

THE LAW
OF SOUTH



SOCIETY
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Submission 101

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BY: *S. B. Gould*

Ms C Cornish
Secretary
House of Representatives
Standing Committee on Legal and Constitutional Affairs
Parliament House
CANBERRA ACT 2600

Dear Ms Cornish

Crime in the Community: Inquiry

I am pleased to enclose a submission to the above inquiry from the Criminal Law Committee of the Law Society of South Australia.

Thank you for agreeing, in telephone conversations of 4 September and 23 July 2002 with Michael Dadds of the above Committee, to accept a submission (including attachments) at this time.

I commend the submission to your Standing Committee. I also take the opportunity to refer you to an article in the September 17 issue of The Bulletin which may be of interest to the Committee.

Yours sincerely

Chris Kourakis QC
PRESIDENT

**HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON LEGAL
AND CONSTITUTIONAL AFFAIRS**

**CRIME IN THE COMMUNITY: VICTIMS, OFFENDERS & FEAR OF CRIME
INQUIRY AND REPORT (“the inquiry”)**

**Submission by the Criminal Law Committee of the Law Society of South
Australia (“the criminal law committee”)**

This submission seeks to promote the use of restorative justice principles in dealing with crime, instead of traditional sentencing methods. The submission deals with the following terms of reference:

- fear of crime;
- strategies to support victims and reduce crime; and
- effectiveness of sentencing.

Fear of crime; strategies to support victims

As the ‘inquiry information’ notes¹, a number of factors have been associated with fear of crime. The criminal law committee submits that fear of crime is largely born of:

- media misinformation and/or omission;
- anecdotal hyperbole; and

¹ at 3.15

- a lack of personal knowledge about crime and the criminal justice system; or
- previous (unsatisfactory) experience.

By employing restorative justice principles, victims of crime², instead of being only peripherally involved in a process they may not completely understand, can participate directly. They have an opportunity to express their feelings directly to the perpetrator of the crime; they can voice their fears; tell of the impact the crime has had; ask questions of the offender; seek to understand why the crime occurred; and have a say in how the damage and/or hurt they suffered might be repaired.

Correspondingly, the offender has the opportunity to admit their offence, express their remorse and shame, understand the consequences of their crime, assuage the victim's fears, and do what they can to make things right.

John Braithwaite's emotional tale of two robbers³(enclⁱ) is a powerful example of the potential effectiveness of restorative justice compared with traditional sentencing methods. Understanding, compassion and security replace ignorance and fear. The victim and her daughter are enriched by the process; they have a little more *grace* in their lives.

The enclosed video tapeⁱⁱ documents the remarkable transformation in the lives of the parents of Rosemary Anderson, who was murdered in Western

² victims of crime include those identified at 3.6 of the 'inquiry information', together with other less obvious victims, such as the *offender's* family

³ see attached except taken from the website: <http://www.realjustice.org/Pages/braithwaite.html>

Australia in 1963 aged 17. This transformation was brought about by the use of restorative justice principles commencing with a conferencing session attended by a number of 'stakeholders' and facilitated by restorative justice expert Terry O'Connell. The criminal law committee encourages the members of the standing committee to view the video. It speaks for itself.

The conferencing session was the first time Mr and Mrs Anderson had faced the man wrongly convicted of the murder, John Button, since Rosemary died. Their anguish is palpable. They had been "kept out of the loop" during Mr Button's trial due to the inadequacies of the criminal justice system. They slowly come around to accepting that Mr Button was not responsible for their daughter's murder, a 'truth' they had held for nearly forty years.

Moreover, their hate and loathing give way to insight and understanding as they see and experience John Button and his children as real people who have suffered their own torment. Mr Anderson experiences a "lift" from the conference. Later in the process he and his wife feel a "weight lift from [their] shoulders"; and the viewer can see this! Mr Button begins to understand why the Andersons continued to blame him for their daughter's death. He writes an apology for not having brought Rosemary home. Mr Anderson respects Mr Button's "gumption" in doing so.

The point made by Mr O'Connell is one that the criminal law committee commends to the inquiry: the criminal justice system ought to be more focused on ascertaining and meeting the *human* needs of victims and

offenders. That is what, until the conference, had been missing from this “whole sorry saga”⁴. Imagine the difference in the lives of the Andersons and the Buttons had those human needs been addressed at an early stage in the criminal justice process.

Strategies to reduce crime; effectiveness of sentencing

The criminal law committee submits that restorative justice principles are more effective in reducing recidivism, promoting social cohesion⁵ and producing lasting outcomes than traditional sentencing methods.

The criminal law committee submits that imprisonment does not deter offenders. Further, it is submitted, there is no evidence that increasing penalty levels results in a reduction in crime⁶.

Recent research has, by contrast, demonstrated that restorative justice programs do reduce recidivism⁷:

- a South Australian study identified a high success rate in terms of avoiding post-conference contact with police⁸;
- the key finding of a New Zealand study was that family group conferencing can contribute to reducing the chance of reoffending even where other important (adverse) factors are considered⁹;

⁴ Terry O'Connell

⁵ which is said to act as a prophylactic against much criminal conduct: R Sarre, “Restorative Justice: Translating the theory into practice”, (1999) 1 UNDALR11

⁶ For academic support for these propositions, see, eg. M Bagaric and K Amarasekara, “The Errors of Retributivism”, [2000] MULR 5, @8.8 (taken from the website: <http://www.austlii.edu.au/au/journals/MULR/2000/5.html>)

⁷ “Restorative Practices and Reoffending”; <http://www.restorativejustice.org/rj3/Feature/July02/recidivism.htm>

⁸ Hayes, Hennessey and Kathleen Daly, 2001: “Youth Justice Conferencing and Reoffending”; referred to in “Restorative Practices and Reoffending, *ibid.*”

- a Canberra study found that diversionary conferences resulted in a 38% decrease in reoffending for young violent offenders, compared with court outcomes¹⁰; and
- a Canadian study reported a significantly lower recidivism rate by participants in a restorative justice program compared with offenders who either went to prison or were placed on probation¹¹.

The department for Correctional Services in South Australia supports and encourages a restorative approach to crime, as do both the Victims of Crime Service and The Offenders Aid and Rehabilitation Service. The department for Correctional Services does so because such an approach “has the potential to make a significant contribution to the reduction of crime, the rate of recidivism and the incidence of imprisonment, which often occurs at the cost of other needs of the community.”¹² The department prides itself on “[contributing] to community safety by encouraging mutual respect and shared responsibility by all parties”¹³ (our emphasis).

Conclusion

The criminal law committee submits that restorative justice programs offer a reliable and cost-effective means by which to reduce the extent, impact and fear of crime; and an effective measure by which to counter and prevent

⁹ Maxwell, Gabrielle, and Allison Morris, 2001: “Family Group Conferences and Reoffending” reported in “Restorative Practices and Reoffending”, *ibid*.

¹⁰ Sherman et al, 2000: “Recidivism Patterns in the Canberra Reintegrative Shaming Experiment”, reported in “Restorative Practices and Reoffending”, *ibid*.

¹¹ Bonta, James, Jennifer Rooney, Suzanne Wallace-Capretta, 1998: “Restorative Justice: An Evaluation of the Restorative Resolution Project”: reported in “Restorative Practices and Reoffending”, *ibid*.

¹² Department for Correctional Services website: <http://www.corrections.sa.gov.au/restore.htm>

¹³ Department for Correctional Services website, *ibid*

crime. The criminal law committee accordingly commends such programs to the inquiry.

The criminal law committee is grateful for the opportunity to make this submission. It would welcome the opportunity to respond to any queries the inquiry might have.

ⁱ copy John Braithwaite lecture
ⁱⁱ video tape "Australian Story" ABC TV 5 August 2002