Styles of supervision also provide an area for consideration of effective practice – ed.

“Typology of Control, Enforcement,

- **Incentive-based compliance** offering a *desirable state or good* at the end of the supervision process - literacy, employability , early revocation of the order, the relaxation of otherwise stringent conditions or demands.



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- **trust-based compliance** - creating *working alliance, a sense of obligation* on the part of an offender, to *honour a promise* made to the supervisor or court.
- **threat-based compliance**- instilling a *fear of dire future consequences* if present arrangements are not complied with.
- **surveillance-based compliance** - instilling an *awareness of immediate, here-and-now regulation*, as a result of being perpetually or intermittently watched, close-up (intelligence-led policing) or at a distance (EM), with ones *trails and traces* retrievable from databases.
- **incapacitation-based compliance** - the actual *deprivation*, not just the *restriction*, of liberty and choice, the complete *inhibition*, not just the required *prohibition*, of desired action. (adapted from Nellis 2004: 239-240)”
- **commitment** - not just going through the motions
- **consolidation** - gains will be short-lived if new learning is not turned into normal behaviour through a process which reinforces and rewards it

Reminders:

Next Meeting:

The first meeting for the year is on at
Victoria Park CJS
12 NOON
Wednesday 7 February 2007

This is our annual planning meeting to set the agenda for the rest of the year.

Your input is valuable.

A light lunch will be provided

Please advise me of your attendance for catering purposes.

Wayne Voak

With a summary of effective case management comprising four elements according to Holt – ed.

“This model is seeking to achieve Holt’s 4 C’s
“**Case Management: The Context for Supervision**” (Holt (2000)

- **consistency** - consistency of message and behaviour, both by the same person over time and by different people working with the same offender at the same time
- **continuity** a reasonable degree of continuity of care and relationship running through the whole of supervision