

Outcare AGM - Wednesday 9 October 2013

The Barry Cable Room - Paterson's Stadium, Subiaco

Judge D J Reynolds

President of the Children's Court of Western Australia

Firstly, I wish to pay my respects to the traditional owners of this land - the Noongar people and to the Elders past and present.

Thank you Rev Sealin Garlett for your very kind welcome to country.

Can I tell you that I am a Wembley boy. In my youth I used to ride my bike to here, Subiaco Oval as it was then known, arrive at three quarter time, get in for free, watch the last quarter, and then after the game pester the players for autographs and have a kick on the oval.

All of that leads me to say that I also wish to pay my respects to Graham (Polly) Farmer, Syd Jackson, Barry Cable, Pat Astone, Harry Little, Ted Kilmurray, to name a few, and all other great WA Aboriginal footballers who graced this haloed turf and displayed their skills.

Thank you to Outcare for the honour of speaking with you tonight. I feel like I am probably preaching to the converted and so please don't be offended if I say something that you already know.

I am currently the President and only full time Judge of the Children's Court of WA. I have been the President since March 2004. The Court has four full time magistrates and one part time magistrate based in Perth. All magistrates resident in various country regions across the State, exercise Children's Court jurisdiction in addition to their other duties which are mainly in the Magistrates Court dealing with adults.

In relation to criminal matters, subject to one qualification, the Children's Court of WA has exclusive jurisdiction to deal with all charges for all kinds of offences for children aged between 10 to less than 18 years of age. The qualification to that is unless the child elects to have the charge heard by a Judge and Jury. A child can only elect to have a charge heard by a Judge and Jury if the charge is of a kind that an adult in an adult court could make that election. Generally this right of election is only for the more serious kinds of criminal offences. If a child makes that election then the matter would be heard in the Supreme Court or the District Court depending on the level of seriousness of the particular offence(s) concerned.

It is very rare for a child to elect to have a hearing before a Judge and Jury. So there are no juries in the Children's Court. Hearings are conducted before a

Judge or Magistrate alone and it is the presiding Judge or Magistrate who ultimately decides guilt or innocence.

The Children's Court has a criminal jurisdiction and also a civil jurisdiction. In the civil jurisdiction, the Court hears and determines applications for Protection Orders. That jurisdiction is often referred to as the care and protection jurisdiction. It concerns applications for children to be removed from parents and placed under the care of the State.

As mentioned, I am the only full time Judge in the Children's Court. I deal with all the top end crime e.g. murder, manslaughter, and the most serious aggravated armed robberies, grievous bodily harms, burglaries and sex offences.

I sit on hearings (without a jury) and determine guilt or innocence. I also sentence young offenders.

The main piece of legislation for dealing with children in relation to offending is the Young Offenders Act 1994. It sets out the objectives and principles to be applied when sentencing children and the various sentencing options. There is an emphasis on rehabilitation and immediate detention is the sentence of last resort.

Sentencing

Can I say at the outset, that from my experience, while sentencing adults and children is a difficult task, I think that sentencing children is generally far more difficult than sentencing adults.

Some of the reasons for that are:

- The sentence can have a long term and significant impact on the life of the young person.**
- The prospects for rehabilitation will likely never be better and conditions of community orders need to be framed to maximise the prospects of rehabilitation.**
- The need to involve family and to provide them with the necessary encouragement and supports to support their child.**

I have yet to meet a parent who does not want the best for his or her child.

Sentencing can be particularly difficult in the Children's Court. I am usually confronted with having to reconcile extremely serious factual circumstances for the offending with personal circumstances of the young offender which include extreme neglect and abuse, no positive role models, poor education, little or no sense of identity and self-esteem, and a substance abuse problem.

What I regard as essential basics in sentencing are often not referred to in texts and articles on the subject.

Sentencing reasons are the means of communicating to the young offender, his or her family, the victim and the community, how and why you have reached the sentence imposed. What you say and how you say it is very important. In addition to the offender, victims need to hear and know that you have thought of them.

In the case of the young offender it is essential that you communicate your reasons with him or her. It must be done in a way they can easily understand, particularly bearing in mind that sentencing is a stressful time. It is usually best done in the form of a conversation rather than talking at the child.

It must be done in a way that shows the young person that you genuinely care.

It must also be done with an understanding that the sentence and the sentencing remarks are a very important part of the first stage of the rehabilitation process.

For young persons to take any notice of what messages you want to pass on to them, and to then try and act on what you have said, it is necessary for the young person to feel that you are treating them with dignity and respect, and that you care about them, their situation and their future.

It is important not to crush a young person's spirit with unduly critical sentencing remarks or any other way. That has already happened. They invariably appear with little or no sense of identity, self esteem and hope. Make the distinction that while their offending was bad, they are not bad. To reasonably expect a positive response, it is necessary to try and give them a good feel about themselves and a positive sense of self belief.

As Charles Dickens wrote in Great Expectations 'In the little world in which children have their existence, whosoever brings them up, there is nothing so finely perceived and so finely felt as injustice'.

Young offenders sentenced by the Court, whatever the sentence is, need to feel that they were treated fairly by a Judge who cares about them and their future. Whatever their level of education and academic ability, they will be quick to pick up on whether or not you care about them.

What level of respect and connection a young person gives me and the Court, and what level of commitment they choose to make for their own rehabilitation will also depend very much on the mentoring and program supports that service providers can provide. That is why the Court needs access to prevention and

diversion programs of the sort provided by Outcare and others. It is in everyone's best interests.

It is also essential that when the hand is extended out to help a young person and supports are offered, that those supports are actually given. Trust is such an important ingredient in every good relationship.

Over the past 5 years:-

- **Criminal lodgements in the Children's Court across the State have decreased by 37%.**
- **Applications for protection orders have increased by 30%.**
- **The fall in Perth is 36%, so in line with the State average.**
- **No major State location has seen an increase in criminal lodgements.**
- **Robberies are down by approximately 11%.**
- **Burglaries are down by approximately 25%. But there has been a pick up from the downward trend over the last year.**
- **Personal violence offences are down by approximately 40%.**
- **Sex offences are down by about 30%.**

But even so:

- **The number of young offenders sentenced to a term of prison or detention over the last 5 years has remained relatively stable.**

- **Anecdotally, the seriousness of the offending (the circumstances of the offending) and the complexity of the offenders has increased.**

It is hard to pinpoint any one reason why these reductions have occurred. It is probably because of a number of reasons including:

- (1) **Police are getting more involved in the prevention and diversion space, which, in my view, is great to see.**

The Youth Liaison Officers in Police are focusing on recidivist young offenders and their siblings and connecting them to programs, and bail conditions are being more strictly managed. In addition to having a rehabilitative effect, that can have a deterrent effect.

- (2) **Police operate within stricter guidelines on whether to charge or not.**
- (3) **I think that it also needs to be said that in Western Australia, as elsewhere, there are many non-government agencies, including Not For Profits, that have entered this space with professionally sound and committed people and good programs which are making a very positive contribution.**

Outcare is one of them.

More referrals to Juvenile Justice Teams is not an answer because referrals have gone down over the last couple of years.

Brain science

Research in brain science is now helping us to understand why teenagers and young people often make bad decisions.

The brain consists of four parts. One part, the frontal cortex or frontal lobe of the brain, deals with empathy, controls emotions, and provides the capacity to understand, including understanding consequences, and the capacity to think. This frontal cortex part of the brain undergoes renovations during the years of adolescence and sometimes until the mid 20's. During this stage of renovation, another part of the brain provides capacity in relation to emotions. This is a reason why in some instances an 11 year old can understand something better than a 15 year old.

Other interesting research in relation to the brain has shown that alcohol has a significant negative affect on the pre-frontal cortex as well as the hippocampus area of the brain which controls memory. The brain is always going to sacrifice the frontal cortex first, which controls reasoning and thinking, rather than another section of the brain which controls the basic necessities of life, such as keeping the heart beating.

Research also shows that the first three years of a young person's life is significant in relation to the development of the frontal cortex. It is continuously gathering data to assist in its development. It is very important for the healthy development of the frontal cortex that the young persons environment is calm and stimulating. Exposure to violence in these early years adversely impacts on the development of the frontal cortex.

On current research, alcohol clearly causes more damage to the brain than cannabis, but it being important to also say that cannabis causes damage. Indeed, of all substances usually involved in substance abuse, alcohol causes the most damage to the brain other than by pure cocaine, methylamphetamine and heroin.

All of this research is very interesting in relation to dealing with children. If anything, it provides a sound scientific basis for why a particular set of objectives and principles should apply when dealing with children and not adults. Children are not small adults. It also provides a sound scientific basis for early intervention and for the proposition that prospects of rehabilitation are generally greater for children and young people than for adults.

The Banksia Riot

The riot at Banksia Hill Detention Centre occurred on the night of January 20th this year.

It is a low point in the history of youth justice in this State.

Early in the morning of 21 January, 73 young male detainees were transferred from Banksia to Hakea Prison. On 7 and 8 February more followed taking the total number at Hakea Prison to about 140 or thereabouts. Under 14 year olds and girls stayed at Banksia Hill Detention Centre.

The riot followed Rangeview Remand Centre closing in October 2012 and remand detainees held there, being transferred and held at Banksia Hill Detention Centre.

In the recent Office of Inspector of Custodial Services Report, Professor Neil Morgan has made numerous findings and recommendations in relation to the riot with which I respectfully agree.

Contributing causative factors for the riot include:

- 1. Failures of management and poor planning in relation to the merger of Banksia and Rangeview.**
- 2. Overcrowding in Banksia.**
- 3. Serious staff shortages at Banksia.**
 - Very high workers comp numbers.**

- **Absenteeism on rostered shifts.**

The combination of overcrowding and staff shortages lead to excessive lockdowns and also an absence or lack of program delivery.

- 4. Repressive regimes for detainees in Banksia. There was no fair and proper reward regime in place for behavioural management. Regimes in place were overly harsh.**
- 5. The time of the riot was in the heat of summer and cells had no air conditioning.**

To be frank, it was no surprise to me that there was a riot. I had previously expressed concern about harsh regimes and the need for staff training. That said, the scale of the riot was greater than I thought would be the case.

In short, systemically, the culture at Banksia was characterised by locking up rather than rehabilitation.

There are many good Youth Custodial Officers (YCOs). They were as disappointed as others, including me, by what happened. In the sequel they have shown great resilience.

All of that said, some of the serious issues arising from the riot include:

- 1. The slow response by the Department in the weeks and months which followed.**
- 2. For about 3 weeks immediately following the riot, the detainees at both Hakea and Banksia were locked down for up to 23 to 24 hours every day. There is, regrettably, good reason to conclude that there was a punitive purpose for that. The Court has reached that conclusion.**
- 3. The need to rethink how you manage behavioural change, particularly bearing in mind that you are dealing with many children with mental health problems who have poor coping skills and lives characterised by neglect and abuse.**

It is true that these kids are hardened, but in my view they are no harder than kids used to be.

The harsh detention regimes contributed to making them harder.

- 4. A key purpose of detention is to rehabilitate. To not properly try to achieve that purpose and to release children back into the community more hardened, more angry and more frustrated, is clearly not in the best interests of the community. Indeed it actually increases the risk to the community rather than decreasing it and so the community thereby rendered more vulnerable.**
- 5. There needs to be programs to enable YCOs to work with children to help them establish positive relationships with the children.**

Relationship building is a key component in the context of rehabilitation.

I'm not a fan of the 12 hour shift. I much prefer 8 hour shifts because they are much better for establishing relationships with the children.

6. The prison culture has dominated Youth Justice. That must change.

One way to achieve that may be to remove Youth Justice from the Department of Corrective Services (DCS). With about 4900 or so adults in custody, and only about 160 or so children in detention, it is not surprising that an adult prison culture shadows Youth Justice.

In my view the adult model is minimal on program intervention and overly heavy on compliance. That approach has filtered down into Youth Justice. It needs to be replaced with a culture of rehabilitation, and prevention and diversion.

The essentials for a good plan for a young offender

1. Need for punitive requirements.

Punishment is provided as an objective of sentencing in the Youth Offenders Act 1994. Particularly for serious offending, the community reasonably expects and looks to the Court to impose some level of punishment.

2. Need for therapeutic requirements.

The sentence will need to reflect the relative weightings for each of these two requirements. The weighting or emphasis will depend on the

seriousness of the offence and the circumstances of the young offender. That is what judging is all about. Sentencing is not a scientific or mathematical exercise. It is about considering everything overall, facts and law, and exercising good, sound judgment to reach an ultimate decision.

In the case of detention, being sent to detention is the punishment. Children are not sent to detention to be punished. When in detention, their therapeutic needs should be met.

In those cases where a community order is imposed, there should be an emphasis on the therapeutic needs of the young person being provided, so that the underlying causes of the offending are addressed.

Therapeutic needs include:

- Family involvement and capacity building;**
- Mentoring;**
- Cultural programs to assist in the young person gaining a sense of identity and positive self-esteem;**
- Education - mainstream/alternative/vocational training;**
- Mental health needs, if any; and**
- Risk factors need to be addressed e.g. stable accommodation, peers, substance abuse.**

Given that about 75% of children in detention are aboriginal children, aboriginal mentors and cultural programs designed and delivered by aboriginal people must be included in any proposed solution. A knowledge of and positive sense of self identity and connection with culture are fundamental to the rehabilitation of a young aboriginal person.

- 3. Goal setting and time frames need to be in place.**

Interventions should commence immediately or at least within a very short timeframe.

- 4. Programs need to have longevity - well beyond the term of court orders.**

Layers of complex problems are not solved within short periods of time.

What does Outcare do so well?

- 1. Operationalise – It is one thing to have ideas and propose solutions and it is another to be able to put an action plan together and actually do it. Outcare has the ability to operationalise and thereby produce successful outcomes.**
- 2. Personnel – staff are very passionate and expert at what they do.**

Without in any diminishing the important role of any person, I wish to particularly recognise Sam Mesiti. He is a champion of youth justice and Outcare and the community is very lucky to have him.

Shudder at the thought, but if we had a cloning machine, then I think that we should feed him through it and press the button which says multiple copies.

3. Good Programs – the variety of programs it delivers include:

- Live Works - is based on a holistic model and provides vocational skills and a supported pathway to employment and community acceptance.**
- BRASAC - Breakaway Respect and Self Awareness Camps to provide young people with connection to culture and community.**
- Artworks program**
- Midland Midnight Basketball Program**
- The World Square Primary School Mentor Program**
- The Cooking Program**
- Say Nay to Crime**
- BIDI Program**
- and others.**

- 4. Outcare's program delivery is based on relationships and connections. Inclusion - ownership - empowerment - connection - are all essential concepts in this space.**

Regrettably, when I look at some government agencies in this space, I see a serious disconnect between senior management and policy people on the one hand and passionate people on the ground with the responsibility of delivering the services on the other. There is too much detailed policy, process and risk aversion, made even worse when all of them are mixed up in a Complicator at a head office. In my view we need to get back to the basics and do them well. I feel sorry for people on the front line who are expected to deliver services when they are not properly resourced and supported with programs or the means to develop them.

All levels of organisations involved in service delivery should have some direct connection with the actual service delivered which includes contact with the children. Management should employ the right people to design and deliver services and then give them the necessary resources. They should also be given some autonomy and trust to make good judgments to make things work along the way.

- 5. Outcare is heavily into collaboration and partnerships. Stakeholders are from the Government, State and Commonwealth, and corporate sectors.**

This is good for sustainability. It also saves young people with Outcare from a lot of duplicated effort going from one agency to another.

- 6. Outcare employs 7 aboriginal people. That is a recognition that aboriginal people are necessary to assist aboriginal children learning their own culture. Culture, and language, song and dance, as part of culture, is so important.**

That said, Outcare has aboriginal children and non-aboriginal children side by side in their programs. In my view that is the way to go. Walking and working together but recognising that each individual has his or her own particular characteristics and needs. The particular needs for aboriginal children can be provided by employing aboriginal people and partnering with aboriginal people and aboriginal organisations.

For those of us who have been fortunate enough to holiday overseas, you may have walked past primary schools in various cities and towns in various countries. I am not sure whether you have had the same experience as me, but one thing that has struck me is that wherever in the world you may be, and whatever the ethnic makeup of the children in the playground, the sound of children playing and talking and laughing with each other is all the same.

Can I give a more specific example to support the point that I wish to make. When I was asked to give this presentation, I was lucky enough to

be in Spain, in Madrid. I was walking in a large park in Madrid and noticed a large group of primary school children on an excursion. Two young children of about 7 years of age walked up to a bubbler to get a drink. Neither of them was tall enough to reach the top of the bubbler to put his mouth near where the water was coming out. One of the small boys was fair skinned and probably of Spanish origin and the other was dark skinned and probably of African origin, or at least from an African parent. Each of them took it in the turns to lift the other one up to be able to get a drink from the bubbler. Both walked away from the bubbler hand-in-hand, with their thirst quenched. I watched these two young boys and thought to myself 'wouldn't it be great if adults behaved like that'. For me, it was a simple but powerful example, that walking and working together is the way to go.

We need organisations like Outcare working in detention centres and also helping to reintegrate children from detention back into the community. We also particularly need Outcare working within the community in the prevention and diversion space.

It seems to be a global rule of thumb that about 20% of the offenders commit about 80% of the crime.

I have frequently commented on the need for early intervention, i.e. well before the age of 10 years of age which is the age of criminal responsibility. Indeed I think it starts from conception and FASD is but one reason why that must be so.

That said, I am of the firm view that we need to target high end offenders, and also children exposed to extreme risks of offending. I say that knowing that they will be the most difficult cases. This is where the greatest gains are to be made. When doing so, the needs and strengths of this particular group can be identified in a non-judgmental way and the necessary solutions provided in a positive and sensitive way, such that there is no negative branding of the young people in this group. Anyway, surely we could live with that, rather than an innocent member of the community becoming a victim of crime and a young person being sentenced to detention for several years.

Outcare takes the hard cases. I know that they have some great successes. That is great for the children and also the community.

Having said all of that, can I comment briefly on the concept of Justice Reinvestment.

It is a concept that was initially developed in California in the USA. It has gained traction and had great success in a number of States in the USA, including Texas.

No offence, but if Texas can embrace it, then surely we can.

I am pleased to note that the Minister for Corrective Services, the Hon Joe Francis, has commented on the need to approach Youth Justice differently. He has highlighted the unacceptably high financial cost of the current system and the need to address the underlying causes of offending. I hope he receives universal support.

In his report titled '*Justice Reinvestment: a new solution to the problem of Indigenous over-representation in the criminal justice system*' dated 20 March 2010, Mr Mick Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, of the Australian Human Rights Commission, said:

Justice reinvestment is a localised criminal justice policy approach that first emerged in the United States. Under this approach, a portion of the public funds that would have been spent on covering the costs of imprisonment are diverted to local communities that have a high concentration of offenders. The money is invested in community programs, services and activities that are aimed at addressing the underlying causes of crime in those communities.

Mr Gooda went on to say:

Therefore I think we need to change the narrative from one of punishment to one of community safety. Funding people to go to prison might make people feel safer, but a far better way would be to stop the offending in the first place, and Justice Reinvestment provides that opportunity. I reckon it makes common sense to prevent offending rather than just build more and bigger prisons.

Justice reinvestment still retains prison as a measure for dangerous and serious offenders but actively shifts the culture away from imprisonment and starts providing community wide services that prevent offending.

Justice reinvestment has a very strong community focus. It recognises that incarcerating or otherwise detaining a large proportion of the population weakens the community, creating the conditions for further crime.

With great respect, I note and agree with what Mr Gooda has said.

The name “Justice Reinvestment” is not strictly apposite in the sense that you cannot shift expenditure from one part of a balance sheet to another on day one of a new approach. There needs to be some new money put up to kick start the new approach. It is not a matter of just flicking an accounting switch. The economic savings will come in time.

Whatever name is used to describe the new approach, there is no doubt on what it involves, namely investing resources in community programs to address underlying causes of crime. By doing that, the expenditure for prisons and detention centres would decrease.

In a way it is sad that as a community we are not prepared to pursue good social policy objectives unless we can show that we are saving dollars when doing it. When saying that, I mean what price do you put on community development and humanity and the pursuit of social objectives such as inclusion, longevity of life, quality of life, and building capacity in people to dare to hope and supporting them to realise their hopes and dreams. Specifically in relation to children, every child in our community should be reasonably supported to realise his or her potential.

Anyway, understanding that we live in a world of commercial reality and that there needs to be a good economic argument to support this paradigm shift in the justice space, the facts and research are there for a compelling economic argument to be made.

In round figures, it costs about \$240,000 per annum or \$650 per day to keep a child in detention. Despite that, we have high recidivist rates. Over the last two decades, imprisonment rates have significantly increased. The current approach

is not working. It is not making our community a safer place. Albert Einstein once made the point that if you keep doing the same thing over and over again then you can't expect different results. We need to change. We can do much better.

Several years ago our State allocated about \$650 million for additional capital expenditure for the prison system. Imagine the community programs that could be delivered for a fraction of that amount.

The economic benefits of a “Justice Reinvestment” approach are not limited to prison and detention expenditure. The economic benefits would also extend to include:

- 1. a reduction in the cost of crime to the community;**
- 2. a reduction in welfare payments; and**
- 3. an increase in the numbers of people in the workforce experiencing the dignity of work and also paying taxes.**

It should also be mentioned that the consequential economic benefits will rollover into the next generation, and the next, and so on, such that the economic savings will be exponential.

Of course, in addition to the economic benefits, there will importantly also be the social benefits as previously mentioned.

I am sure that we have all experienced cases which have taught us a lot, but one thing especially, and that is:

'Never give up on a young person.'

Can I leave you with an observation made by Nelson Mandela in 1985:

'There can be no keener revelation of a society's soul than in the way it treats its children and young people.'

Thank you again to Outcare and to all of the other organisations and people who are here tonight and who are involved in supporting youth at risk and the community. I wish you all the best in your very important work.