

**INQUIRY INTO INQUIRY INTO THE PROHIBITION ON
THE PUBLICATION OF NAMES OF CHILDREN INVOLVED
IN CRIMINAL PROCEEDINGS**

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**SUBMISSION TO NSW STANDING COMMITTEE ON LAW AND
JUSTICE. INQUIRY INTO THE PROHIBITION ON THE
PUBLICATION OF NAMES OF CHILDREN INVOLVED IN
CRIMINAL PROCEEDINGS.**

**Robert Taylor
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Homicide Victims' Support Group (HVSG)**

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PREAMBLE

My name is Robert Taylor, and I make this presentation as President, Homicide Victims' Support Group (Australia) Incorporated.

On 21 March 2003, my wife Rosalie and my late son, Simon, were victims of a violent robbery which led to the murder of Simon Taylor, the traumatising of Rosalie Taylor and a serious stab wound to my chest.

The perpetrators were brothers. The elder brother was aged 20 years at the time of the offences. The younger brother was aged 17 years and 10 months at the time of the offences. The brothers were tried and then sentenced on 25 February 2005 by the Honourable Justice Levine. As a juvenile under the law it is the younger brother's sentence that is of relevance to our Submission:

- Guilty to robbery armed with an offensive weapon, contrary to section 97 (1) of the Crimes Act 1900: *"Imprisonment for a non-parole period of 3 years to commence on 25 March 2003 and expire 24 March 2006 with a balance of term of 1 year and 1 month to commence 25 March 2006 and to expire 24 April 2007"*
- Guilty of manslaughter, contrary to section 18 (1) (b) of the Crimes Act 1900: *"Imprisonment for a non-parole period of 3 years to commence 25 March 2003 and to expire 24 March 2006 with a balance of term of 2 years and 3 months to commence 25 March 2006 and to expire 24 June 2008"*.
- *"His Honour directed that the non-parole period be served in a juvenile detention centre and recommended Cobham. His Honour directed that it be a condition upon his release on parole that he be supervised as to his health, psychological treatment and continuing further education"*.

My perspective in this Submission must be partly conditioned by the events of this case: events from which I, my wife, my daughter and my son-in-law (as direct victims) walk a long, painful road to recovery.

My perspective is also conditioned by my office as President, HVSG, where I am privy to the many horrifying stories of our Group's members: some of these also victims of juvenile criminals. You will hear one of these from my colleague David Berret.

Finally, my perspective is conditioned by my personal circumstances. I have been blessed to be born and raised in this wonderful country of ours. I have been educated by great teachers, in the way of life of this land, since my first day in kindergarten. I am a practicing Christian and all that this implies.

MADNESS ON THE STREETS

There are forms of madness on the streets of Sydney today as there are, to a much greater extent, in most of the cities of the Western world. These forms of madness range from isolated acts of violence by mentally ill persons to the structured violence of street gangs who recruit young boys and girls from dysfunctional families: their recruitment and

training being basically no different to that used by warlords in other violent parts of the world.

In December 2005 I attended a *Quadrant* Dinner where the guest speaker was Tim Priest, a retired senior detective. In the blunt language of a policeman he described to us the situation of street violence in Los Angeles and Paris:

“There are no-go areas in Paris for police and citizens alike. The rule of law has broken down so badly that when police went to one of these areas recently to round up three Islamic terrorists, they went in armored vehicles, with heavy weaponry and over 1000 armed officers just to arrest a few suspects.”

And again,

“When William Bratton, the most innovative police commissioner of modern times, took over as Los Angeles Police Chief recently, he declared the gang problems there a national security problem, so serious that it was beyond the resources of the state of California. There is a lesson for us there, but we have to learn quickly, or the problem will overtake us.”

These are very strong examples of gang violence, but ones which could be repeated in any major Western city at any time, in a world where there are large and constant movements to them from war torn and economically and socially failed regions of the world. Sydney is not immune from these trends. Also violent gangs may not have the formal structures of those in Paris or Los Angeles. They may only consist of two or three persons. But the pathology of life in the gang would be similar. So also would be the life histories of its members:

- Recruited in early ‘teens
- Served an apprenticeship which would habituate the person to violence
- In the context of NSW when the person reaches legal adulthood at 18 years he may have fully earned his spurs in crime and violence.

Data on juvenile crime in NSW is notoriously poor. But we would all probably agree with a 1996 review of juvenile crime statistics in this State, which noted:

- *“the overwhelming majority of juvenile crime is not serious*
- *“juvenile offending is generally not violent in nature...*
- *“is directed at property*
- and *“...is not organised”*

(Source: Juvenile Justice: Some Recent Developments. Briefing Paper No. 05/ 1999. Honor Figgis)

But there is that significant percentage of juvenile criminals, best documented in police files, who need special consideration. They are ones with violent life histories which may have begun as early as 9 or 10 years of age.

The social costs of a crime of violence can be immense, where the crime itself has a ripple effect through a whole community, gathering in new victims as the ripples spread.

When the perpetrator of a violent crime is an adult, the justice system nowadays generally ensures that the sentence reflects the damage done to the community. In the case of a juvenile committing a similar crime (See Preamble above), every effort is made by the juvenile justice system to enable the criminal to rehabilitate himself or herself. And this is as it should be in an enlightened society such as ours.

THE QUESTIONS PUT AND CONSIDERED BY HVSG

Question 1. “ How would naming influence a juvenile offender’s rehabilitation?”

Detailed ethical guidelines are in existence for Australian newsrooms of newspapers, radio and television. Publication of the identity of juveniles involved in criminal court proceedings is, in most cases in NSW, scrupulously restricted. But do the authorities not know that the juvenile offender’s peers around him, or indeed his age cohort around the world do not read newspapers, listen to radio news or watch news programs on television? Yet they communicate rapidly and comprehensively by a whole variety of electronic devices. For good or ill, news of a violent crime and the identity of the supposed perpetrator (including hearsay, rumour and all kinds of distortions) is around the world within hours. With today’s technology the violent juvenile criminal has no anonymity amongst his peers or – if the violence is newsworthy enough – to his age cohort around the world. The most dramatic example of this occurred in the Cronulla Riots and their aftermath. I would urge the Standing Committee to be briefed by the NSW Police on how the gangs communicated, in the events which took place then. In this context no one had anonymity except that imposed on the ethics and law-bound public media.

If this redundancy is accepted then the issue of the juvenile offender’s rehabilitation becomes clearer. The juvenile offender’s rehabilitation may take years after sentencing, years in which the offender will mature, hopefully, into a law abiding and useful adult. But the naming of the offender directly after conviction (and through due process) would have the following practical beneficial effects:

1. It would alert the community to the fact that a crime of violence has been committed in the community.
2. It would give accurate information to the public, through responsible and ethical media channels, on the nature of the crime and the criminal.
3. It might enable the police to identify new witnesses or other co-offenders. Thus this process of naming focuses on improving the community’s response to violent crime.

Question 2. “Are you aware of any evidence to suggest that naming juvenile offenders is an effective way to reduce their likelihood of re-offending?”

I would respectfully suggest that this question is a further redundancy, as it is linked to Question 1.

First, however, I would like to comment upon the dearth of public information on juvenile offenders who are in rehabilitation programs in NSW at any given time. Because of this my answer has to be that I have no research evidence to answer this question. Also, I would suggest that this question can best be answered by those managing the rehabilitation programs. Their answers could then be tested against reliable performance indicators.

Second, in my answer to Question 1, I pointed out that the naming of the juvenile criminal is largely irrelevant in the rehabilitation process that follows the sentencing. Therefore judging the likelihood of the criminal’s re-offence is one more performance indicator of the rehabilitation of the criminal – which really cannot be applied until the rehabilitation process is completed.

Question 3. “ How would naming juvenile offenders affect the rehabilitation of victims?”

A crime of violence is a terrible event. In a peace-loving community such as ours it is like ripples in a pond: creating multiple victims as its impact works through the community. I have attached to this Submission my personal Victim’s Impact Statement, to illustrate what effect a violent crime has on a direct victim. But there are always many, many more victims, both direct and indirect, to a crime of violence. Take the general case of the Cronulla Riots: there were thousands of victims. Australia’s world reputation as a place of peace was itself a victim.

In the case of any crime of violence in the community the justice system needs to publicly reveal the identity and purpose of the criminal, in the interests of equity to the many, many victims of that crime.

Question 4. “ Do you think that naming juvenile offenders is a way of making parents more responsible for their children’s behaviour?”

Most studies of the life histories of violent juveniles will find some degree of parental culpability for the behaviour of that juvenile through his or her life. But for the violent crime itself, no parent can be held responsible. What follows after sentencing is the responsibility of society only. It is then up to the juvenile justice system in that society to determine what role, if any, the parents might play in the juvenile’s rehabilitation.

THE HVSG SUBMISSION

The HVSG is well aware of the *Doli incapax* principle: a presumption in common law that a child under the age of 14 is not capable of committing a crime because he or she does not know that the criminal conduct is wrong.

We are also certain that the learned Members of the Standing Committee will have read the liberal philosophers, such as John Stuart Mill, who did much to shape the practice of the rule of law in our society. For example, Mill determined that those who are in the care of others, due to young or very old age, or physical or mental incapacity must be protected against their own actions as well as against external injury (See J S Mill's famous essay, "*On Liberty*")

We submit that the naming of a juvenile offender in a crime of violence – any crime of violence – forfeits the offender's right to anonymity on the following grounds:

- Communications technology is now such that true or false knowledge of the offender or the offence will be rapidly known to a wide circle of the offender's peers and age cohort.
- It would have the practical value to the police and other authorities in the management of the offence to present accurate information on the offender and the offence, as soon as possible. This can be done by due process.
- The issues relating to an offender's subsequent long and expensive rehabilitation are separate from the act of revealing the offender's name.
- All crimes of violence create long lists of victims, like ripples in a pond. In the interests of justice, they need to know the identity of the person who created their victimhood.

THE HVSG SUPPORTS THE NAMING OF JUVENILES THUS:

1. The juvenile, regardless of age, should be named, if that person is bailed or convicted of murder.
2. The juvenile aged 13 years and above, should be named, if that person is bailed or convicted of a crime of violence, designated by the Crimes Act of this State.
3. The juvenile aged 13 years and above, should be named at the discretion of the Court, if that person is bailed or convicted of other crimes designated by the Crimes Act of this State.

Victim Impact Statement by Robert and Rosalie Taylor and Jane Chapman (sister of Simon Ross Taylor)

1. Family Victim:

Robert John Taylor – Father

Primary Victim:

Simon Ross Taylor

Names of Offender:

Charges to which the sentencing relates:

Guilty of inflicting grievous Bodily harm to Robert John Taylor at Glebe on 21st March 2003 by wounding and puncturing of the right lung.

Sentencing Court:

Supreme Court of New south Wales
Darlinghurst.

Sentencing Date:

Nature of Relationship to the victim: Father.

2. Details of Impact of Death of Primary Victim.

As a primary and a family victim I would like to relate to you the personal harm and continuing mental anguish I have suffered since the event of March 21 2003 in two parts.

Preamble.

Before doing so I would like to refer to the atmosphere in the car on the drive to the meeting with my wife, our son and myself. The three of us were in a very jovial mood, as throughout the trip we had been discussing the details of the 35th wedding anniversary celebrations my wife and I intended to have at our home the

following month. As with any family celebration, Simon and Jane, our daughter, were always an important part.

We discussed with Simon the final guest list and the catering arrangements. There was much frivolity between us all, especially as Simon said to us that he'd like to give us a 'toast' on the night and that it would be a 'real beauty'. We started discussing all the anecdotes he would tell our friends and family of our life together. As you can imagine there was much laughter and love in our reminiscing, in the car, as we made our way to the meeting.

Physical and Associated Mental Injury Suffered.

I remember very clearly all the events of the evening of the 21st, as the court has heard, but my first recollection after being placed on the ambulance stretcher is the breath of a doctor on my face. As I opened my eyes, I heard him say something like 'good, he's back with us'.

The events in the hospital are very hazy. However I am aware that I was attended to around the clock by nursing staff for a number of days and was not allowed to eat or drink.

I am greatly troubled that, due to my injury, I was unable to identify my son's body. I was also unable to assist my wife, my daughter and my son-in-law in making the arrangements for my son's funeral. It was only some days later that it was possible for me to see the body of my son.

After I was discharged from hospital and allowed to go home, the Medical Officers from the hospital issued instructions on the care of the puncture in my torso and the puncture of my lung. I did reluctantly allow my wife to dress the wound to my torso without observing the process, as I was unable to view it for many many months. After each shower I would deliberately avoid looking at the area. Many waking hours I had trouble reconciling with the fact that I had had this injustice done to me for no conceivable reason and the mere thought of looking at the wound repulsed me.

I experienced months of lack of sleep and when I do sleep now I relive the experience. Details such as my waking in the hospital and then hearing from a surgeon that they could not save my son's life. One of the most agonizing and painful nightmare recollections is of the gun being held at the bridge of my nose with words of blasphemy being yelled at me and with demands of what the man with the gun was demanding I do. I have found assistance by having medication prescribed for me by my General Practitioner. The medication allows me some relief.

In mid October 2003 I was finally forced to look at the wound on my chest. At this time I had to undergo open heart surgery for a quintuple by-pass. The

surgeon has stated, it is quite likely that in years ahead I would have to undergo the same surgery: but the stress and trauma of losing my son so violently and the ensuing and continued involvement in this case, greatly accelerated the deterioration in my condition.

To this day, I still relive the events of March 21 2003, both in waking hours and more often in nightmares reliving the tragedy. When I settle down to watch a programme on television or attend the theatre and I am confronted with similar actions as I experienced on 21 March 2003, I either leave the room, turn off the channel or in the case of the theatre leave. I am at a point now that I do not like going to the theatre unless I have made necessary enquiries as to the content of the movie.

The fact that the authorities would not release my son's wounded heart to be cremated with his body is a continuing mental anguish for to me.

Psychological and Emotional Injury.

On March 21, 2003, my only son was brutally taken from me. Ours was a very special relationship.

I need to tell you something about this relationship so that you can assess the kind of psychological and emotional injury it has done to me.

I recall Simon's birth, while comforting my wife the best I could and witnessing this miracle, was the first of two moments of explosive joy in my life. I recall Simon's aunt saying 'it's a boy and everything is in place'. After completing proper formalities she wrapped this miracle and handed him to me, I then placed Simon on his mother's chest and we both laughed and cried with joy and humility.

From the day Simon was born he was, without exception, well behaved. I have no recollection of either his mother or myself 'walking the floor' with him. Conversely, because he was so quiet at night, I kept a hand mirror near his cot and held it near his mouth to satisfy myself he was breathing.

When Simon grew up and left us, as a family we would always try to have dinner together once a week but very often Simon would come over more than that.

When Simon arrived each time he greeted his mother affectionately and me by saying "hi dad, how's things? What's happening?" Simon always showed a real interest and concern for our extended family as well, and wanted to know what was happening and what everyone was involved in. He would ask if I've heard from this aunt or that and how his great aunt of over 90 was getting on.